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H. R. 1330

To amend the Federal Water Pollution Control Act to establish a comprehensive program for conserving and managing wetlands in the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 1993

Mr. HAYES (for himself, Mr. RIDGE, Mr. TAUZIN, Mr. YOUNG of Alaska, Mr. BREWSTER, Mr. SHUSTER, Mr. BROOKS, Mr. FIELDS of Texas, Mr. NATCHER, Mr. CLINGER, Mr. MONTGOMERY, Mr. EMERSON, Mr. THOMAS of California, Mr. LAUGHLIN, Mr. INHOFE, Mr. PAXON, Mr. LAFALCE, Mr. CUNNINGHAM, Mr. VOLKMER, Mrs. VUCANOVICH, Mr. GRANDY, Mr. WILSON, Mr. PICKETT, Mr. BAKER of Louisiana, Mr. DELAY, Mr. ROTH, Mr. PARKER, Mr. CLEMENT, Mr. HEFNER, Mr. POMBO, Mr. PACKARD, Mr. MURPHY, Mr. SARPALIUS, Mr. THOMAS of Wyoming, Mr. SMITH of Oregon, Mr. EWING, Mr. HANSEN, Mr. BLILEY, Mr. PETE GEREN of Texas, Mr. CRAPO, Mr. CONDIT, Mr. LIVINGSTON, Mr. BATEMAN, Ms. LAMBERT, Mr. LIGHTFOOT, Mr. MCCRERY, Mr. POSHARD, Mr. WALKER, Mr. SOLOMON, Mr. LANCASTER, Mr. STENHOLM, Mr. SKELTON, and Mr. ORTON) introduced the following bill; which was referred jointly to the Committees on Public Works and Transportation and Merchant Marine and Fisheries

MARCH 3, 1994

Additional sponsors: Mr. SUNDQUIST, Mr. HERGER, Mr. EDWARDS of Texas, Mr. GOODLING, Mr. HANCOCK, Mr. MCHUGH, Mr. BURTON of Indiana, Mr. NUSSLE, Mr. SAM JOHNSON of Texas, Mr. MCDADE, Mr. GILLMOR, Mr. DORNAN, Mr. HASTERT, Mr. BOEHNER, Mr. STUMP, Mr. BARRETT of Nebraska, Mr. TAYLOR of North Carolina, Mr. LEWIS of California, Mr. GALLEGLY, Mr. BARTON of Texas, Mr. COSTELLO, Mr. COMBEST, Mr. BONILLA, Mr. MYERS of Indiana, Mr. ROBERTS, Mr. HUTCHINSON, Mr. SMITH of Texas, Mr. GEKAS, Mr. HOUGHTON, Mr. SISISKY, Mr. MICHEL, Mr. KYL, Mr. COBLE, Mr. BUYER, Mr. DUNCAN, Mr. ROWLAND, Mr. DOOLEY, Mr. BUNNING, Mr. QUILLEN, Mr. TALENT, Mr. COLLINS of Georgia, Mr. LINDER, Mr. CRANE, Mr. HOBSON, Mrs. BENTLEY, Mr. ARMEY, Mr. MCCOLLUM, Mr. DOOLITTLE, Mr. MCINNIS, Mr. BISHOP, Mr. OXLEY, Mr. CALLAHAN, Mr. BARTLETT of Maryland, Mr. HILLIARD, Mr. HYDE, Mr. CALVERT, Mrs. FOWLER, Mr. ALLARD, Mr. HALL of Texas, Mr. GINGRICH, Mr. SCHAEFER, Mr. SPENCE, Mr.

SKEEN, Mr. HUNTER, Mr. BALLENGER, Ms. DUNN, Mr. ORTIZ, Mr. McCANDLESS, Mr. KIM, Mr. McKEON, Mr. HORN, Mr. BARCIA of Michigan, Mr. ROGERS, Mr. MOORHEAD, Mr. DREIER, Mr. WALSH, Mr. ROYCE, and Mr. COX

A BILL

To amend the Federal Water Pollution Control Act to establish a comprehensive program for conserving and managing wetlands in the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Comprehensive Wet-

5 lands Conservation and Management Act of 1993”.

6 **SEC. 2. FINDINGS AND STATEMENT OF PURPOSE.**

7 (a) FINDINGS.—The Congress finds that—

8 (1) wetlands play an integral role in maintain-

9 ing the quality of life through material contributions

10 to our national economy, food supply, water supply

11 and quality, flood control, and fish, wildlife, and

12 plant resources, and thus to the health, safety,

13 recreation and economic well-being of citizens

14 throughout the Nation;

15 (2) wetlands serve important ecological and nat-

16 ural resource functions, such as providing essential

17 nesting and feeding habitat for waterfowl, other

1 wildlife, and many rare and endangered species, fish-
2 eries habitat, the enhancement of water quality, and
3 natural flood control;

4 (3) much of the Nation's resource has sustained
5 significant degradation, resulting in the need for ef-
6 fective programs to limit the loss of ecologically sig-
7 nificant wetlands and to provide for long-term res-
8 toration and enhancement of the wetlands resource
9 base;

10 (4) most of the loss of wetlands in coastal Lou-
11 isiana is not attributable to human activity;

12 (5) because 75 per centum of the Nation's wet-
13 lands in the lower forty-eight States are privately
14 owned and because the majority of the Nation's pop-
15 ulation lives in or near wetlands areas, an effective
16 wetlands conservation and management program
17 must reflect a balanced approach that conserves and
18 enhances important wetlands values and functions
19 while observing private property rights, recognizing
20 the need for essential public infrastructure, such as
21 highways, ports, airports, sewer system, and public
22 water supply systems and providing the opportunity
23 for sustained economic growth;

24 (6) while wetlands provide many varied eco-
25 nomic and environmental benefits, they also present

1 health risks in some instances where they act as
2 breeder grounds for insects that are carriers of
3 human and animal diseases; and

4 (7) the Federal permit program established
5 under section 404 of the Federal Water Pollution
6 Control Act was not originally conceived as a wet-
7 lands regulatory program and is insufficient to en-
8 sure that the Nation's wetlands resource base will be
9 conserved and managed in a fair and environ-
10 mentally sound manner.

11 (b) PURPOSE.—The purpose of this Act is to estab-
12 lish a new Federal wetlands regulatory program to—

13 (1) assert Federal regulatory jurisdiction over a
14 broad category of specifically identified activities
15 that result in the degradation or loss of wetlands;

16 (2) account for variations in wetlands values or
17 functions in determining the character and extent of
18 regulation of activities occurring in wetlands areas;

19 (3) provide sufficient regulatory incentives for
20 conservation, restoration, or enhancement activities;

21 (4) encourage conservation of resources on an
22 ecosystem basis to the fullest extent practicable; and

23 (5) balance public and private interests in de-
24 termining the conditions under which activity in wet-
25 lands areas may occur.

1 **SEC. 3. WETLANDS CONSERVATION AND MANAGEMENT.**

2 Title IV of the Federal Water Pollution Control Act
3 (33 U.S.C. 1341 et seq.) is amended by striking section
4 404 and inserting in lieu thereof the following new section:

5 **“SEC 404. PERMITS FOR ACTIVITIES IN WETLANDS OR WA-**
6 **TERS OF THE UNITED STATES.**

7 “(a) PROHIBITED ACTIVITIES.—(1) No person shall
8 undertake an activity in wetlands or waters of the United
9 States as described in paragraph (2) of this subsection un-
10 less such activity is undertaken pursuant to a permit is-
11 sued by the Secretary or is otherwise authorized under
12 this section.

13 “(2) For purposes of this section an ‘activity in wet-
14 lands or waters of the United States’ means—

15 “(A) the discharge of dredged or fill material
16 into waters of the United States, including wetlands
17 at a specific disposal site; or

18 “(B) the draining, channelization, or excavation
19 of wetlands.

20 “(3) For purposes of this section—

21 “(A) ‘wetlands’ means those lands that meet
22 the criteria for delineation of lands as wetlands set
23 forth in paragraph (2) of subsection (g);

24 “(B) ‘Secretary’ means the Secretary of the
25 Army; and

1 “(C) ‘Director’ means the Director of the Unit-
2 ed States Fish and Wildlife Service.

3 “(b) AUTHORIZED ACTIVITIES.—(1) The Secretary is
4 authorized to issue permits authorizing activities described
5 in subsection (a)(2) of this section in accordance with the
6 requirements of this section.

7 “(2) Activities described in paragraph (2) of sub-
8 section (a) may be undertaken without a permit from the
9 Secretary if those activities are authorized under sub-
10 sections (e)(5) or (6) or are exempt from the requirements
11 of this section under subsection (f) or other provisions of
12 this section.

13 “(c) WETLANDS CLASSIFICATION.—(1) Any person
14 seeking to undertake activities in wetlands for which a per-
15 mit is required under subsection (b) shall make application
16 to the Secretary identifying the site of such activity and
17 requesting that the Secretary determine, in accordance
18 with paragraph (3) of this subsection, the classification
19 of the wetlands in which such activity is proposed to occur.
20 The applicant may also provide such additional informa-
21 tion regarding such proposed activity as may be necessary
22 or appropriate for purposes of determining the classifica-
23 tion of such wetlands or whether and under what condi-
24 tions the proposed activity may be permitted to occur.

1 “(2)(A) Except as provided in subparagraph (B) of
2 this paragraph, within ninety days following the receipt
3 of an application under paragraph (1), the Secretary shall
4 provide notice to the applicant of the classification of the
5 wetlands that are the subject of such application and shall
6 state in writing the basis for such classification. The clas-
7 sification of the wetlands that are the subject of the appli-
8 cation shall be determined by the Secretary in accordance
9 with the requirements for classification of wetlands
10 under paragraphs (3) and (5).

11 “(B) In the case of an application proposing activities
12 located in wetlands that are the subject of an advance clas-
13 sification under subsection (h), the Secretary shall provide
14 notice to the applicant of such classification within thirty
15 days following the receipt of such application, and shall
16 provide an opportunity for review of such classification
17 under paragraphs (4) and (5) of this subsection.

18 “(3) Upon application under this subsection, the Sec-
19 retary shall—

20 “(A) classify as type A wetlands those wetlands
21 that are of critical significance to the long-term con-
22 servation of the ecosystem of which such wetlands
23 are a part and which meet the following require-
24 ments—

1 “(i) such wetlands serve critical wetlands
2 functions, including the provision of critical
3 habitat for a concentration of avian, aquatic, or
4 wetland dependent wildlife;

5 “(ii) such wetlands consist of or may be a
6 portion of ten or more contiguous acres and
7 have an inlet or outlet for relief of water flow;
8 except that this requirement shall not operate
9 to preclude the classification as type A wetlands
10 lands containing prairie pothole features, playa
11 lakes, or vernal pools if such lands otherwise
12 meet the requirements for type A classification
13 under this paragraph;

14 “(iii) there exists a scarcity within the wa-
15 tershed or aquatic ecosystem of identified eco-
16 logical functions served by such wetlands such
17 that the use of such wetlands for activities de-
18 scribed in subsection (a) would seriously jeop-
19 ardize the availability of these identified wet-
20 lands functions;

21 “(iv) there is no overriding public interest
22 in the use of such wetlands for purposes other
23 than conservation; and

24 “(v) the nature and scope of wetlands
25 functions are such that minimization and com-

1 pensation are not feasible means for conserving
2 wetlands values and functions;

3 “(B) classify as type B wetlands those wetlands
4 that provide habitat for a significant population of
5 avian, aquatic or wetland dependent wildlife, or pro-
6 vide other significant wetlands functions including
7 significant enhancement or protection of water qual-
8 ity, or significant natural flood control; and

9 “(C) classify as type C wetlands all wetlands
10 that:

11 “(i) serve limited wetlands functions;

12 “(ii) serve marginal wetlands functions but
13 which exist in such abundance that regulation
14 of activities in such wetlands is not necessary
15 for conserving important wetlands values and
16 functions;

17 “(iii) are prior converted cropland;

18 “(iv) are fastlands; or,

19 “(v) are wetlands within industrial com-
20 plexes or other intensely developed areas that
21 do not serve significant wetlands functions as a
22 result of such location.

23 “(4)(A) Within thirty days of receipt of notice of an
24 advance classification by the Secretary under paragraph
25 (2)(B) of this subsection, an applicant may request the

1 Secretary to make a de novo determination of the classi-
2 fication of wetlands that are the subject of such notice.
3 Such de novo determination shall be made by the Sec-
4 retary in consultation with the Director. The Secretary
5 may sustain an advance classification made by the Direc-
6 tor or may modify such classification if the Secretary de-
7 termines, upon examination of all relevant information
8 submitted by the applicant or otherwise available to the
9 Secretary (including, if appropriate, an on-the-ground-ex-
10 amination), that—

11 “(i) the lands involved do not meet the stand-
12 ards and criteria for delineating wetlands set forth
13 in paragraph (2) of subsection (g);

14 “(ii) the weight of relevant information does not
15 support the determination of the advance classifica-
16 tion with respect to the specific wetlands involved;

17 “(iii) the factual basis for such advance classi-
18 fication is no longer valid; except that such change
19 in factual circumstances has not been caused by ac-
20 tivities undertaken without authorization by the Sec-
21 retary as may have been required under this section;

22 or

23 “(iv) the limitations on uses of the specific wet-
24 lands involved that would be imposed by the Sec-
25 retary under the requirements of this section would

1 effectively preclude reasonable economic use of the
2 wetlands.

3 “(5) In the event that the Secretary delegates author-
4 ity to determine the classification of wetlands under para-
5 graphs (3) and (4), the Secretary shall, by rule, provide
6 for a right of appeal to the Secretary or his designee of
7 the classification of wetlands under paragraph (3) or the
8 de novo determination of a classification under paragraph
9 (4).

10 “(d) COMPENSATION FOR LANDOWNERS.—(1) Any
11 person (including a State or political subdivision thereof)
12 who owns an interest in lands that have been classified
13 as type A wetlands by the Secretary under subsection (c)
14 or by the Director under subsection (h) may, within two
15 years of receipt of actual notice of such classification (or
16 within two years following a de novo determination of such
17 classification), notify the Secretary and the Director that
18 such person is electing to seek compensation for the fair
19 market value of such interests in lands at the time of such
20 classification, in accordance with the requirements of this
21 section. Fair market value may include reasonable attor-
22 neys fees and shall be calculated without regard to any
23 diminution in value resulting from the applicability of this
24 section.

1 “(2) Immediately upon receipt by the Secretary and
2 the Director of notification of election to seek compensa-
3 tion under paragraph (1), the Director shall enter into
4 good faith negotiations with the owner for purposes of de-
5 termining the value of the interests in lands that have
6 been classified as type A wetlands. Within three months
7 after receipt of the notice of election by the landowner
8 under paragraph (1), the Director shall make an offer of
9 reasonable compensation to the owner.

10 “(3) Within six years of the date an offer for com-
11 pensation is made under paragraph (2), the owner shall,
12 in his discretion—

13 “(A) accept such offer of compensation;

14 “(B) file a claim for determination of value of
15 compensation with the United States Claims Court;
16 or

17 “(C) advise the Director and the Secretary that
18 he elects to retain title to such wetlands and elects
19 not to receive compensation for the taking of land
20 under this subsection.

21 Failure to provide notice in accordance with this para-
22 graph shall be deemed an election not to receive compensa-
23 tion under this subsection.

24 “(4) Upon acceptance of an offer for compensation
25 or the filing of a claim for compensation under paragraph

1 (3), the classification as type A wetlands of the wetlands
2 that are the subject of such offer or claim shall be binding
3 upon the owner and any successor in interest, and the title
4 to such lands shall pass to the United States. The classi-
5 fication of such lands as type A wetlands under this para-
6 graph shall constitute a taking by the United States of
7 the owner's interests in such lands and shall be compen-
8 sable under the provisions of this subsection.

9 “(5) A taking under this subsection shall be deemed
10 to be a taking of surface interests in lands only or water
11 rights allocated under State law; except that: (A) if the
12 Secretary determines that the exploration for or develop-
13 ment of oil and gas or mineral interests is not compatible
14 with conservation of the surface interests in lands that
15 have been classified as type A wetlands located above such
16 oil and gas or mineral interests (or located adjacent to
17 such oil and gas or mineral interests where such adjacent
18 lands are necessary to provide reasonable access to such
19 interests), the Secretary may classify such oil and gas or
20 mineral interests as type A wetlands and notify the owner
21 of such interests that the owner may elect to receive com-
22 pensation for such interests under paragraph (1), and (B)
23 the failure to provide reasonable access to oil and gas or
24 mineral interests located beneath or adjacent to surface

1 interests of type A wetlands shall be deemed a taking of
2 such oil and gas or mineral interests.

3 “(6) The United States Claims Court shall have juris-
4 diction—

5 “(A) to determine the value of interests taken
6 and the fair compensation required under this sub-
7 section and the Constitution of the United States;

8 “(B) in case of oil and gas or mineral interests,
9 to require the United States to provide reasonable
10 access in, across, or through lands that may be the
11 subject of a taking under this subsection solely for
12 the purpose of undertaking activity necessary to de-
13 termine the value of the interests taken; and

14 “(C) to provide other equitable remedies
15 deemed appropriate.

16 “(7) Any judgment rendered under paragraph (6)
17 may be executed, at the election of the landowner, no later
18 than two years after the date such judgment is rendered.
19 The landowner may, prior to the execution of such judg-
20 ment, enter into an agreement with the United States for
21 satisfaction of such judgment through a crediting of tax
22 benefits, acquisition of interests in oil and gas or minerals,
23 an exchange of interests in lands with the United States
24 or other means of compensation.

1 “(8)(A) The remedies for taking of interests in lands
2 under this subsection shall not be construed to preempt,
3 alter, or limit the availability of other remedies for the
4 taking of interests in lands under the Constitution of the
5 United States or State law, including the taking of rights
6 to the use of water allocated under State law or the taking
7 of interest in lands by denial of a permit under this sec-
8 tion.

9 “(B) Any award of compensation for the taking of
10 interest in lands by denial of a permit under this section
11 shall be based upon the fair market value of such interests
12 in lands at the time of such taking. Fair market value
13 may include reasonable attorneys fees and shall be cal-
14 culated without regard to any diminution in value result-
15 ing from the applicability of this section.

16 “(9) Interests in lands acquired by the United States
17 under this subsection shall be managed by the United
18 States Fish and Wildlife Service as a part of the National
19 Wildlife Refuge System unless otherwise provided by the
20 Director or by Act of Congress.

21 “(10) No action taken under this subsection shall be
22 construed to alter or supersede requirements governing
23 use of water applicable under State law.

24 “(e) REQUIREMENTS APPLICABLE TO PERMITTED
25 ACTIVITY.—(1) Following the determination of wetlands

1 classification pursuant to subsection (c), and after compli-
2 ance with the requirements of subsection (d) if applicable,
3 the Secretary may issue or deny permits for authorization
4 to undertake activities in wetlands, in accordance with the
5 requirements of this subsection.

6 “(2) The Secretary shall deny a permit authorizing
7 activities in type A wetlands unless the Secretary deter-
8 mines that—

9 “(A) such an activity can be undertaken with
10 minimal alteration or surface disturbance;

11 “(B) there are overriding public interest con-
12 cerns that require use of the lands for purposes
13 other than conservation, including:

14 “(i) the likelihood that efforts to mitigate
15 adverse impacts through avoidance and mini-
16 mization will protect, enhance, or increase criti-
17 cal wetlands values and functions; or

18 “(ii) the lack of practical and feasible
19 means for accomplishing the project purpose at
20 an alternative location; or

21 “(C) the proposed use of the land, taking into
22 account all proposed mitigation, will result in overall
23 environmental benefits, including the prevention of
24 wetlands loss.

1 Any permit issued authorizing activities in type A wet-
2 lands may contain such terms and conditions concerning
3 mitigation (including those applicable under paragraph (3)
4 for type B wetlands) that the Secretary deems appropriate
5 to prevent the unacceptable loss or degradation of type
6 A wetlands.

7 “(3)(A) The Secretary may issue a permit authoriz-
8 ing activities in type B wetlands subject to such terms and
9 conditions as the Secretary finds are necessary to ensure
10 that the watershed or aquatic ecosystem of which such
11 wetlands are a part does not suffer significant loss or deg-
12 radation of wetlands values and functions. In determining
13 whether or not specific terms and conditions are necessary
14 to avoid a significant loss of wetlands values and func-
15 tions, the Secretary shall consider the following:

16 “(i) the quality and quantity of ecologically sig-
17 nificant functions served by the areas to be affected;

18 “(ii) the opportunities to reduce impacts
19 through cost effective design to avoid or minimize
20 use of wetlands areas;

21 “(iii) the costs of mitigation requirements and
22 the social, recreational, and economic benefits associ-
23 ated with the proposed activity, including local, re-
24 gional, or national needs for improved or expanded
25 infrastructure;

1 “(iv) the ability of the permittee to mitigate
2 wetlands loss or degradation as measured by wet-
3 lands functions;

4 “(v) the environmental benefit, measured by
5 wetlands functions, that may occur through mitiga-
6 tion efforts, including restoring, preserving, enhanc-
7 ing, or creating wetlands values and functions; and

8 “(vi) the marginal impact of the proposed activ-
9 ity on the watershed of which such wetlands are a
10 part.

11 “(B) In considering an application for activities on
12 type B wetlands, the Secretary may require alternative
13 site analyses for individual permit applications involving
14 the alteration or permanent surface disturbance of ten or
15 more contiguous acres of wetlands. There shall be a rebut-
16 table presumption that the project purpose as defined by
17 the applicant shall be binding upon the Secretary. The def-
18 inition of project purpose for projects sponsored by public
19 agencies shall be binding upon the Secretary, subject to
20 the authority of the Secretary to impose mitigation re-
21 quirements to minimize impacts on wetlands values and
22 functions, including cost effective redesign of projects to
23 avoid wetlands areas.

24 “(C) Except as otherwise provided in this section, re-
25 quirements for mitigation shall be imposed when the Sec-

1 retary finds that activities undertaken under this section
2 will result in the loss or degradation of type B wetlands
3 functions and values where such loss or degradation is not
4 a temporary or incidental impact. When determining miti-
5 gation requirements in any specific case, the Secretary
6 shall take into consideration the type of wetlands affected,
7 the character of the impact on ecological functions, wheth-
8 er any adverse effects on wetlands are of a permanent or
9 temporary nature, and the cost effectiveness of such miti-
10 gation and shall seek to minimize the costs of such mitiga-
11 tion.

12 “(D) In accordance with subsection (i), the Secretary
13 shall issue rules governing requirements for mitigation for
14 activities occurring in type B wetlands that allow for—

15 “(i) minimization of impacts through project
16 design, including avoidance of specific wetlands im-
17 pacts where economically practicable and consistent
18 with the project’s purpose, provisions for compen-
19 satory mitigation, if any, and other terms and condi-
20 tions necessary and appropriate in the public inter-
21 est;

22 “(ii) preservation or donation of type A wet-
23 lands or type B wetlands (where title has not been
24 acquired by the United States and no compensation
25 for the taking of such wetlands has been provided)

1 as mitigation for activities that alter or degrade wet-
2 lands;

3 “(iii) enhancement or restoration of degraded
4 wetlands as compensation for wetlands lost or de-
5 graded through permitted activity;

6 “(iv) compensation through contribution to a
7 mitigation banking program established for a State
8 pursuant to subparagraph (F);

9 “(v) offsite compensatory mitigation if such
10 mitigation contributes to the restoration, enhance-
11 ment or creation of significant wetlands values on a
12 watershed or ecosystem-wide basis and is balanced
13 with the affects that the proposed activity will have
14 on the specific site; except that offsite compensatory
15 mitigation, if any, shall be required only within the
16 State within which the proposed activity is to occur,
17 and shall, to the extent practicable, be within the
18 watershed within which the proposed activity is to
19 occur, unless otherwise consistent with a State wet-
20 lands management plan;

21 “(vi) contribution of in-kind value acceptable to
22 the Secretary and otherwise authorized by law;

23 “(vii) in areas subject to wetlands loss, the con-
24 struction of coastal protection and enhancement
25 projects;

1 “(viii) contribution of resources of more than
2 one permittee toward a single mitigation project;
3 and

4 “(ix) other mitigation measures determined by
5 the Secretary to be appropriate in the public interest
6 and consistent with the requirements and purposes
7 of this Act.

8 “(E) Notwithstanding the provisions of subparagraph
9 (C), the Secretary may determine not to impose require-
10 ments for compensatory mitigation if the Secretary finds
11 that—

12 “(i) the adverse impacts of a permitted activity
13 are limited;

14 “(ii) the failure to impose compensatory mitiga-
15 tion requirements is compatible with maintaining
16 wetlands functions and values and no practicable
17 and reasonable means of mitigation is available;

18 “(iii) there is an abundance of similar signifi-
19 cant wetlands functions and values in or near the
20 area in which the proposed activity is to occur that
21 will continue to serve the functions lost or degraded
22 as a result of such activity, taking into account the
23 impacts of such proposed activity and the cumulative
24 impacts of similar activity in the area;

1 “(iv) the temporary character of the impacts
2 and the use of minimization techniques make com-
3 pensatory mitigation unnecessary to protect signifi-
4 cant wetlands values; or

5 “(v) a waiver from requirements for compen-
6 satory mitigation is necessary to prevent special
7 hardship.

8 “(F) The Secretary, in consultation with the Direc-
9 tor, shall establish a mitigation banking program in each
10 State. Such mitigation banking program shall be devel-
11 oped in consultation with the Director and the Governor
12 of the State in which the wetlands covered by such mitiga-
13 tion banking program is located and, after approval by
14 the Secretary, will be available to the Secretary as a means
15 for ensuring compensation for loss and degradation of wet-
16 lands functions and values in such State in accordance
17 with the requirements of this paragraph. The primary ob-
18 jective of such programs shall be to provide for the res-
19 toration, enhancement, or, where feasible, creation of eco-
20 logically significant wetlands on an ecosystem basis. Such
21 programs shall—

22 “(i) provide a preference for larger scale
23 projects, unless the Secretary (or the Governor of a
24 State that is administering its own permit program
25 under subsection (1)) determines that a smaller

1 project will contribute substantially to the conserva-
2 tion, enhancement or restoration of ecologically sig-
3 nificant wetlands values and functions or that the
4 restoration of indigenous wetlands resources cannot
5 be accomplished through large-scale projects;

6 “(ii) authorize mitigation banks sponsored ei-
7 ther by private entities or public entities;

8 “(iii) provide for crediting of contributions to
9 the mitigation bank in land, cash, or in-kind con-
10 tributions so that persons unable to sponsor specific
11 mitigation projects can contribute to a State or pri-
12 vately maintained mitigation bank;

13 “(iv) have sufficient requirements to ensure
14 completion, maintenance and supervision for at least
15 a twenty-five-year period, including requirements for
16 bonds or other evidence of financial responsibility;

17 “(v) authorize the imposition of bonding re-
18 quirements on private entities operating such banks;

19 “(vi) limit activities in or on wetlands that are
20 part of a mitigation bank to uses that are consistent
21 with maintaining or gaining significant wetlands val-
22 ues and functions; and

23 “(vii) authorize a credit to be provided on an
24 acre-for-acre or value-for-value basis for type A and
25 B wetlands that are permanently protected in na-

1 tional conservation units in States that have con-
2 verted less than 10 per centum of their State's his-
3 toric wetlands base.

4 “(4)(A) In the case of any application for authoriza-
5 tion to undertake activities in wetlands that are not eligi-
6 ble for treatment on an expedited basis pursuant to para-
7 graph (5) of this subsection, final action by the Secretary
8 shall occur within six months following the date such ap-
9 plication is filed, unless—

10 “(i) the Secretary and the applicant agree that
11 such final action shall occur within a shorter or
12 longer period of time;

13 “(ii) the Secretary determines that an addi-
14 tional, specified period of time is necessary to permit
15 the Secretary to comply with other applicable Fed-
16 eral law; or

17 “(iii) the Secretary, within fifteen days from
18 the date such application is received, notifies the ap-
19 plicant that such application does not contain all in-
20 formation necessary to allow the Secretary to con-
21 sider such application and identifies any necessary
22 additional information, in which case, the provisions
23 of subparagraph (B) shall apply.

24 “(B) Upon the receipt of a request for additional in-
25 formation under paragraph (A)(iii), the applicant shall

1 supply such additional information and shall advise the
2 Secretary that the application contains all requested infor-
3 mation and is therefore complete. The Secretary may—

4 “(i) within thirty days of the receipt of notice
5 of the applicant that the application is complete, de-
6 termine that the application does not contain all re-
7 quested additional information and, on that basis,
8 deny the application without prejudice to resubmis-
9 sion; or

10 “(ii) review the application and take final action
11 within six months from the date that the applicant
12 provides notification to the Secretary that the appli-
13 cation is complete.

14 “(C) If the Secretary fails to take final action on an
15 application under this paragraph within six months from
16 the date that the applicant provides notification to the
17 Secretary that such application is complete, a permit shall
18 be presumed to be granted authorizing the activities pro-
19 posed in such application under such terms and conditions
20 as are stated in such completed application.

21 “(D) Within sixty days from the date of decision of
22 the Secretary denying an application under this para-
23 graph, the applicant may appeal such decision to the Sec-
24 retary of Defense or his designee. Upon such an appeal,
25 the Secretary must prove by clear and convincing evidence

1 that granting the permit requested in such application
2 would be inconsistent with the provisions of this section.

3 “(5)(a) Activities in wetlands that have been classi-
4 fied as type C wetlands by the Secretary or the Director
5 may be undertaken without authorization required under
6 subsection (b) of this section.

7 “(B) The Secretary may establish requirements for
8 reporting activities undertaken in type C wetlands.

9 “(C) No requirements for alternative site analyses or
10 mitigation of environmental impacts shall apply for activi-
11 ties undertaken in type C wetlands.

12 “(6) The Secretary may, by rule in accordance with
13 subsection (i), issue general permits on a State, regional,
14 or nationwide basis for any category of activities involving
15 activities described in section (a) of this section in wet-
16 lands if the Secretary determines that such activities are
17 similar in nature and that such activities, when performed
18 separately and cumulatively, will not result in the signifi-
19 cant loss of ecologically significant wetlands values and
20 functions. Permits issued under this subsection shall in-
21 clude procedures for expedited review of eligibility for such
22 permits (if such review is required) and may include re-
23 quirements for reporting and mitigation. Requirements for
24 compensatory mitigation for such permits may be imposed
25 where necessary to avoid or minimize the significant loss

1 or degradation of significant wetlands values and func-
2 tions where such loss or degradation is not a temporary
3 or incidental impact. Nationwide, general or regional per-
4 mits in effect on the date of enactment of the Comprehen-
5 sive Wetlands Conservation and Management Act of 1993
6 shall remain in effect until otherwise modified by the Sec-
7 retary.

8 “(f) ACTIVITIES NOT REQUIRING PERMIT.—(1) Ex-
9 cept as provided in paragraph (3) of this subsection, ac-
10 tivities undertaken in wetlands are exempt from the re-
11 quirements of this section and are not prohibited by or
12 otherwise subject to regulation under this section or sec-
13 tion 301 or 402 of the Act (except effluent standards or
14 prohibitions under section 307 of the Act), if such activi-
15 ties—

16 “(A) result from normal farming, silviculture,
17 aquaculture, and ranching activities and practices,
18 such as plowing, seeding, cultivating, minor drain-
19 age, burning of vegetation in connection with such
20 activities, harvesting for the production of food,
21 fiber, and forest products, or upland soil and water
22 conservation practices;

23 “(B) are for the purpose of maintenance, in-
24 cluding emergency reconstruction of recently dam-
25 aged parts of currently serviceable structures such

1 as dikes, dams, levees, water control structures,
2 groins, riprap, breakwaters, causeways, and bridge
3 abutments or approaches, and transportation struc-
4 tures;

5 “(C) are for the purpose of construction or
6 maintenance of farm, stock or aquaculture ponds or
7 irrigation canals and ditches, or the maintenance of
8 drainage ditches;

9 “(D) are for the purpose of construction of
10 temporary sedimentation basins on a construction
11 site which does not include placement of fill material
12 into the navigable waters;

13 “(E) are for the purpose of construction or
14 maintenance of farm roads or forest roads, or tem-
15 porary roads for moving mining equipment if such
16 roads are constructed and maintained, in accordance
17 with best management practices, to assure that flow
18 and circulation patterns and chemical and biological
19 characteristics of the waters are not impaired, that
20 the reach of the waters is not reduced, and that any
21 adverse effect on the aquatic environment will be
22 otherwise minimized;

23 “(F) are undertaken on farmed wetlands, ex-
24 cept that any change in use of such land for the
25 purpose of undertaking activities that are not ex-

1 empt from regulation under this subsection shall be
2 subject to the requirements of this section to the ex-
3 tent that such farmed wetlands are ‘wetlands’ under
4 paragraph (2) of subsection (g);

5 “(G) result from any activity with respect to
6 which a State has an approved program under sec-
7 tion 208(b)(4) of this title which meets the require-
8 ments of subparagraphs (B) and (C) of such section;

9 “(H) are consistent with a State or local land
10 management plan submitted to the Secretary and
11 approved pursuant to paragraph (2);

12 “(I) are undertaken in connection with a marsh
13 management and conservation program in a coastal
14 Parish in the State of Louisiana where such pro-
15 gram has been approved by the Governor of such
16 State or the designee of the Governor;

17 “(J) are undertaken on lands or involve activi-
18 ties within a State’s coastal zone which are excluded
19 from regulation under a State coastal zone manage-
20 ment program approved under the Coastal Zone
21 Management Act of 1972 (16 U.S.C. 1451, et seq.);

22 “(K) are undertaken in incidentally created
23 wetlands, unless such incidentally created wetlands
24 have exhibited wetlands functions and values for
25 more than five years in which case activities under-

1 taken in such wetlands shall be subject to the re-
2 quirements of this section;

3 “(L) are part of expanding an ongoing farming
4 operation involving the water dependent, obligate
5 crop *Vaccinium macrocarpin*, so long as such expan-
6 sion does not occur in type A wetlands, does not re-
7 sult in the conversion of more than ten acres of wet-
8 lands per operator per year, and the converted wet-
9 lands (other than where dikes and other necessary
10 facilities are placed) remain as wetlands or other wa-
11 ters of the United States; or

12 “(M) result from aggregate or clay mining ac-
13 tivities in wetlands conducted pursuant to a State
14 or Federal permit that requires the reclamation of
15 such affected wetlands. Conditions of reclamation
16 shall include that for any site, such reclamation shall
17 be completed within five years of the commencement
18 of activities at such site and that upon completion
19 of such reclamation, such wetlands shall support
20 wetlands functions and values equivalent to the func-
21 tions and values supported by such wetlands at the
22 time of commencement of such activities.

23 “(2) Any State or political subdivision thereof acting
24 pursuant to State authorization may develop a land man-
25 agement plan with respect to lands that include identified

1 wetlands. The State or local government agency may sub-
2 mit any such plan to the Secretary for review and ap-
3 proval. The Secretary shall, within sixty days, notify in
4 writing the designated State or local official of approval
5 or disapproval of any such plan. The Secretary shall ap-
6 prove any plan that is consistent with the objectives and
7 policies of this section. No person shall be entitled to judi-
8 cial review of the decision of the Secretary to approve or
9 disapprove a land management plan under this paragraph.
10 Nothing in this paragraph shall be construed to alter, limit
11 or supersede the authority of a State or political subdivi-
12 sion thereof to establish land management plans for pur-
13 poses other than the provisions of this subsection.

14 “(g) RULES FOR DELINEATING WETLANDS.—(1)
15 The Secretary is authorized and directed to establish
16 standards, by rule in accordance with subsection (i), that
17 shall govern the delineation of lands as ‘wetlands’ for pur-
18 poses of this section. Such rules shall be established after
19 consultation with other agencies of the United States, in-
20 cluding the United States Fish and Wildlife Service, the
21 Environmental Protection Agency, and the United States
22 Soil Conservation Service, and shall be binding on all Fed-
23 eral agencies in connection with the administration or im-
24 plementation of any provision of this section. The stand-
25 ards for delineation of wetlands and any decision of the

1 Secretary, the Director, or any other Federal officer or
2 agency made in connection with the administration of this
3 section shall comply with the requirements for delineation
4 of wetlands set forth in paragraph (2) of this subsection.

5 “(2)(A) The standards established by rule or applied
6 in any case for purposes of this section shall ensure that
7 lands are delineated as wetlands only if such lands are
8 found to be ‘wetlands’ under section 502 of this Act (33
9 U.S.C. 1362), except that such standards may not—

10 “(i) result in the delineation of lands as wet-
11 lands unless clear evidence of wetlands hydrology,
12 hydrophytic vegetation, and hydric soil are found to
13 be present during the period in which such delinea-
14 tion is made, which delineation shall be conducted
15 during the growing season unless otherwise re-
16 quested by the applicant;

17 “(ii) result in the classification of vegetation as
18 hydrophytic if such vegetation is equally adapted to
19 dry or wet soil conditions or is more typically adapt-
20 ed to dry soil conditions than to wet soil conditions;

21 “(iii) result in the classification of lands as wet-
22 lands unless some obligate wetlands vegetation is
23 found to be present during the period of delineation;
24 except that if such vegetation has been removed for

1 the purpose of evading jurisdiction under this sec-
2 tion, this clause shall not apply;

3 “(iv) result in the conclusion that wetlands hy-
4 drology is present unless water is found to be
5 present at the surface of such lands for at least
6 twenty-one consecutive days during the growing sea-
7 son in which such delineation is made and for twen-
8 ty-one consecutive days in the growing seasons in a
9 majority of the years for which records are available;
10 and,

11 “(v) result in the classification of lands as wet-
12 lands that are temporarily or incidentally created as
13 a result of adjacent development activity.

14 “(B) In addition to the requirements of subparagraph
15 (A), any standards established by rule or applied to delin-
16 eate wetlands for purposes of this section shall provide
17 that ‘normal circumstances’ shall be determined on the
18 basis of the factual circumstances in existence at the time
19 a classification is made under subsection (h) or at the time
20 of application under subsection (e), whichever is applica-
21 ble, if such circumstances have not been altered by an ac-
22 tivity prohibited under this section.

23 “(3) No more than 20 per centum of any county, par-
24 ish, or borough shall be classified as type A wetlands; ex-
25 cept that, type A wetlands in Federal or State ownership

1 (including type A wetlands in units of the National Wild-
2 life Refuge System, the National Park System, and lands
3 held in conservation easements) shall be included in cal-
4 culating the percent of type A wetlands in a county, par-
5 ish, or borough.

6 “(h) UNITED STATES FISH AND WILDLIFE SERVICE
7 WETLANDS IDENTIFICATION AND CLASSIFICATION
8 PROJECT.—(1) The Director, in concurrence with the
9 Chief of the Soil Conservation Service, shall undertake a
10 project to identify and classify wetlands in the United
11 States. The Director shall complete such project not later
12 than ten years after the date of enactment of the Com-
13 prehensive Wetlands Conservation and Management Act
14 of 1993.

15 “(2) In conducting the project under this section, the
16 Director shall identify and classify wetlands in accordance
17 with standards for delineation of wetlands established by
18 the Secretary under subsection (g) of this section.

19 “(3) In conducting the project under this section, the
20 Director shall provide notice and an opportunity for a pub-
21 lic hearing in each county, parish or borough of a State
22 before completion of identification and classification of
23 wetlands in such county, parish, or borough.

24 “(4) Promptly after completion of identification and
25 classification of wetlands in a county, parish, or borough

1 under this section, the Director shall publish information
2 on such identification and classification in the Federal
3 Register and in publications of wide circulation and take
4 other steps reasonably necessary to ensure that such infor-
5 mation is available to the public.

6 “(5) The Director shall report to Congress on imple-
7 mentation of the project to be conducted under this section
8 not later than two years after the date of the enactment
9 of the Comprehensive Wetlands Conservation and Man-
10 agement Act and annually thereafter.

11 “(6) Any classification of lands as wetlands under
12 this section shall, to the fullest extent practicable, be re-
13 corded on the property records in the county, parish or
14 borough in which such wetlands are located.

15 “(i) ADMINISTRATIVE PROVISIONS.—(1) Not later
16 than one year after the date of enactment of the Com-
17 prehensive Wetlands Conservation and Management Act
18 of 1993, the Secretary shall, after notice and opportunity
19 for comment, issue (in accordance with section 553 of title
20 5 of the United States Code and as otherwise required
21 under this section), final rules and regulations for the is-
22 suance of permits. Such rules and regulations shall, in ac-
23 cordance with this section, provide—

24 “(A) standards and procedures for the classi-
25 fication and delineation of wetlands and procedures

1 for administrative review of any such classification
2 or delineation;

3 “(B) standards and procedures for the review
4 of State or local land management plans and State
5 programs for the regulation of wetlands;

6 “(C) for the issuance of general, nationwide, or
7 regional permits;

8 “(D) standards and procedures for the individ-
9 ual permit applications under this section;

10 “(E) for enforcement of this section;

11 “(F) any other rules and regulations that the
12 Secretary deems necessary or appropriate to imple-
13 ment the requirements of this section;

14 “(G) standards and procedures for administra-
15 tive appeals of actions by the Secretary denying ap-
16 plications for permits under subsection (b) or issuing
17 such permits subject to conditions; and,

18 “(H) requirements governing the establishment
19 of mitigation banks.

20 “(2) Any judicial review of final regulations issued
21 pursuant to this section and the Secretary’s denial of any
22 petition for the issuance, amendment, or repeal of any reg-
23 ulation under this section shall be in accordance with sec-
24 tions 701 through 706 of title 5 of the United States Code;
25 except that a petition for review of action of the Secretary

1 in issuing any regulation or requirement under this section
2 or denying any petition for the issuance, amendment, or
3 repeal of any regulation under this section may be filed
4 only in the United States Court of Appeals for the District
5 of Columbia, and such petition shall be filed within ninety
6 days from the date of such issuance or denial or after such
7 date if such petition for review is based solely on grounds
8 arising after such ninetieth day. Action of the Secretary
9 with respect to which review could have been obtained
10 under this subsection shall not be subject to judicial review
11 in civil or criminal proceedings for enforcement.

12 “(3) The Secretary shall, within ninety days after the
13 date of the enactment of the Comprehensive Wetlands
14 Conservation and Management Act of 1993, issue interim
15 rules and regulations consistent with this section to take
16 effect immediately. Notice of the interim regulations shall
17 be published in the Federal Register, and such regulations
18 shall be binding until the issuance of final regulations pur-
19 suant to paragraph (1); except that the Secretary shall
20 provide adequate procedures for waiver of any provisions
21 of such interim regulations to avoid special hardship, in-
22 equity, or unfair distribution of burdens, or to advance
23 the purposes of this section.

24 “(4) Except where otherwise expressly provided in
25 this section, the Secretary shall administer this section.

1 The Secretary or any other Federal officer or agency in
2 which any function under this section is vested or dele-
3 gated is authorized to perform any and all acts (including
4 appropriate enforcement activity), and to prescribe, issue,
5 amend, or rescind such rules or orders as such officer or
6 agency may find necessary or appropriate with this sub-
7 section, subject to the requirements of this subsection.

8 “(j) VIOLATIONS.—(1) Whenever, on the basis of reli-
9 able and substantial information and after reasonable in-
10 quiry, the Secretary finds that any person is or may be
11 in violation of this section or of any condition or limitation
12 set forth in a permit issued by the Secretary under this
13 section, the Secretary shall issue an order requiring such
14 persons to comply with this section or with such condition
15 or limitation or the Secretary shall bring a civil action in
16 accordance with paragraph (3).

17 “(2) A copy of any order issued under this subsection
18 shall be sent immediately by the Secretary to the Governor
19 of the State in which the violation occurs and the Gov-
20 ernors of other affected States. Any order issued under
21 this subsection shall be by personal service to the appro-
22 priate person or corporate officer and shall state with rea-
23 sonable specificity the nature of the asserted violation, and
24 specify a time for compliance, not to exceed thirty days,
25 which the Secretary determines is reasonable taking into

1 account the seriousness of the asserted violation and any
2 good faith efforts to comply with applicable requirements;
3 except that if the person receiving notice of the asserted
4 violation disputes the Secretary's determination and so no-
5 tifies the Secretary in writing within ninety days of receipt
6 of the Secretary's notice, the Secretary shall within sixty
7 days after receiving notice of a dispute of an asserted vio-
8 lation, or within one hundred and fifty days from the date
9 of notification of violation by the Secretary if no notice
10 of a dispute is received (or after serving notice, unless oth-
11 erwise agreed to by the parties) prosecute a civil action
12 in accordance with paragraph (3) or rescind such order
13 and be estopped from any further enforcement proceed-
14 ings for the same asserted violation.

15 “(3) The Secretary is authorized to commence a civil
16 action for appropriate relief, including a permanent or
17 temporary injunction, for any violation for which the Sec-
18 retary is authorized to issue a compliance order under
19 paragraph (1) of this subsection. Any action under this
20 paragraph may be brought in the district court of the
21 United States for the district in which the defendant is
22 located or resides or is doing business, and such court
23 shall have jurisdiction to restrain such violation and to re-
24 quire compliance. Notice of the commencement of such ac-
25 tion shall be given immediately to the appropriate State.

1 “(4) Any person who violates any condition or limita-
2 tion in a permit issued by the Secretary under this section,
3 and any person who violates any order issued by the Sec-
4 retary under paragraph (1) of this subsection shall be sub-
5 ject to a civil penalty not to exceed \$25,000 per day for
6 each violation commencing on the day following expiration
7 of the time allowed for compliance. The amount of the fine
8 imposed per day shall be in proportion to the scale or
9 scope of the project. In determining the amount of a civil
10 penalty the court shall consider the seriousness of the vio-
11 lation or violations, the economic benefit (if any) resulting
12 from the violation, any history of such violations, any
13 good-faith efforts to comply with the applicable require-
14 ments, the economic impact of the penalty on the violator,
15 and such other matters as justice may require.

16 “(k) STATE AUTHORITY TO CONTROL DIS-
17 CHARGES.—Nothing in the section shall preclude or deny
18 the right of any State or interstate agency to control ac-
19 tivities in waters within the jurisdiction of such State, in-
20 cluding any activity of any Federal agency, and each such
21 agency shall comply with such State or interstate require-
22 ments both substantive and procedural to control such ac-
23 tivities to the same extent that any person is subject to
24 such requirements. This section shall not be construed as

1 affecting or impairing the authority of the Secretary to
2 maintain navigation.

3 “(l) STATE REGULATION OF WETLANDS.—(1) The
4 Governor of any State desiring to administer its own indi-
5 vidual and general permit program for activities covered
6 by this section within its jurisdiction may submit to the
7 Secretary a description of the program it proposes to es-
8 tablish and administer under State law or under an inter-
9 state compact. In addition, such State shall submit a
10 statement from the chief legal officer in the case of the
11 State or interstate agency, that the laws of such State,
12 or the interstate compact, as the case may be, provide ade-
13 quate authority to carry out the described program.

14 “(2) Not later than one year after the date of the
15 receipt by the Secretary of a program and statement sub-
16 mitted by any State under paragraph (1), the Secretary
17 shall determine whether such State has the following au-
18 thority with respect to the issuance of permits pursuant
19 to such program:

20 “(A) to issue permits which—

21 “(i) apply, and assure compliance with,
22 any applicable requirements of this section; and

23 “(ii) can be terminated or modified for
24 cause, including—

1 “(I) violation of any condition of the
2 permit;

3 “(II) obtaining a permit by misrepre-
4 sentation, or failure to disclose fully all rel-
5 evant facts; or

6 “(III) change in any condition that
7 requires either a temporary or permanent
8 reduction or elimination of the permitted
9 activity;

10 “(B) to issue permits which apply, and ensure
11 compliance with, all applicable requirements of sec-
12 tion 308 of this Act or to inspect, monitor, enter,
13 and require reports to at least the same extent as
14 required in section 308 of this Act;

15 “(C) to ensure that the public, and any other
16 State the waters of which may be affected, receive
17 notice of each application for a permit and to pro-
18 vide an opportunity for public hearing before a rul-
19 ing on each such application;

20 “(D) to ensure that the Secretary receives no-
21 tice of each application for a permit and that, prior
22 to any action by the State, both the applicant for the
23 permit and the State have received from the Sec-
24 retary information with respect to any advance clas-

1 sification applicable to wetlands that are the sub-
2 ject of such application;

3 “(E) to ensure that any State (other than the
4 permitting State) whose waters may be affected by
5 the issuance of a permit may submit written rec-
6 ommendation to the permitting State with respect to
7 any permit application and, if any part of such writ-
8 ten recommendations are not accepted by the per-
9 mitting State, that the permitting State will notify
10 such affected State (and the Secretary) in writing of
11 its failure to so accept such recommendations to-
12 gether with its reasons for doing so; and

13 “(F) to abate violations of the permit or the
14 permit program, including civil and criminal pen-
15 alties and other ways and means of enforcement.

16 “(3) If, with respect to a State program submitted
17 under paragraph (1) of this section, the Secretary deter-
18 mines that such State—

19 “(A) has the authority set forth in paragraph
20 (2), the Secretary shall approve the program and so
21 notify such State and suspend the issuance of per-
22 mits under subsection (b) for activities with respect
23 to which a permit may be issued pursuant to such
24 State program; or

1 “(B) does not have the authority set forth in
2 paragraph (2) of this subsection, the Secretary shall
3 so notify such State and provide a description of the
4 revisions or modifications necessary so that such
5 State may resubmit such program for a determina-
6 tion by the Secretary under this subsection.

7 “(4) If the Secretary fails to make a determination
8 with respect to any program submitted by a State under
9 this subsection within one year after the date of receipt
10 of such program, such program shall be deemed approved
11 pursuant to paragraph (3)(A) and the Secretary shall so
12 notify such State and suspend the issuance of permits
13 under subsection (b) for activities with respect to which
14 a permit may be issued by such State.

15 “(5) After the Secretary approves a State permit pro-
16 gram under paragraphs (3)(A) or (4), the Secretary shall
17 transfer any applications for permits pending before the
18 Secretary for activities with respect to which a permit may
19 be issued pursuant to such State program to such State
20 for appropriate action.

21 “(6) Upon notification from a State with a permit
22 program approved under this subsection that such State
23 intends to administer and enforce the terms and condi-
24 tions of a general permit issued by the Secretary under
25 subsection (e) with respect to activities in such State to

1 which such general permit applies, the Secretary shall sus-
2 pend the administration and enforcement of such general
3 permit with respect to such activities.

4 “(7) Whenever the Secretary determines after public
5 hearing that a State is not administering a program ap-
6 proved under paragraph (3)(A) in accordance with this
7 section, the Secretary shall notify the State and, if appro-
8 priate corrective action is not taken within a reasonable
9 time, not to exceed ninety days after the date of the re-
10 ceipt of such notification, the Secretary shall—

11 “(A) withdraw approval of such program until
12 the Secretary determines such corrective action has
13 been taken; and

14 “(B) resume the program for the issuance of
15 permits under subsections (b) and (e) for all activi-
16 ties with respect to which the State was issuing per-
17 mits until such time as the Secretary makes the de-
18 termination described in paragraph (2) and such
19 State again has an approved program.

20 “(m) A copy of each permit application and each per-
21 mit issued under this section shall be available to the pub-
22 lic. Such permit application or portion thereof shall fur-
23 ther be available on request for the purpose of reproduc-
24 tion.

1 “(n) Compliance with a permit issued pursuant to
2 this section, including any activity carried out pursuant
3 to a general permit issued under this section, shall be
4 deemed in compliance, for purposes of sections 309 and
5 505, with sections 301, 307, and 403.

6 “(o) After the effective date of this section under sec-
7 tion 6 of the Comprehensive Wetlands Conservation and
8 Management Act of 1993, no permit for any activity de-
9 scribed in subsection (a) may be issued except in accord-
10 ance with this section. Any permit for an activity described
11 in subsection (a) issued under this section prior to such
12 effective date shall be deemed to be a permit under this
13 section and shall continue in force and effect for the term
14 of the permit unless revoked, modified, or suspended in
15 accordance with this section. Any application for a permit
16 for such an activity pending under this section on such
17 effective date shall be deemed to be an application for a
18 permit under this section.

19 “(p) Any fee charged in connection with the delineation
20 or classification of wetlands, an application for a permit
21 authorizing an activity described in subsection (a), or
22 any other action taken in compliance with the require-
23 ments of this section (other than fines for violation under
24 subsection (i)) shall not exceed the amount in effect for
25 such fee on January 1, 1990.”.

1 **SEC. 4. DEFINITIONS.**

2 Section 502 of the Federal Water Pollution Control
3 Act (33 U.S.C. 1362) is amended by adding at the end
4 thereof the following new paragraphs:

5 “(21) The term ‘wetlands’ means lands which have
6 a predominance of hydric soils and which are inundated
7 by surface water at a frequency and duration sufficient
8 to support, and that under normal circumstances do sup-
9 port, a prevalence of vegetation typically adapted for life
10 in saturated soil conditions. Wetlands generally include
11 swamps, marshes, bogs, and similar areas.

12 “(22) The term ‘creation of wetlands’ means an activ-
13 ity that brings a wetland into existence at a site where
14 it did not formerly occur for the purpose of compensation.

15 “(23) The term ‘enhancement of wetlands’ means any
16 activity that increases the value of one or more functions
17 in existing wetlands.

18 “(24) The term ‘fastlands’ means lands located be-
19 hind permitted man-made structures, such as levees con-
20 structed and maintained to permit the utilization of such
21 lands for commercial, industrial or residential purposes
22 consistent with local land use planning requirements.

23 “(25) The term ‘wetlands functions’ means the roles
24 wetlands serve which are of value including flood water
25 storage, flood water conveyance, ground water discharge,
26 erosion control, wave attenuation, water quality protec-

1 tion, scenic and aesthetic use, food chain support, fish-
2 eries, wetlands plant habitat, aquatic habitat, and habitat
3 for wetland dependent wildlife.

4 “(26) The term ‘growing seasons’ means, for each
5 plant hardiness zone, the period between the average date
6 of last frost in spring and the average date of first frost
7 in autumn.

8 “(27) The term ‘incidentally created wetlands’ means
9 lands that exhibit wetlands characteristics sufficient to
10 meet the criteria for delineation of wetlands, where one
11 or more of such characteristics is the unintended result
12 of human induced alterations of hydrology.

13 “(28) The term ‘maintenance’ means activities un-
14 dertaken to assure continuation of a wetland or the accom-
15 plishment of project goals after a restoration or creation
16 project has been technically completed, including water
17 level manipulations and control of nonnative plant species.

18 “(29) The term ‘mitigation banking’ means wetlands
19 restoration, enhancement, preservation or creation for the
20 purpose of providing compensation for wetland degrada-
21 tion or loss.

22 “(30) The term ‘normal farming, silviculture, aqua-
23 culture and ranching activities’ means normal ongoing
24 practices identified as such by the Secretary of Agri-
25 culture, in consultation with the Cooperative Extension

1 Service for each State and the land grant university sys-
2 tem and agricultural colleges of the State, taking into ac-
3 count existing practices and such other practices as may
4 be identified in consultation with the affected industry or
5 community.

6 “(31) The term ‘prior converted cropland’ means
7 land that was both manipulated (drained or otherwise
8 physically altered to remove excess water from the land)
9 and cropped before December 23, 1985, to the extent that
10 such land no longer exhibits significant wetlands values.

11 “(32) The term ‘restoration’ in reference to wetlands
12 means an activity undertaken to return a wetland from
13 a disturbed or altered condition with lesser acreage or
14 fewer functions to a previous condition with greater wet-
15 lands acreage or functions.

16 “(33) The term ‘temporary impact’ means the dis-
17 turbance or alteration of wetlands caused by activities
18 under circumstances in which, within three years following
19 the commencement of such activities, such wetlands—

20 “(A) are returned to the conditions in existence
21 prior to the commencement of such activity; or

22 “(B) display conditions sufficient to ensure,
23 that without further human action, such wetlands
24 will return to the conditions in existence prior to the
25 commencement of such activity.”.

1 **SEC. 5. TECHNICAL AND CONFORMING AMENDMENTS.—**

2 Section 309 of the Federal Water Pollution Control
3 Act (33 U.S.C. 1319) is hereby amended—

4 (a) by striking “or 404” in subsection (a)(1);

5 (b) by striking “or in a permit issued under section
6 404 of this title by a State” in subsection (a)(3);

7 (c) by striking “or in a permit issued under section
8 404 of this Act by a State,” in subsection (d);

9 (d) by striking “—(A)” and “or in a permit issued
10 under section 404 of this title by a State, or” in section
11 309(g)(1)(A);

12 (e) by striking “(B)” through “as the case may be,”
13 and inserting in lieu thereof “the Administrator” in sec-
14 tion 309(g)(1); and,

15 (f) by striking “or Secretary”, “or the Secretary”,
16 “or the Secretary as the case may be,” “or Secretary’s”,
17 and “and the Secretary” each place they occur.

18 **SEC. 6. EFFECTIVE DATE.**

19 This Act, including the amendments made by this
20 Act, shall be effective on the ninetieth day following the
21 date of its enactment.

○

HR 1330 SC—2

HR 1330 SC—3

HR 1330 SC—4