

104TH CONGRESS  
1ST SESSION

# 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.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 28, 1995

Mr. HAYES (for himself, Mr. SHUSTER, Mr. TAUZIN, Mr. YOUNG of Alaska, Mr. EMERSON, Mr. PETE GEREN of Texas, Mr. SOLOMON, Mr. COSTELLO, Mr. CLINGER, Ms. DANNER, Mr. BLUTE, Mr. LAUGHLIN, Mr. BATEMAN, Mr. PARKER, Mr. HUTCHINSON, Mr. KIM, Mr. EWING, Mr. INGLIS of South Carolina, Mr. DICKEY, Mr. ENGLISH of Pennsylvania, Mr. BREWSTER, Mr. MICA, Mr. FIELDS of Texas, Mr. COBLE, Mr. DUNCAN, Mr. DOOLITTLE, Mrs. FOWLER, Mr. HANSEN, Mr. CALVERT, Mr. LATHAM, Mr. POMBO, Mrs. CUBIN, Mr. JONES, Mrs. LINCOLN, Mr. TAYLOR of North Carolina, Mr. SHADEGG, Mrs. CHENOWETH, Mr. DELAY, Mr. POSHARD, Mr. BAKER of Louisiana, Mr. WAMP, Mr. LIVINGSTON, Mr. CLEMENT, Mr. PACKARD, Mr. LEWIS of California, Mr. LAHOOD, Mr. DEAL of Georgia, Mr. QUINN, and Mr. GALLEGLY) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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## 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Comprehensive  
3 Wetlands Conservation and Management Act of 1995”.

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

5 (a) FINDINGS.—Congress finds that—

6 (1) wetlands play an integral role in maintain-  
7 ing the quality of life through material contributions  
8 to our national economy, food supply, water supply  
9 and quality, flood control, and fish, wildlife, and  
10 plant resources, and thus to the health, safety,  
11 recreation and economic well-being of citizens  
12 throughout the Nation;

13 (2) wetlands serve important ecological and nat-  
14 ural resource functions, such as providing essential  
15 nesting and feeding habitat for waterfowl, other  
16 wildlife, and many rare and endangered species, fish-  
17 eries habitat, the enhancement of water quality, and  
18 natural flood control;

19 (3) much of the Nation’s resource has sustained  
20 significant degradation, resulting in the need for ef-  
21 fective programs to limit the loss of ecologically sig-  
22 nificant wetlands and to provide for long-term res-  
23 toration and enhancement of the wetlands resource  
24 base;

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

1           (5) because 75 percent of the Nation's wetlands  
2           in the lower 48 States are privately owned and be-  
3           cause the majority of the Nation's population lives  
4           in or near wetlands areas, an effective wetlands con-  
5           servation and management program must reflect a  
6           balanced approach that conserves and enhances im-  
7           portant wetlands values and functions while observ-  
8           ing private property rights, recognizing the need for  
9           essential public infrastructure, such as highways,  
10          ports, airports, pipelines, sewer systems, and public  
11          water supply systems, and providing the opportunity  
12          for sustained economic growth;

13          (6) while wetlands provide many varied eco-  
14          nomic and environmental benefits, they also present  
15          health risks in some instances where they act as  
16          breeding grounds for insects that are carriers of  
17          human and animal diseases; and

18          (7) the Federal permit program established  
19          under section 404 of the Federal Water Pollution  
20          Control Act was not originally conceived as a wet-  
21          lands regulatory program and is insufficient to en-  
22          sure that the Nation's wetlands resource base will be  
23          conserved and managed in a fair and environ-  
24          mentally sound manner.

1 (b) PURPOSE.—The purpose of this Act is to estab-  
2 lish a new Federal regulatory program for certain wet-  
3 lands and waters of the United States—

4 (1) to assert Federal regulatory jurisdiction  
5 over a broad category of specifically identified activi-  
6 ties that result in the degradation or loss of wet-  
7 lands;

8 (2) to provide that each Federal agency, officer,  
9 and employee exercise Federal authority under sec-  
10 tion 404 of the Federal Water Pollution Control Act  
11 to ensure that agency action under such section will  
12 not limit the use of privately owned property so as  
13 to diminish its value;

14 (3) to account for variations in wetlands func-  
15 tions in determining the character and extent of reg-  
16 ulation of activities occurring in wetlands areas;

17 (4) to provide sufficient regulatory incentives  
18 for conservation, restoration, or enhancement activi-  
19 ties;

20 (5) to encourage conservation of resources on a  
21 watershed basis to the fullest extent practicable; and

22 (6) to protect public safety and balance public  
23 and private interests in determining the conditions  
24 under which activity in wetlands 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 further amended by striking  
4 section 404 and inserting the following new section:

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

7 “(a) PROHIBITED ACTIVITIES.—No person shall un-  
8 dertake an activity in wetlands or waters of the United  
9 States unless such activity is undertaken pursuant to a  
10 permit issued by the Secretary or is otherwise authorized  
11 under this section.

12 “(b) AUTHORIZED ACTIVITIES.—

13 “(1) PERMITS.—The Secretary is authorized to  
14 issue permits authorizing an activity in wetlands or  
15 waters of the United States in accordance with the  
16 requirements of this section.

17 “(2) NONPERMIT ACTIVITIES.—An activity in  
18 wetlands or waters of the United States may be un-  
19 dertaken without a permit from the Secretary if that  
20 activity is authorized under subsection (e)(6) or  
21 (e)(8) or is exempt from the requirements of this  
22 section under subsection (f) or other provisions of  
23 this section.

24 “(c) WETLANDS CLASSIFICATION.—

25 “(1) REGULATIONS; APPLICATIONS.—

1           “(A) DEADLINE FOR ISSUANCE OF REGU-  
2           LATIONS.—Not later than 1 year after the date  
3           of the enactment of the Comprehensive Wet-  
4           lands Conservation and Management Act of  
5           1995, the Secretary shall issue regulations to  
6           classify wetlands as type A, type B, or type C  
7           wetlands depending on the relative ecological  
8           significance of the wetlands.

9           “(B) APPLICATION REQUIREMENT.—Any  
10          person seeking to undertake activities in wet-  
11          lands or waters of the United States for which  
12          a permit is required under this section shall  
13          make application to the Secretary identifying  
14          the site of such activity and requesting that the  
15          Secretary determine, in accordance with para-  
16          graph (3) of this subsection, the classification  
17          of the wetlands in which such activity is pro-  
18          posed to occur. The applicant may also provide  
19          such additional information regarding such pro-  
20          posed activity as may be necessary or appro-  
21          priate for purposes of determining the classi-  
22          fication of such wetlands or whether and under  
23          what conditions the proposed activity may be  
24          permitted to occur.

25          “(2) DEADLINES FOR CLASSIFICATIONS.—

1           “(A) GENERAL RULE.—Except as provided  
2           in subparagraph (B) of this paragraph, within  
3           90 days following the receipt of an application  
4           under paragraph (1), the Secretary shall pro-  
5           vide notice to the applicant of the classification  
6           of the wetlands that are the subject of such ap-  
7           plication and shall state in writing the basis for  
8           such classification. The classification of the wet-  
9           lands that are the subject of the application  
10          shall be determined by the Secretary in accord-  
11          ance with the requirements for classification of  
12          wetlands under paragraph (3) and subsection  
13          (i).

14          “(B) RULE FOR ADVANCE CLASSIFICA-  
15          TIONS.—In the case of an application proposing  
16          activities located in wetlands that are the sub-  
17          ject of an advance classification under sub-  
18          section (h), the Secretary shall provide notice to  
19          the applicant of such classification within thirty  
20          days following the receipt of such application,  
21          and shall provide an opportunity for review of  
22          such classification under paragraph (5) and  
23          subsection (i).

24          “(3) CLASSIFICATION SYSTEM.—Upon applica-  
25          tion under this subsection, the Secretary shall—

1           “(A) classify as type A wetlands those wet-  
2 lands that are of critical significance to the  
3 long-term conservation of the aquatic environ-  
4 ment of which such wetlands are a part and  
5 which meet the following requirements:

6           “(i) such wetlands serve critical wet-  
7 lands functions, including the provision of  
8 critical habitat for a concentration of  
9 avian, aquatic, or wetland dependent wild-  
10 life;

11           “(ii) such wetlands consist of or may  
12 be a portion of ten or more contiguous  
13 acres and have an inlet or outlet for relief  
14 of water flow; except that this requirement  
15 shall not operate to preclude the classifica-  
16 tion as type A wetlands lands containing  
17 prairie pothole features, playa lakes, or  
18 vernal pools if such lands otherwise meet  
19 the requirements for type A classification  
20 under this paragraph;

21           “(iii) there exists a scarcity within the  
22 watershed or aquatic environment of iden-  
23 tified functions served by such wetlands  
24 such that the use of such wetlands for an  
25 activity in wetlands or waters of the Unit-

1 ed States would seriously jeopardize the  
2 availability of these identified wetlands  
3 functions; and

4 “(iv) there is unlikely to be an over-  
5 riding public interest in the use of such  
6 wetlands for purposes other than conserva-  
7 tion.

8 “(B) classify as type B wetlands those wet-  
9 lands that provide habitat for a significant pop-  
10 ulation of wetland dependent wildlife or provide  
11 other significant wetlands functions, including  
12 significant enhancement or protection of water  
13 quality or significant natural flood control; and

14 “(C) classify as type C wetlands all wet-  
15 lands that—

16 “(i) serve limited wetlands functions;

17 “(ii) serve marginal wetlands func-  
18 tions but which exist in such abundance  
19 that regulation of activities in such wet-  
20 lands is not necessary for conserving im-  
21 portant wetlands functions;

22 “(iii) are prior converted cropland;

23 “(iv) are fastlands; or

24 “(v) are wetlands within industrial,  
25 commercial, or residential complexes or

1 other intensely developed areas that do not  
2 serve significant wetlands functions as a  
3 result of such location.

4 “(4) REQUEST FOR DETERMINATION OF JURIS-  
5 DICTION.—

6 “(A) IN GENERAL.—A person who holds  
7 an ownership interest in property, or who has  
8 written authorization from such a person, may  
9 submit a request to the Secretary identifying  
10 the property and requesting the Secretary to  
11 make one or more of the following determina-  
12 tions with respect to the property:

13 “(i) Whether the property contains  
14 waters of the United States.

15 “(ii) If the determination under clause  
16 (i) is made, whether any portion of the wa-  
17 ters meets the requirements for delineation  
18 as wetland under subsection (g).

19 “(iii) If the determination under  
20 clause (ii) is made, the classification of  
21 each wetland on the property under this  
22 subsection.

23 “(B) PROVISION OF INFORMATION.—The  
24 person shall provide such additional information

1 as may be necessary to make each determina-  
2 tion requested under subparagraph (A).

3 “(C) DETERMINATION AND NOTIFICATION  
4 BY THE SECRETARY.—Not later than 90 days  
5 after receipt of a request under subparagraph  
6 (A), the Secretary shall—

7 “(i) notify the person submitting the  
8 request of each determination made by the  
9 Secretary pursuant to the request; and

10 “(ii) provide written documentation of  
11 each determination and the basis for each  
12 determination.

13 “(D) AUTHORITY TO SEEK IMMEDIATE RE-  
14 VIEW.—Any person authorized under this para-  
15 graph to request a jurisdictional determination  
16 may seek immediate judicial review of any such  
17 jurisdictional determination or may proceed  
18 under subsection (i).

19 “(5) DE NOVO DETERMINATION AFTER AD-  
20 VANCE CLASSIFICATION.—Within 30 days of receipt  
21 of notice of an advance classification by the Sec-  
22 retary under paragraph (2)(B) of this subsection, an  
23 applicant may request the Secretary to make a de  
24 novo determination of the classification of wetlands  
25 that are the subject of such notice.

1 “(d) RIGHT TO COMPENSATION.—

2 “(1) IN GENERAL.—The Federal Government  
3 shall compensate an owner of property whose use of  
4 any portion of that property has been limited by an  
5 agency action under this section that diminishes the  
6 fair market value of that portion by 20 percent or  
7 more. The amount of the compensation shall equal  
8 the diminution in value that resulted from the agen-  
9 cy action. If the diminution in value of a portion of  
10 that property is greater than 50 percent, at the op-  
11 tion of the owner, the Federal Government shall buy  
12 that portion of the property for its fair market  
13 value.

14 “(2) DURATION OF LIMITATION ON USE.—  
15 Property with respect to which compensation has  
16 been paid under this section shall not thereafter be  
17 used contrary to the limitation imposed by the agen-  
18 cy action, even if that action is later rescinded or  
19 otherwise vitiated. However, if that action is later  
20 rescinded or otherwise vitiated, and the owner elects  
21 to refund the amount of the compensation, adjusted  
22 for inflation, to the Treasury of the United States,  
23 the property may be so used.

24 “(3) EFFECT OF STATE LAW.—If a use is a  
25 nuisance as defined by the law of a State or is al-

1 ready prohibited under a local zoning ordinance, no  
2 compensation shall be made under this section with  
3 respect to a limitation on that use.

4 “(4) EXCEPTIONS.—

5 “(A) PREVENTION OF HAZARD TO HEALTH  
6 OR SAFETY OR DAMAGE TO SPECIFIC PROP-  
7 ERTY.—No compensation shall be made under  
8 this section with respect to an agency action the  
9 primary purpose of which is to prevent an iden-  
10 tifiable—

11 “(i) hazard to public health or safety;

12 or

13 “(ii) damage to specific property other  
14 than the property whose use is limited.

15 “(B) NAVIGATION SERVITUDE.—No com-  
16 pensation shall be made under this section with  
17 respect to an agency action pursuant to the  
18 Federal navigation servitude, as defined by the  
19 courts of the United States, except to the ex-  
20 tent such servitude is interpreted to apply to  
21 wetlands.

22 “(5) PROCEDURE.—

23 “(A) REQUEST OF OWNER.—An owner  
24 seeking compensation under this section shall  
25 make a written request for compensation to the

1 agency whose agency action resulted in the limi-  
2 tation. No such request may be made later than  
3 180 days after the owner receives actual notice  
4 of that agency action.

5 “(B) NEGOTIATIONS.—The agency may  
6 bargain with that owner to establish the  
7 amount of the compensation. If the agency and  
8 the owner agree to such an amount, the agency  
9 shall promptly pay the owner the amount  
10 agreed upon.

11 “(C) CHOICE OF REMEDIES.—If, not later  
12 than 180 days after the written request is  
13 made, the parties do not come to an agreement  
14 as to the right to and amount of compensation,  
15 the owner may choose to take the matter to  
16 binding arbitration or seek compensation in a  
17 civil action.

18 “(D) ARBITRATION.—The procedures that  
19 govern the arbitration shall, as nearly as prac-  
20 ticable, be those established under title 9, Unit-  
21 ed States Code, for arbitration proceedings to  
22 which that title applies. An award made in such  
23 arbitration shall include a reasonable attorney’s  
24 fee and other arbitration costs (including ap-

1 praisal fees). The agency shall promptly pay  
2 any award made to the owner.

3 “(E) CIVIL ACTION.—An owner who does  
4 not choose arbitration, or who does not receive  
5 prompt payment when required by this section,  
6 may obtain appropriate relief in a civil action  
7 against the agency. An owner who prevails in a  
8 civil action under this section shall be entitled  
9 to, and the agency shall be liable for, a reason-  
10 able attorney’s fee and other litigation costs (in-  
11 cluding appraisal fees). The court shall award  
12 interest on the amount of any compensation  
13 from the time of the limitation.

14 “(F) SOURCE OF PAYMENTS.—Any pay-  
15 ment made under this section to an owner and  
16 any judgment obtained by an owner in a civil  
17 action under this section shall, notwithstanding  
18 any other provision of law, be made from the  
19 annual appropriation of the agency whose ac-  
20 tion occasioned the payment or judgment. If the  
21 agency action resulted from a requirement im-  
22 posed by another agency, then the agency mak-  
23 ing the payment or satisfying the judgment  
24 may seek partial or complete reimbursement  
25 from the appropriated funds of the other agen-

1           cy. For this purpose the head of the agency  
2           concerned may transfer or reprogram any ap-  
3           propriated funds available to the agency. If in-  
4           sufficient funds exist for the payment or to sat-  
5           isfy the judgment, it shall be the duty of the  
6           head of the agency to seek the appropriation of  
7           such funds for the next fiscal year.

8           “(6) LIMITATION.—Notwithstanding any other  
9           provision of law, any obligation of the United States  
10          to make any payment under this section shall be  
11          subject to the availability of appropriations.

12          “(7) DUTY OF NOTICE TO OWNERS.—Whenever  
13          an agency takes an agency action limiting the use of  
14          private property, the agency shall give appropriate  
15          notice to the owners of that property directly af-  
16          fected explaining their rights under this section and  
17          the procedures for obtaining any compensation that  
18          may be due to them under this section.

19          “(8) RULES OF CONSTRUCTION.—

20                  “(A) EFFECT ON CONSTITUTIONAL RIGHT  
21                  TO COMPENSATION.—Nothing in this section  
22                  shall be construed to limit any right to com-  
23                  pensation that exists under the Constitution,  
24                  laws of the United States, or laws of any State.

1           “(B) EFFECT OF PAYMENT.—Payment of  
2           compensation under this section (other than  
3           when the property is bought by the Federal  
4           Government at the option of the owner) shall  
5           not confer any rights on the Federal Govern-  
6           ment other than the limitation on use resulting  
7           from the agency action.

8           “(9) TREATMENT OF CERTAIN ACTIONS.—A  
9           diminution in value under this subsection shall apply  
10          to surface interests in lands only or water rights al-  
11          located under State law; except that—

12                 “(A) if the Secretary determines that the  
13                 exploration for or development of oil and gas or  
14                 mineral interests is not compatible with limita-  
15                 tions on use related to the surface interests in  
16                 lands that have been classified as type A or  
17                 type B wetlands located above such oil and gas  
18                 or mineral interests (or located adjacent to such  
19                 oil and gas or mineral interests where such ad-  
20                 jacent lands are necessary to provide reasonable  
21                 access to such interests), the Secretary shall no-  
22                 tify the owner of such interests that the owner  
23                 may elect to receive compensation for such in-  
24                 terests under paragraph (1); and

1           “(B) the failure to provide reasonable ac-  
2           cess to oil and gas or mineral interests located  
3           beneath or adjacent to surface interests of type  
4           A or type B wetlands shall be deemed a diminu-  
5           tion in value of such oil and gas or mineral in-  
6           terests.

7           “(10) JURISDICTION.—The arbitrator or court  
8           under paragraph (5)(D) or (5)(E) of this subsection,  
9           as the case may be, shall have jurisdiction, in the  
10          case of oil and gas or mineral interests, to require  
11          the United States to provide reasonable access in,  
12          across, or through lands that may be the subject of  
13          a diminution in value under this subsection solely for  
14          the purpose of undertaking activity necessary to de-  
15          termine the value of the interests diminished and to  
16          provide other equitable remedies deemed appro-  
17          priate.

18          “(11) LIMITATIONS ON STATUTORY CONSTRUC-  
19          TION.—No action under this subsection shall be con-  
20          strued—

21                 “(A) to impose any obligation on any State  
22                 or political subdivision thereof to compensate  
23                 any person, even in the event that the Secretary  
24                 has approved a land management plan under

1 subsection (f)(2) or an individual and general  
2 permit program under subsection (l); or

3 “(B) to alter or supersede requirements  
4 governing use of water applicable under State  
5 law.

6 “(e) REQUIREMENTS APPLICABLE TO PERMITTED  
7 ACTIVITY.—

8 “(1) ISSUANCE OR DENIAL OF PERMITS.—Fol-  
9 lowing the determination of wetlands classification  
10 pursuant to subsection (c) if applicable, and after  
11 compliance with the requirements of subsection (d)  
12 if applicable, the Secretary may issue or deny per-  
13 mits for authorization to undertake activities in wet-  
14 lands or waters of the United States in accordance  
15 with the requirements of this subsection.

16 “(2) TYPE A WETLANDS.—

17 “(A) SEQUENTIAL ANALYSIS.—The Sec-  
18 retary shall determine whether to issue a permit  
19 for an activity in waters of the United States  
20 classified under subsection (c) as type A wet-  
21 lands based on a sequential analysis that seeks,  
22 to the maximum extent practicable, to—

23 “(i) avoid adverse impact on the wet-  
24 lands;

1           “(ii) minimize such adverse impact on  
2           wetlands functions that cannot be avoided;  
3           and

4           “(iii) compensate for any loss of wet-  
5           land functions that cannot be avoided or  
6           minimized.

7           “(B) MITIGATION TERMS AND CONDI-  
8           TIONS.—Any permit issued authorizing activi-  
9           ties in type A wetlands may contain such terms  
10          and conditions concerning mitigation (including  
11          those applicable under paragraph (3) for type B  
12          wetlands) that the Secretary deems appropriate  
13          to prevent the unacceptable loss or degradation  
14          of type A wetlands. The Secretary shall deem  
15          the mitigation requirement of this section to be  
16          met with respect to activities in type A wetlands  
17          if such activities (i) are carried out in accord-  
18          ance with a State-approved reclamation plan or  
19          permit which requires recontouring and  
20          revegetation following mining, and (ii) result in  
21          overall environmental benefits being achieved.

22          “(3) TYPE B WETLANDS.—

23                 “(A) GENERAL RULE.—The Secretary may  
24                 issue a permit authorizing activities in type B  
25                 wetlands if the Secretary finds that issuance of

1 the permit is in the public interest, balancing  
2 the reasonably foreseeable benefits and det-  
3 riments resulting from the issuance of the per-  
4 mit. The permit shall be subject to such terms  
5 and conditions as the Secretary finds are nec-  
6 essary to carry out the purposes of the Com-  
7 prehensive Wetlands Conservation and Manage-  
8 ment Act of 1995. In determining whether or  
9 not to issue the permit and whether or not spe-  
10 cific terms and conditions are necessary to  
11 avoid a significant loss of wetlands functions,  
12 the Secretary shall consider the following fac-  
13 tors:

14 “(i) The quality and quantity of sig-  
15 nificant functions served by the areas to be  
16 affected.

17 “(ii) The opportunities to reduce im-  
18 pacts through cost-effective design to mini-  
19 mize use of wetlands areas.

20 “(iii) The costs of mitigation require-  
21 ments and the social, recreational, and eco-  
22 nomic benefits associated with the pro-  
23 posed activity, including local, regional, or  
24 national needs for improved or expanded

1 infrastructure, minerals, energy, food pro-  
2 duction, or recreation.

3 “(iv) The ability of the permittee to  
4 mitigate wetlands loss or degradation as  
5 measured by wetlands functions.

6 “(v) The environmental benefit, meas-  
7 ured by wetlands functions, that may occur  
8 through mitigation efforts, including re-  
9 storing, preserving, enhancing, or creating  
10 wetlands values and functions.

11 “(vi) The marginal impact of the pro-  
12 posed activity on the watershed of which  
13 such wetlands are a part.

14 “(vii) Whether the impact on the wet-  
15 lands is temporary or permanent.

16 “(B) DETERMINATION OF PROJECT PUR-  
17 POSE.—In considering an application for activi-  
18 ties on type B wetlands, there shall be a rebut-  
19 table presumption that the project purpose as  
20 defined by the applicant shall be binding upon  
21 the Secretary. The definition of project purpose  
22 for projects sponsored by public agencies shall  
23 be binding upon the Secretary, subject to the  
24 authority of the Secretary to impose mitigation  
25 requirements to minimize impacts on wetlands

1 values and functions, including cost effective re-  
2 design of projects on the proposed project site.

3 “(C) MITIGATION REQUIREMENTS.—Ex-  
4 cept as otherwise provided in this section, re-  
5 quirements for mitigation shall be imposed  
6 when the Secretary finds that activities under-  
7 taken under this section will result in the loss  
8 or degradation of type B wetlands functions  
9 where such loss or degradation is not a tem-  
10 porary or incidental impact. When determining  
11 mitigation requirements in any specific case,  
12 the Secretary shall take into consideration the  
13 type of wetlands affected, the character of the  
14 impact on wetland functions, whether any ad-  
15 verse effects on wetlands are of a permanent or  
16 temporary nature, and the cost effectiveness of  
17 such mitigation and shall seek to minimize the  
18 costs of such mitigation. The Secretary shall  
19 deem the mitigation requirement of this section  
20 to be met with respect to activities in type B  
21 wetlands if such activities (i) are carried out in  
22 accordance with a State-approved reclamation  
23 plan or permit which requires recontouring and  
24 revegetation following mining, and (ii) will re-

1           sult in overall environmental benefits being  
2           achieved.

3           “(D) RULES GOVERNING MITIGATION.—In  
4           accordance with subsection (j), the Secretary  
5           shall issue rules governing requirements for  
6           mitigation for activities occurring in wetlands  
7           that allow for—

8                   “(i) minimization of impacts through  
9                   project design in the proposed project site  
10                  consistent with the project’s purpose, pro-  
11                  visions for compensatory mitigation, if any,  
12                  and other terms and conditions necessary  
13                  and appropriate in the public interest;

14                   “(ii) preservation or donation of type  
15                  A wetlands or type B wetlands (where title  
16                  has not been acquired by the United States  
17                  and no compensation under subsection (d)  
18                  for such wetlands has been provided) as  
19                  mitigation for activities that alter or de-  
20                  grade wetlands;

21                   “(iii) enhancement or restoration of  
22                  degraded wetlands as compensation for  
23                  wetlands lost or degraded through per-  
24                  mitted activity;

1           “(iv) creation of wetlands as com-  
2           pensation for wetlands lost or degraded  
3           through permitted activity if conditions are  
4           imposed that have a reasonable likelihood  
5           of being successful;

6           “(v) compensation through contribu-  
7           tion to a mitigation bank program estab-  
8           lished pursuant to paragraph (4);

9           “(vi) offsite compensatory mitigation  
10          if such mitigation contributes to the res-  
11          toration, enhancement or creation of sig-  
12          nificant wetlands functions on a watershed  
13          basis and is balanced with the effects that  
14          the proposed activity will have on the spe-  
15          cific site; except that offsite compensatory  
16          mitigation, if any, shall be required only  
17          within the State within which the proposed  
18          activity is to occur, and shall, to the extent  
19          practicable, be within the watershed within  
20          which the proposed activity is to occur, un-  
21          less otherwise consistent with a State wet-  
22          lands management plan;

23          “(vii) contribution of in-kind value ac-  
24          ceptable to the Secretary and otherwise au-  
25          thorized by law;

1           “(viii) in areas subject to wetlands  
2 loss, the construction of coastal protection  
3 and enhancement projects;

4           “(ix) contribution of resources of  
5 more than one permittee toward a single  
6 mitigation project; and

7           “(x) other mitigation measures, in-  
8 cluding contributions of other than in-kind  
9 value referred to in clause (vii), determined  
10 by the Secretary to be appropriate in the  
11 public interest and consistent with the re-  
12 quirements and purposes of this Act.

13           “(E) LIMITATIONS ON REQUIRING MITIGA-  
14 TION.—Notwithstanding the provisions of sub-  
15 paragraph (C), the Secretary may determine  
16 not to impose requirements for compensatory  
17 mitigation if the Secretary finds that—

18           “(i) the adverse impacts of a per-  
19 mitted activity are limited;

20           “(ii) the failure to impose compen-  
21 satory mitigation requirements is compat-  
22 ible with maintaining wetlands functions;

23           “(iii) no practicable and reasonable  
24 means of mitigation are available;

1           “(iv) there is an abundance of similar  
2           significant wetlands functions and values  
3           in or near the area in which the proposed  
4           activity is to occur that will continue to  
5           serve the functions lost or degraded as a  
6           result of such activity, taking into account  
7           the impacts of such proposed activity and  
8           the cumulative impacts of similar activity  
9           in the area;

10           “(v) the temporary character of the  
11           impacts and the use of minimization tech-  
12           niques make compensatory mitigation un-  
13           necessary to protect significant wetlands  
14           values; or

15           “(vi) a waiver from requirements for  
16           compensatory mitigation is necessary to  
17           prevent special hardship.

18           “(4) MITIGATION BANKS.—

19           “(A) ESTABLISHMENT.—Not later than 6  
20           months after the date of the enactment of this  
21           subparagraph, after providing notice and oppor-  
22           tunity for public review and comment, the Sec-  
23           retary shall issue regulations for the establish-  
24           ment, use, maintenance, and oversight of miti-  
25           gation banks. The regulations shall be devel-

1           oped in consultation with the heads of other ap-  
2           propriate Federal agencies.

3           “(B) PROVISIONS AND REQUIREMENTS.—  
4           The regulations issued pursuant to subpara-  
5           graph (A) shall ensure that each mitigation  
6           bank—

7                   “(i) provides for the chemical, phys-  
8                   ical, and biological functions of wetlands or  
9                   waters of the United States which are lost  
10                  as a result of authorized adverse impacts  
11                  to wetlands or other waters of the United  
12                  States;

13                  “(ii) to the extent practicable and en-  
14                  vironmentally desirable, provides in-kind  
15                  replacement of lost wetlands functions and  
16                  be located in, or in proximity to, the same  
17                  watershed or designated geographic area  
18                  as the affected wetlands or waters of the  
19                  United States;

20                  “(iii) be operated by a public or pri-  
21                  vate entity which has the financial capabil-  
22                  ity to meet the requirements of this para-  
23                  graph, including the deposit of a perform-  
24                  ance bond or other appropriate demonstra-  
25                  tion of financial responsibility to support

1 the long-term maintenance of the bank,  
2 fulfill responsibilities for long-term mon-  
3 itoring, maintenance, and protection, and  
4 provide for the long-term security of own-  
5 ership interests of wetlands and uplands  
6 on which projects are conducted to protect  
7 the wetlands functions associated with the  
8 mitigation bank;

9 “(iv) employ consistent and scientif-  
10 ically sound methods to determine debits  
11 by evaluating wetlands functions, project  
12 impacts, and duration of the impact at the  
13 sites of proposed permits for authorized  
14 activities pursuant to this section and to  
15 determine credits based on wetlands func-  
16 tions at the site of the mitigation bank;

17 “(v) provide for the transfer of credits  
18 for mitigation that has been performed and  
19 for mitigation that shall be performed  
20 within a designated time in the future,  
21 provided that financial bonds shall be post-  
22 ed in sufficient amount to ensure that the  
23 mitigation will be performed in the case of  
24 default; and

1           “(vi) provide opportunity for public  
2           notice of and comment on proposals for the  
3           mitigation banks; except that any process  
4           utilized by a mitigation bank to obtain a  
5           permit authorizing operations under this  
6           section before the date of the enactment of  
7           the Comprehensive Wetlands Conservation  
8           and Management Act of 1995 satisfies the  
9           requirement for such public notice and  
10          comment.

11           “(5) PROCEDURES AND DEADLINES FOR FINAL  
12          ACTION.—

13           “(A) OPPORTUNITY FOR PUBLIC COM-  
14          MENT.—Not later than 15 days after receipt of  
15          an application for a permit under this section,  
16          together with information necessary to consider  
17          such application, the Secretary shall publish no-  
18          tice that the application has been received and  
19          shall provide opportunity for public comment  
20          and, to the extent appropriate, opportunity for  
21          a public hearing on the issuance of the permit.

22           “(B) GENERAL PROCEDURES.—In the case  
23          of any application for authorization to under-  
24          take activities in wetlands or waters of the  
25          United States that are not eligible for treat-

1           ment on an expedited basis pursuant to para-  
2           graph (8), final action by the Secretary shall  
3           occur within 90 days following the date such  
4           application is filed, unless—

5                   “(i) the Secretary and the applicant  
6                   agree that such final action shall occur  
7                   within a longer period of time;

8                   “(ii) the Secretary determines that an  
9                   additional, specified period of time is nec-  
10                  essary to permit the Secretary to comply  
11                  with other applicable Federal law; except  
12                  that if the Secretary is required under the  
13                  National Environmental Policy Act of  
14                  1969 (42 U.S.C. 4321 et seq.) to prepare  
15                  an environmental impact statement, with  
16                  respect to the application, the final action  
17                  shall occur not later than 45 days follow-  
18                  ing the date such statement is filed; or

19                  “(iii) the Secretary, within 15 days  
20                  from the date such application is received,  
21                  notifies the applicant that such application  
22                  does not contain all information necessary  
23                  to allow the Secretary to consider such ap-  
24                  plication and identifies any necessary addi-

1            tional information, in which case, the pro-  
2            visions of subparagraph (C) shall apply.

3            “(C) SPECIAL RULE WHEN ADDITIONAL  
4            INFORMATION IS REQUIRED.—Upon the receipt  
5            of a request for additional information under  
6            subparagraph (B)(iii), the applicant shall sup-  
7            ply such additional information and shall advise  
8            the Secretary that the application contains all  
9            requested information and is therefore com-  
10          plete. The Secretary may—

11                  “(i) within 30 days of the receipt of  
12                  notice of the applicant that the application  
13                  is complete, determine that the application  
14                  does not contain all requested additional  
15                  information and, on that basis, deny the  
16                  application without prejudice to resubmis-  
17                  sion; or

18                  “(ii) within 90 days from the date  
19                  that the applicant provides notification to  
20                  the Secretary that the application is com-  
21                  plete, review the application and take final  
22                  action.

23                  “(D) EFFECT OF NOT MEETING DEAD-  
24                  LINE.—If the Secretary fails to take final ac-  
25                  tion on an application under this paragraph

1           within 90 days from the date that the applicant  
2           provides notification to the Secretary that such  
3           application is complete, a permit shall be pre-  
4           sumed to be granted authorizing the activities  
5           proposed in such application under such terms  
6           and conditions as are stated in such completed  
7           application.

8           “(6) TYPE C WETLANDS.—Activities in wet-  
9           lands that have been classified as type C wetlands  
10          by the Secretary may be undertaken without author-  
11          ization required under subsection (a) of this section.

12          “(7) STATES WITH SUBSTANTIAL CONSERVED  
13          WETLANDS.—

14                 “(A) IN GENERAL.—With respect to type  
15                 A and type B wetlands in States with substan-  
16                 tial conserved wetlands areas, at the option of  
17                 the permit applicant, the Secretary shall issue  
18                 permits authorizing activities in such wetlands  
19                 pursuant to this paragraph. Final action on is-  
20                 suanace of such permits shall be in accordance  
21                 with the procedures and deadlines of paragraph  
22                 (5). The Secretary may include conditions or  
23                 requirements for minimization of adverse im-  
24                 pacts to wetlands functions when minimization  
25                 is economically practicable. No permit to which

1 this paragraph applies shall include conditions,  
2 requirements, or standards for mitigation to  
3 compensate for adverse impacts to wetlands or  
4 waters of the United States or conditions, re-  
5 quirements, or standards for avoidance of ad-  
6 verse impacts to wetlands or waters of the  
7 United States.

8 “(B) ECONOMIC BASE LANDS.—Upon ap-  
9 plication by the owner of economic base lands  
10 in a State with substantial conserved wetlands  
11 areas, the Secretary shall issue individual and  
12 general permits to owners of such lands for ac-  
13 tivities in wetlands or waters of the United  
14 States. The Secretary shall reduce the require-  
15 ments of subparagraph (A)—

16 “(i) to allow economic base lands to  
17 be beneficially used to create and sustain  
18 economic activity; and

19 “(ii) in the case of lands owned by  
20 Alaska Native entities, to reflect the social  
21 and economic needs of Alaska Natives to  
22 utilize economic base lands.

23 The Secretary shall consult with and provide  
24 assistance to the Alaska Natives (including  
25 Alaska Native Corporations) in promulgation

1 and administration of policies and regulations  
2 under this section.

3 “(8) GENERAL PERMITS.—

4 “(A) GENERAL AUTHORITY.—The Sec-  
5 retary may issue, by rule in accordance with  
6 subsection (j), general permits on a pro-  
7 grammatic, State, regional, or nationwide basis  
8 for any category of activities involving an activ-  
9 ity in wetlands or waters of the United States  
10 if the Secretary determines that such activities  
11 are similar in nature and that such activities,  
12 when performed separately and cumulatively,  
13 will not result in the significant loss of eco-  
14 logically significant wetlands values and func-  
15 tions.

16 “(B) PROCEDURES.—Permits issued under  
17 this paragraph shall include procedures for ex-  
18 pedited review of eligibility for such permits (if  
19 such review is required) and may include re-  
20 quirements for reporting and mitigation. To the  
21 extent that a proposed activity requires a deter-  
22 mination by the Secretary as to the eligibility to  
23 qualify for a general permit under this sub-  
24 section, such determination shall be made with-  
25 in 30 days of the date of submission of the ap-

1           plication for such qualification, or the applica-  
2           tion shall be treated as being approved.

3           “(C) COMPENSATORY MITIGATION.—Re-  
4           quirements for compensatory mitigation for  
5           general permits may be imposed where nec-  
6           essary to offset the significant loss or degrada-  
7           tion of significant wetlands functions where  
8           such loss or degradation is not a temporary or  
9           incidental impact.

10          “(D) GRANDFATHER OF EXISTING GEN-  
11          ERAL PERMITS.—General permits in effect on  
12          day before the date of the enactment of the  
13          Comprehensive Wetlands Conservation and  
14          Management Act of 1995 shall remain in effect  
15          until otherwise modified by the Secretary.

16          “(E) STATES WITH SUBSTANTIAL CON-  
17          SERVED LANDS.—Upon application by a State  
18          or local authority in a State with substantial  
19          conserved wetlands areas, the Secretary shall  
20          issue a general permit applicable to such au-  
21          thority for activities in wetlands or waters of  
22          the United States. No permit issued pursuant  
23          to this subparagraph shall include conditions,  
24          requirements, or standards for mitigation to  
25          compensate for adverse impacts to wetlands or

1 waters of the United States or shall include  
2 conditions, requirements, or standards for  
3 avoidance of adverse impacts of wetlands or wa-  
4 ters of the United States.

5 “(9) OTHER WATERS OF THE UNITED  
6 STATES.—The Secretary may issue a permit author-  
7 izing activities in waters of the United States (other  
8 than those classified as type A, B, or C wetlands  
9 under this section) if the Secretary finds that issu-  
10 ance of the permit is in the public interest, bal-  
11 ancing the reasonably foreseeable benefits and det-  
12 riments resulting from the issuance of the permit.  
13 The permit shall be subject to such terms and condi-  
14 tions as the Secretary finds are necessary to carry  
15 out the purposes of the Comprehensive Wetlands  
16 Conservation and Management Act of 1995. In de-  
17 termining whether or not to issue the permit and  
18 whether or not specific terms and conditions are nec-  
19 essary to carry out such purposes, the Secretary  
20 shall consider the factors set forth in paragraph  
21 (3)(A) as they apply to nonwetlands areas and such  
22 other provisions of paragraph (3) as the Secretary  
23 determines are appropriate to apply to nonwetlands  
24 areas.

25 “(f) ACTIVITIES NOT REQUIRING PERMIT.—

1           “(1) IN GENERAL.—Activities undertaken in  
2 any wetlands or waters of the United States are ex-  
3 empt from the requirements of this section and are  
4 not prohibited by or otherwise subject to regulation  
5 under this section or section 301 or 402 of this Act  
6 (except effluent standards or prohibitions under sec-  
7 tion 307 of this Act) if such activities—

8           “(A) result from normal farming,  
9 silviculture, aquaculture, and ranching activities  
10 and practices, including but not limited to plow-  
11 ing, seeding, cultivating, haying, grazing, nor-  
12 mal maintenance activities, minor drainage,  
13 burning of vegetation in connection with such  
14 activities, harvesting for the production of food,  
15 fiber, and forest products, or upland soil and  
16 water conservation practices;

17           “(B) are for the purpose of maintenance,  
18 including emergency reconstruction of recently  
19 damaged parts, of currently serviceable struc-  
20 tures such as dikes, dams, levees, flood control  
21 channels, water control structures, groins,  
22 riprap, breakwaters, utility distribution and  
23 transmission lines, causeways, and bridge abut-  
24 ments or approaches, and transportation struc-  
25 tures;

1           “(C) are for the purpose of construction or  
2 maintenance of farm, stock or aquaculture  
3 ponds, wastewater retention facilities (including  
4 dikes and berms) that are used by concentrated  
5 animal feeding operations, or irrigation canals  
6 and ditches or the maintenance of drainage  
7 ditches;

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

12           “(E) are for the purpose of construction or  
13 maintenance of farm roads or forest roads, tem-  
14 porary roads for moving mining equipment, ac-  
15 cess roads for utility distribution and trans-  
16 mission lines, or railroad lines of up to 10 miles  
17 in length if such roads or railroad lines are con-  
18 structed and maintained, in accordance with  
19 best management practices, to assure that flow  
20 and circulation patterns and chemical and bio-  
21 logical characteristics of the waters are not im-  
22 paired, that the reach of the waters is not re-  
23 duced, and that any adverse effect on the  
24 aquatic environment will be otherwise mini-  
25 mized;

1           “(F) are undertaken on farmed wetlands,  
2           except that any change in use of such land for  
3           the purpose of undertaking activities that are  
4           not exempt from regulation under this sub-  
5           section shall be subject to the requirements of  
6           this section to the extent that such farmed wet-  
7           lands are ‘wetlands’ under this section;

8           “(G) result from any activity with respect  
9           to which a State has an approved program  
10          under section 208(b)(4) of this Act which meets  
11          the requirements of subparagraphs (B) and (C)  
12          of such section;

13          “(H) are consistent with a State or local  
14          land management plan submitted to the Sec-  
15          retary and approved pursuant to paragraph (2);

16          “(I) are undertaken in connection with a  
17          marsh management and conservation program  
18          in a coastal parish in the State of Louisiana  
19          where such program has been approved by the  
20          Governor of such State or the designee of the  
21          Governor;

22          “(J) are undertaken on lands or involve  
23          activities within a State’s coastal zone which  
24          are excluded from regulation under a State  
25          coastal zone management program approved

1 under the Coastal Zone Management Act of  
2 1972 (16 U.S.C. 1451, et seq.);

3 “(K) are undertaken in incidentally created  
4 wetlands, unless such incidentally created wet-  
5 lands have exhibited wetlands functions and val-  
6 ues for more than 5 years in which case activi-  
7 ties undertaken in such wetlands shall be sub-  
8 ject to the requirements of this section;

9 “(L) are for the purpose of preserving and  
10 enhancing aviation safety or are undertaken in  
11 order to prevent an airport hazard;

12 “(M) result from aggregate, clay, or phos-  
13 phate mining activities in wetlands conducted  
14 pursuant to a State or Federal permit that re-  
15 quires the reclamation of such affected wetlands  
16 if such reclamation will be completed within 5  
17 years of the commencement of activities at the  
18 site and, upon completion of such reclamation,  
19 the wetlands will support wetlands functions  
20 equivalent to the functions supported by the  
21 wetlands at the time of commencement of such  
22 activities;

23 “(N) are for the placement of a structural  
24 member for a pile-supported structure, such as  
25 a pier or dock, or for a linear project such as

1 a bridge, transmission or distribution line foot-  
2 ing, powerline structure, or elevated or other  
3 walkway;

4 “(O) are for the placement of a piling in  
5 waters of the United States in a circumstance  
6 that involves—

7 “(i) a linear project described in sub-  
8 paragraph (N); or

9 “(ii) a structure such as a pier, boat-  
10 house, wharf, marina, lighthouse, or indi-  
11 vidual house built on stilts solely to reduce  
12 the potential of flooding;

13 “(P) are for the clearing (including mecha-  
14 nized clearing) of vegetation within a right-of-  
15 way associated with the development and main-  
16 tenance of a transmission or distribution line or  
17 other powerline structure;

18 “(Q) are undertaken in or affecting  
19 waterfilled depressions created in uplands inci-  
20 dental to construction activity, or are under-  
21 taken in or affecting pits excavated in uplands  
22 for the purpose of obtaining fill, sand, gravel,  
23 aggregates, or minerals, unless and until the  
24 construction or excavation operation is aban-  
25 doned; or

1           “(R) are undertaken in a State with sub-  
2           stantial conserved wetlands areas and—

3                   “(i) are for purposes of providing crit-  
4                   ical infrastructure, including water and  
5                   sewer systems, airports, roads, communica-  
6                   tion sites, fuel storage sites, landfills, hous-  
7                   ing, hospitals, medical clinics, schools, and  
8                   other community infrastructure;

9                   “(ii) are for construction and mainte-  
10                  nance of log transfer facilities associated  
11                  with log transportation activities;

12                  “(iii) are for construction of tailings  
13                  impoundments utilized for treatment facili-  
14                  ties (as determined by the development  
15                  document) for the mining subcategory for  
16                  which the tailings impoundment is con-  
17                  structed; or

18                  “(iv) are for construction of ice pads  
19                  and ice roads and for purposes of snow  
20                  storage and removal.

21           “(2) STATE OR LOCAL MANAGEMENT PLAN.—  
22           Any State or political subdivision thereof acting pur-  
23           suant to State authorization may develop a land  
24           management plan with respect to lands that include  
25           identified wetlands. The State or local government

1 agency may submit any such plan to the Secretary  
2 for review and approval. The Secretary shall, within  
3 60 days, notify in writing the designated State or  
4 local official of approval or disapproval of any such  
5 plan. The Secretary shall approve any plan that is  
6 consistent with the purposes of this section. No per-  
7 son shall be entitled to judicial review of the decision  
8 of the Secretary to approve or disapprove a land  
9 management plan under this paragraph. Nothing in  
10 this paragraph shall be construed to alter, limit, or  
11 supersede the authority of a State or political sub-  
12 division thereof to establish land management plans  
13 for purposes other than the provisions of this sub-  
14 section.

15 “(g) RULES FOR DELINEATING WETLANDS.—

16 “(1) STANDARDS.—

17 “(A) ISSUANCE OF RULE.—The Secretary  
18 is authorized and directed to establish stand-  
19 ards, by rule in accordance with subsection (j),  
20 that shall govern the delineation of lands as  
21 ‘wetlands’ for purposes of this section. Such  
22 rules shall be established after consultation with  
23 the heads of other appropriate Federal agencies  
24 and shall be binding on all Federal agencies in  
25 connection with the administration or imple-

1           mentation of any provision of this section. The  
2           standards for delineation of wetlands and any  
3           decision of the Secretary, the Secretary of Agri-  
4           culture (in the case of agricultural lands and  
5           associated nonagricultural lands), or any other  
6           Federal officer or agency made in connection  
7           with the administration of this section shall  
8           comply with the requirements for delineation of  
9           wetlands set forth in subparagraphs (B) and  
10          (C).

11           “(B) EXCEPTIONS.—The standards estab-  
12          lished by rule or applied in any case for pur-  
13          poses of this section shall ensure that lands are  
14          delineated as wetlands only if such lands are  
15          found to be ‘wetlands’ under section 502 of this  
16          Act; except that such standards may not—

17                   “(i) result in the delineation of lands  
18                   as wetlands unless clear evidence of wet-  
19                   lands hydrology, hydrophytic vegetation,  
20                   and hydric soil are found to be present  
21                   during the period in which such delineation  
22                   is made, which delineation shall be con-  
23                   ducted during the growing season unless  
24                   otherwise requested by the applicant;

1           “(ii) result in the classification of  
2           vegetation as hydrophytic if such vegeta-  
3           tion is equally adapted to dry or wet soil  
4           conditions or is more typically adapted to  
5           dry soil conditions than to wet soil condi-  
6           tions;

7           “(iii) result in the classification of  
8           lands as wetlands unless some obligate  
9           wetlands vegetation is found to be present  
10          during the period of delineation; except  
11          that if such vegetation has been removed  
12          for the purpose of evading jurisdiction  
13          under this section, this clause shall not  
14          apply;

15          “(iv) result in the conclusion that wet-  
16          lands hydrology is present unless water is  
17          found to be present at the surface of such  
18          lands for 21 consecutive days in the grow-  
19          ing seasons in a majority of the years for  
20          which records are available; and

21          “(v) result in the classification of  
22          lands as wetlands that are temporarily or  
23          incidentally created as a result of adjacent  
24          development activity.

1           “(C) NORMAL CIRCUMSTANCES.—In addi-  
2           tion to the requirements of subparagraph (B),  
3           any standards established by rule or applied to  
4           delineate wetlands for purposes of this section  
5           shall provide that ‘normal circumstances’ shall  
6           be determined on the basis of the factual cir-  
7           cumstances in existence at the time a classifica-  
8           tion is made under subsection (h) or at the time  
9           of application under subsection (e), whichever is  
10          applicable, if such circumstances have not been  
11          altered by an activity prohibited under this sec-  
12          tion.

13          “(2) LAND AREA CAP FOR TYPE A WET-  
14          LANDS.—No more than 20 percent of any county,  
15          parish, or borough shall be classified as type A wet-  
16          lands. Type A wetlands in Federal or State owner-  
17          ship (including type A wetlands in units of the Na-  
18          tional Wildlife Refuge System, the National Park  
19          System, and lands held in conservation easements)  
20          shall be included in calculating the percent of type  
21          A wetlands in a county, parish, or borough.

22          “(3) AGRICULTURAL LANDS.—

23                  “(A) DELINEATION BY SECRETARY OF AG-  
24                  RICULTURE.—For purposes of this section, wet-  
25                  lands located on agricultural lands and associ-

1           ated nonagricultural lands shall be delineated  
2           solely by the Secretary of Agriculture in accord-  
3           ance with section 1222(j) of the Food Security  
4           Act of 1985 (16 U.S.C. 3822(j)).

5           “(B) EXEMPTION OF LANDS EXEMPTED  
6           UNDER FOOD SECURITY ACT.—Any area of ag-  
7           ricultural land or any activities related to the  
8           land determined to be exempt from the require-  
9           ments of subtitle C of title XII of the Food Se-  
10          curity Act of 1985 (16 U.S.C. 3821 et seq.)  
11          shall also be exempt from the requirements of  
12          this section for such period of time as those  
13          lands are used as agricultural lands.

14          “(C) EFFECT OF APPEAL DETERMINATION  
15          PURSUANT TO FOOD SECURITY ACT.—Any area  
16          of agricultural land or any activities related to  
17          the land determined to be exempt pursuant to  
18          an appeal taken pursuant to subtitle C of title  
19          XII of the Food Security Act of 1985 (16  
20          U.S.C. 3821 et seq.) shall be exempt under this  
21          section for such period of time as those lands  
22          are used as agricultural lands.

23          “(h) MAPPING AND PUBLIC NOTICE REQUIRE-  
24          MENTS.—

25          “(1) PROVISION OF PUBLIC NOTICE.—

1           “(A) IN GENERAL.—Not later than 90  
2 days after the date of the enactment of the  
3 Comprehensive Wetlands Conservation and  
4 Management Act of 1995, the Secretary shall  
5 provide the court of each county, parish, or bor-  
6 ough in which the wetland subject to classifica-  
7 tion under subsection (c) is located, a notice for  
8 posting near the property records of the county,  
9 parish, or borough. The notice shall—

10           “(i) state that wetlands regulated  
11 under this section may be located in the  
12 county, parish, or borough;

13           “(ii) provide an explanation under-  
14 standable to the general public of how wet-  
15 lands are delineated and classified;

16           “(iii) describe the requirements and  
17 restrictions of the regulatory program  
18 under this section; and

19           “(iv) provide instructions on how to  
20 obtain a delineation and classification of  
21 wetlands under this section.

22           “(2) PROVISION OF DELINEATION DETERMINA-  
23 TIONS.—On completion under this section of a delin-  
24 eation and classification of property that contains  
25 wetlands or a delineation of property that contains

1 waters of the United States that are not wetlands,  
2 the Secretary of Agriculture, in the case of wetlands  
3 located on agricultural lands and associated non-  
4 agricultural lands, and the Secretary, in the case of  
5 other lands, shall—

6 “(A) file a copy of the delineation, includ-  
7 ing the classification of any wetland located on  
8 the property, with the records of the property  
9 in the local courthouse; and

10 “(B) serve a copy of the delineation deter-  
11 mination on every owner of the property on  
12 record and any person with a recorded mort-  
13 gage or lien on the property.

14 “(3) NOTICE OF ENFORCEMENT ACTIONS.—The  
15 Secretary shall file notice of each enforcement action  
16 under this section taken with respect to private  
17 property with the records of the property in the local  
18 courthouse.

19 “(4) WETLANDS IDENTIFICATION AND CLASSI-  
20 FICATION PROJECT.—

21 “(A) IN GENERAL.—The Secretary and the  
22 Secretary of Agriculture shall undertake a  
23 project to identify and classify wetlands in the  
24 United States that are regulated under this sec-  
25 tion. The Secretaries shall complete such

1 project not later than 10 years after the date  
2 of the enactment of the Comprehensive Wet-  
3 lands Conservation and Management Act of  
4 1995.

5 “(B) APPLICABILITY OF DELINEATION  
6 STANDARDS.—In conducting the project under  
7 this section, the Secretaries shall identify and  
8 classify wetlands in accordance with standards  
9 for delineation of wetlands established by the  
10 Secretaries under subsection (g).

11 “(C) PUBLIC HEARINGS.—In conducting  
12 the project under this section, the Secretaries  
13 shall provide notice and an opportunity for a  
14 public hearing in each county, parish or bor-  
15 ough of a State before completion of identifica-  
16 tion and classification of wetlands in such coun-  
17 ty, parish, or borough.

18 “(D) PUBLICATION.—Promptly after com-  
19 pletion of identification and classification of  
20 wetlands in a county, parish, or borough under  
21 this section, the Secretaries shall have published  
22 information on such identification and classi-  
23 fication in the Federal Register and in publica-  
24 tions of wide circulation and take other steps

1 reasonably necessary to ensure that such infor-  
2 mation is available to the public.

3 “(E) REPORTS.—The Secretaries shall re-  
4 port to Congress on implementation of the  
5 project to be conducted under this section not  
6 later than 2 years after the date of the enact-  
7 ment of the Comprehensive Wetlands Conserva-  
8 tion and Management Act of 1995 and annually  
9 thereafter.

10 “(F) RECORDATION.—Any classification of  
11 lands as wetlands under this section shall, to  
12 the maximum extent practicable, be recorded on  
13 the property records in the county, parish, or  
14 borough in which such wetlands are located.

15 “(i) ADMINISTRATIVE APPEALS.—

16 “(1) REGULATIONS ESTABLISHING PROCE-  
17 DURES.—Not later than 1 year after the date of the  
18 enactment of the Comprehensive Wetlands Conserva-  
19 tion and Management Act of 1995, the Secretary  
20 shall, after providing notice and opportunity for pub-  
21 lic comment, issue regulations establishing proce-  
22 dures pursuant to which—

23 “(A) a landowner may appeal a determina-  
24 tion of regulatory jurisdiction under this section

1 with respect to a parcel of the landowner's  
2 property;

3 "(B) a landowner may appeal a wetlands  
4 classification under this section with respect to  
5 a parcel of the landowner's property;

6 "(C) any person may appeal a determina-  
7 tion that the proposed activity on the land-  
8 owner's property is not exempt under sub-  
9 section (f);

10 "(D) a landowner may appeal a determina-  
11 tion that an activity on the landowner's prop-  
12 erty does not qualify under a general permit is-  
13 sued under this section;

14 "(E) an applicant for a permit under this  
15 section may appeal a determination made pur-  
16 suant to this section to deny issuance of the  
17 permit or to impose a requirement under the  
18 permit; and

19 "(F) a landowner or any other person re-  
20 quired to restore or otherwise alter a parcel of  
21 property pursuant to an order issued under this  
22 section may appeal such order.

23 "(2) DEADLINE FOR FILING APPEAL.—An ap-  
24 peal brought pursuant to this subsection shall be  
25 filed not later than 30 days after the date on which

1 the decision or action on which the appeal is based  
2 occurs.

3 “(3) DEADLINE FOR DECISION.—An appeal  
4 brought pursuant to this subsection shall be decided  
5 not later than 90 days after the date on which the  
6 appeal is filed.

7 “(4) PARTICIPATION IN APPEALS PROCESS.—  
8 Any person who participated in the public comment  
9 process concerning a decision or action that is the  
10 subject of an appeal brought pursuant to this sub-  
11 section may participate in such appeal.

12 “(5) DECISIONMAKER.—An appeal brought  
13 pursuant to this subsection shall be heard and de-  
14 cided by an appropriate and impartial official of the  
15 Federal Government, other than the official who  
16 made the determination or carried out the action  
17 that is the subject of the appeal.

18 “(6) STAY OF PENALTIES AND MITIGATION.—A  
19 landowner or any other person who has filed an ap-  
20 peal under this subsection shall not be required to  
21 pay a penalty or perform mitigation or restoration  
22 assessed under this section or section 309 until after  
23 the appeal has been decided.

24 “(j) ADMINISTRATIVE PROVISIONS.—

1           “(1) FINAL REGULATIONS FOR ISSUANCE OF  
2 PERMITS.—Not later than 1 year after the date of  
3 the enactment of the Comprehensive Wetlands Con-  
4 servation and Management Act of 1995, the Sec-  
5 retary shall, after notice and opportunity for com-  
6 ment, issue (in accordance with section 553 of title  
7 5 of the United States Code and this section) final  
8 regulations for implementation of this section. Such  
9 regulations shall, in accordance with this section,  
10 provide—

11           “(A) standards and procedures for the  
12 classification and delineation of wetlands and  
13 procedures for administrative review of any  
14 such classification or delineation;

15           “(B) standards and procedures for the re-  
16 view of State or local land management plans  
17 and State programs for the regulation of wet-  
18 lands;

19           “(C) for the issuance of general, including  
20 programmatic, State, regional, and nationwide  
21 permits;

22           “(D) standards and procedures for the in-  
23 dividual permit applications under this section;

24           “(E) for enforcement of this section; and

1           “(F) any other rules and regulations that  
2           the Secretary deems necessary or appropriate to  
3           implement the requirements of this section.

4           “(2) JUDICIAL REVIEW OF FINAL REGULA-  
5           TIONS.—Any judicial review of final regulations is-  
6           sued pursuant to this section and the Secretary’s de-  
7           nial of any petition for the issuance, amendment, or  
8           repeal of any regulation under this section shall be  
9           in accordance with sections 701 through 706 of title  
10          5 of the United States Code; except that a petition  
11          for review of action of the Secretary in issuing any  
12          regulation or requirement under this section or de-  
13          nying any petition for the issuance, amendment, or  
14          repeal of any regulation under this section may be  
15          filed only in the United States Court of Appeals for  
16          the District of Columbia, and such petition shall be  
17          filed within 90 days from the date of such issuance  
18          or denial or after such date if such petition for re-  
19          view is based solely on grounds arising after such  
20          ninetieth day. Action of the Secretary with respect  
21          to which review could have been obtained under this  
22          subsection shall not be subject to judicial review in  
23          civil or criminal proceedings for enforcement.

24          “(3) INTERIM REGULATIONS.—The Secretary  
25          shall, within 90 days after the date of the enactment

1 of the Comprehensive Wetlands Conservation and  
2 Management Act of 1995, issue interim regulations  
3 consistent with this section to take effect imme-  
4 diately. Notice of the interim regulations shall be  
5 published in the Federal Register, and such regula-  
6 tions shall be binding until the issuance of final reg-  
7 ulations pursuant to paragraph (1); except that the  
8 Secretary shall provide adequate procedures for  
9 waiver of any provisions of such interim regulations  
10 to avoid special hardship, inequity, or unfair dis-  
11 tribution of burdens or to advance the purposes  
12 of this section.

13 “(4) ADMINISTRATION BY SECRETARY.—Except  
14 where otherwise expressly provided in this section,  
15 the Secretary shall administer this section. The Sec-  
16 retary or any other Federal officer or agency in  
17 which any function under this section is vested or  
18 delegated is authorized to perform any and all acts  
19 (including appropriate enforcement activity), and to  
20 prescribe, issue, amend, or rescind such rules or or-  
21 ders as such officer or agency may find necessary or  
22 appropriate with this subsection, subject to the re-  
23 quirements of this subsection.

24 “(k) ENFORCEMENT.—

1           “(1) COMPLIANCE ORDER.—Whenever, on the  
2 basis of reliable and substantial information and  
3 after reasonable inquiry, the Secretary finds that  
4 any person is or may be in violation of this section  
5 or of any condition or limitation set forth in a per-  
6 mit issued by the Secretary under this section, the  
7 Secretary shall issue an order requiring such persons  
8 to comply with this section or with such condition or  
9 limitation.

10           “(2) NOTICE AND OTHER PROCEDURAL RE-  
11 QUIREMENTS RELATING TO ORDERS.—A copy of any  
12 order issued under this subsection shall be sent im-  
13 mediately by the Secretary to the Governor of the  
14 State in which the violation occurs and the Gov-  
15 ernors of other affected States. The person commit-  
16 ting the asserted violation that results in issuance of  
17 the order shall be notified of the issuance of the  
18 order by personal service made to the appropriate  
19 person or corporate officer. The notice shall state  
20 with reasonable specificity the nature of the asserted  
21 violation and specify a time for compliance, not to  
22 exceed 30 days, which the Secretary determines is  
23 reasonable taking into account the seriousness of the  
24 asserted violation and any good faith efforts to com-  
25 ply with applicable requirements. If the person re-

1       ceiving the notice disputes the Secretary's deter-  
2       mination, the person may file an appeal as provided  
3       in subsection (i). Within 60 days of a decision which  
4       denies an appeal, or within 150 days from the date  
5       of notification of violation by the Secretary if no ap-  
6       peal is filed, the Secretary shall prosecute a civil ac-  
7       tion in accordance with paragraph (3) or rescind  
8       such order and be estopped from any further en-  
9       forcement proceedings for the same asserted viola-  
10      tion.

11           “(3) CIVIL ACTION ENFORCEMENT.—The Sec-  
12      retary is authorized to commence a civil action for  
13      appropriate relief, including a permanent or tem-  
14      porary injunction, for any violation for which the  
15      Secretary is authorized to issue a compliance order  
16      under paragraph (1). Any action under this para-  
17      graph may be brought in the district court of the  
18      United States for the district in which the defendant  
19      is located or resides or is doing business, and such  
20      court shall have jurisdiction to restrain such viola-  
21      tion and to require compliance. Notice of the com-  
22      mencement of such action shall be given immediately  
23      to the appropriate State.

24           “(4) CIVIL PENALTIES.—Any person who vio-  
25      lates any condition or limitation in a permit issued

1 by the Secretary under this section and any person  
2 who violates any order issued by the Secretary under  
3 paragraph (1) shall be subject to a civil penalty not  
4 to exceed \$25,000 per day for each violation com-  
5 mencing on expiration of the compliance period if no  
6 appeal is filed or on the 30th day following the date  
7 of the denial of an appeal of such violation. The  
8 amount of the penalty imposed per day shall be in  
9 proportion to the scale or scope of the project. In de-  
10 termining the amount of a civil penalty, the court  
11 shall consider the seriousness of the violation or vio-  
12 lations, the economic benefit (if any) resulting from  
13 the violation, any history of such violations, any  
14 good-faith efforts to comply with the applicable re-  
15 quirements, the economic impact of the penalty on  
16 the violator, and such other matters as justice may  
17 require.

18 “(5) CRIMINAL PENALTIES.—If any person  
19 knowingly and willfully violates any condition or lim-  
20 itation in a permit issued by the Secretary under  
21 this section or knowingly and willfully violates an  
22 order issued by the Secretary under paragraph (1)  
23 and has been notified of the issuance of such order  
24 under paragraph (2) and if such violation has re-  
25 sulted in actual degradation of the environment,

1 such person shall be punished by a fine of not less  
2 than \$5,000 nor more than \$50,000 per day of vio-  
3 lation, or by imprisonment for not more than 3  
4 years, or by both. If a conviction of a person is for  
5 a violation committed after a first conviction of such  
6 person under this paragraph, punishment shall be by  
7 a fine of not more than \$100,000 per day of viola-  
8 tion, or imprisonment of not more than 6 years, or  
9 by both. An action for imposition of a criminal pen-  
10 alty under this paragraph may only be brought by  
11 the Attorney General.

12 “(l) STATE REGULATION.—

13 “(1) SUBMISSION OF PROPOSED STATE PRO-  
14 GRAM.—The Governor of any State desiring to ad-  
15 minister its own individual or general permit pro-  
16 gram for some or all of the activities covered by this  
17 section within any geographical region within its ju-  
18 risdiction may submit to the Secretary a description  
19 of the program it proposes to establish and admin-  
20 ister under State law or under an interstate com-  
21 pact. In addition, such State shall submit a state-  
22 ment from the chief legal officer in the case of the  
23 State or interstate agency, that the laws of such  
24 State, or the interstate compact, as the case may be,

1 provide adequate authority to carry out the de-  
2 scribed program.

3 “(2) STATE AUTHORITIES REQUIRED FOR AP-  
4 PROVAL.—Not later than 1 year after the date of  
5 the receipt by the Secretary of a program and state-  
6 ment submitted by any State under paragraph (1),  
7 the Secretary shall determine whether such State  
8 has the following authority with respect to the issu-  
9 ance of permits pursuant to such program:

10 “(A) to issue permits which—

11 “(i) apply, and assure compliance  
12 with, any applicable requirements of this  
13 section; and

14 “(ii) can be terminated or modified  
15 for cause, including—

16 “(I) violation of any condition of  
17 the permit;

18 “(II) obtaining a permit by mis-  
19 representation, or failure to disclose  
20 fully all relevant facts; or

21 “(III) change in any condition  
22 that requires either a temporary or  
23 permanent reduction or elimination  
24 of the permitted activity;

1           “(B) to issue permits which apply, and en-  
2           sure compliance with, all applicable require-  
3           ments of section 308 of this Act or to inspect,  
4           monitor, enter, and require reports to at least  
5           the same extent as required in section 308 of  
6           this Act;

7           “(C) to ensure that the public, and any  
8           other State the waters of which may be af-  
9           fected, receive notice of each application for a  
10          permit and to provide an opportunity for public  
11          hearing before a ruling on each such applica-  
12          tion;

13          “(D) to ensure that the Secretary receives  
14          notice of each application for a permit and that,  
15          prior to any action by the State, both the appli-  
16          cant for the permit and the State have received  
17          from the Secretary information with respect to  
18          any advance classification applicable to wet-  
19          lands that are the subject of such application;

20          “(E) to ensure that any State (other than  
21          the permitting State) whose waters may be af-  
22          fected by the issuance of a permit may submit  
23          written recommendation to the permitting State  
24          with respect to any permit application and, if  
25          any part of such written recommendations are

1 not accepted by the permitting State, that the  
2 permitting State will notify such affected State  
3 (and the Secretary) in writing of its failure to  
4 so accept such recommendations together with  
5 its reasons for doing so; and

6 “(F) to abate violations of the permit or  
7 the permit program, including civil and criminal  
8 penalties and other ways and means of enforce-  
9 ment.

10 “(3) APPROVAL; RESUBMISSION.—If, with re-  
11 spect to a State program submitted under paragraph  
12 (1) of this section, the Secretary determines that the  
13 State—

14 “(A) has the authority set forth in para-  
15 graph (2), the Secretary shall approve the pro-  
16 gram and so notify such State and suspend the  
17 issuance of permits under subsection (b) for ac-  
18 tivities with respect to which a permit may be  
19 issued pursuant to the State program; or

20 “(B) does not have the authority set forth  
21 in paragraph (2) of this subsection, the Sec-  
22 retary shall so notify such State and provide a  
23 description of the revisions or modifications  
24 necessary so that the State may resubmit the

1           program for a determination by the Secretary  
2           under this subsection.

3           “(4) EFFECT OF FAILURE OF SECRETARY TO  
4           MAKE TIMELY DECISION.—If the Secretary fails to  
5           make a determination with respect to any program  
6           submitted by a State under this subsection within 1  
7           year after the date of receipt of the program, the  
8           program shall be treated as being approved pursuant  
9           to paragraph (3)(A) and the Secretary shall so no-  
10          tify the State and suspend the issuance of permits  
11          under subsection (b) for activities with respect to  
12          which a permit may be issued by the State.

13          “(5) TRANSFER OF PENDING APPLICATIONS  
14          FOR PERMITS.—If the Secretary approves a State  
15          permit program under paragraph (3)(A) or (4), the  
16          Secretary shall transfer any applications for permits  
17          pending before the Secretary for activities with re-  
18          spect to which a permit may be issued pursuant to  
19          the State program to the State for appropriate  
20          action.

21          “(6) GENERAL PERMITS.—Upon notification  
22          from a State with a permit program approved under  
23          this subsection that such State intends to administer  
24          and enforce the terms and conditions of a general  
25          permit issued by the Secretary under subsection (e)

1 with respect to activities in the State to which such  
2 general permit applies, the Secretary shall suspend  
3 the administration and enforcement of such general  
4 permit with respect to such activities.

5 “(7) REVIEW BY SECRETARY.—Every 5 years  
6 after approval of a State administered program  
7 under paragraph (3)(A), the Secretary shall review  
8 the program to determine whether it is being admin-  
9 istered in accordance with this section. If, on the  
10 basis of such review, the Secretary finds that a State  
11 is not administering its program in accordance with  
12 this section or if the Secretary determines based on  
13 clear and convincing evidence after a public hearing  
14 that a State is not administering its program in ac-  
15 cordance with this section and that substantial ad-  
16 verse impacts to wetlands or waters of the United  
17 States are imminent, the Secretary shall notify the  
18 State and, if appropriate corrective action is not  
19 taken within a reasonable time, not to exceed 90  
20 days after the date of the receipt of such notifica-  
21 tion, the Secretary shall—

22 “(A) withdraw approval of the program  
23 until the Secretary determines such corrective  
24 action has been taken; and

1           “(B) resume the program for the issuance  
2           of permits under subsections (b) and (e) for all  
3           activities with respect to which the State was is-  
4           suing permits until such time as the Secretary  
5           makes the determination described in para-  
6           graph (2) and the State again has an approved  
7           program.

8           “(m) MISCELLANEOUS PROVISIONS.—

9           “(1) STATE AUTHORITY TO CONTROL DIS-  
10          CHARGES.—Nothing in this section shall preclude or  
11          deny the right of any State or interstate agency to  
12          control activities in waters within the jurisdiction of  
13          such State, including any activity of any Federal  
14          agency, and each such agency shall comply with  
15          such State or interstate requirements both sub-  
16          stantive and procedural to control such activities to  
17          the same extent that any person is subject to such  
18          requirements. This section shall not be construed as  
19          affecting or impairing the authority of the Secretary  
20          to maintain navigation.

21          “(2) AVAILABILITY TO PUBLIC.—A copy of each  
22          permit application and each permit issued under this  
23          section shall be available to the public. Such permit  
24          application or portion thereof shall further be avail-  
25          able on request for the purpose of reproduction.

1           “(3) PUBLICATION IN FEDERAL REGISTER.—  
2           The Secretary shall have published in the Federal  
3           Register all memoranda of agreement, regulatory  
4           guidance letters, and other guidance documents of  
5           general applicability to implementation of this sec-  
6           tion at the time they are distributed to agency re-  
7           gional or field offices. In addition, the Secretary  
8           shall prepare, update on a biennial basis and make  
9           available to the public for purchase at cost—

10                   “(A) an indexed publication containing all  
11                   Federal regulations, general permits, memo-  
12                   randa of agreement, regulatory guidance letters,  
13                   and other guidance documents relevant to the  
14                   permitting of activities pursuant to this section;  
15                   and

16                   “(B) information to enable the general  
17                   public to understand the delineation of wet-  
18                   lands, the permitting requirements referred to  
19                   in subsection (e), wetlands restoration and en-  
20                   hancement, wetlands functions, available non-  
21                   regulatory programs to conserve and restore  
22                   wetlands, and other matters that the Secretary  
23                   considers relevant.

24           “(4) COMPLIANCE.—

1           “(A) COMPLIANCE WITH PERMIT.—Com-  
2           pliance with a permit issued pursuant to this  
3           section, including any activity carried out pur-  
4           suant to a general permit issued under this sec-  
5           tion, shall be deemed in compliance, for pur-  
6           poses of sections 309 and 505, with sections  
7           301, 307, and 403.

8           “(B) CRANBERRY PRODUCTION.—Activi-  
9           ties associated with expansion, improvement, or  
10          modification of existing cranberry production  
11          operations shall be deemed in compliance, for  
12          purposes of sections 309 and 505, with section  
13          301, if—

14                 “(i) the activity does not result in the  
15                 modification of more than 10 acres of wet-  
16                 lands per operator per year and the modi-  
17                 fied wetlands (other than where dikes and  
18                 other necessary facilities are placed) re-  
19                 main as wetlands or other waters of the  
20                 United States; or

21                 “(ii) the activity is required by any  
22                 State or Federal water quality program.

23          “(5) LIMITATION ON FEES.—Any fee charged  
24          in connection with the delineation or classification of  
25          wetlands, the submission or processing of an applica-

1       tion for a permit authorizing an activity in wetlands  
2       or waters of the United States, or any other action  
3       taken in compliance with the requirements of this  
4       section (other than fines for violations under sub-  
5       section (k)) shall not exceed the amount in effect for  
6       such fee on February 15, 1995.

7           “(6) BALANCED IMPLEMENTATION.—

8           “(A) IN GENERAL.—In implementing his  
9       or her responsibilities under the regulatory pro-  
10      gram under this section, the Secretary shall  
11      balance the objective of conserving functioning  
12      wetlands with the objective of ensuring contin-  
13      ued economic growth, providing essential infra-  
14      structure, maintaining strong State and local  
15      tax bases, and protecting against the diminish-  
16      ment of the use and value of privately owned  
17      property.

18          “(B) MINIMIZATION OF ADVERSE EFFECTS  
19      ON PRIVATE PROPERTY.—In carrying out this  
20      section, the Secretary and the heads of all other  
21      Federal agencies shall seek in all actions to  
22      minimize the adverse effects of the regulatory  
23      program under this section on the use and  
24      value of privately owned property.

1           “(7) PROCEDURES FOR EMERGENCIES.—The  
2 Secretary shall develop procedures for facilitating ac-  
3 tions under this section that are necessary to re-  
4 spond to emergency conditions (including flood  
5 events and other emergency situations) which may  
6 involve loss of life and property damage. Such proce-  
7 dures shall address circumstances requiring exped-  
8 ited approvals as well as circumstances requiring  
9 no formal approval under this section.

10           “(8) USE OF PROPERTY.—For purposes of this  
11 section, a use of property is limited by an agency ac-  
12 tion if a particular legal right to use that property  
13 no longer exists because of the action.

14           “(9) LIMITATION ON CLASSIFICATION OF CER-  
15 TAIN WATERS.—For purposes of this section, no  
16 water of the United States or wetland shall be sub-  
17 ject to this section based solely on the fact that mi-  
18 gratory birds use or could use such water or wet-  
19 land.

20           “(10) TRANSITION RULES.—

21           “(A) PERMIT REQUIRED.—After the effec-  
22 tive date of this section under section 6 of the  
23 Comprehensive Wetlands Conservation and  
24 Management Act of 1995, no permit for any ac-  
25 tivity in wetlands or waters of the United

1 States may be issued except in accordance with  
2 this section. Any application for a permit for  
3 such an activity pending under this section on  
4 such effective date shall be deemed to be an ap-  
5 plication for a permit under this section.

6 “(B) PRIOR PERMITS.—Any permit for an  
7 activity in wetlands or waters of the United  
8 States issued under this section prior to the ef-  
9 fective date referred to in subparagraph (A)  
10 shall be deemed to be a permit under this sec-  
11 tion and shall continue in force and effect for  
12 the term of the permit unless revoked, modified,  
13 suspended, or canceled in accordance with this  
14 section.

15 “(C) REEVALUATION.—Any person holding  
16 a permit for an activity in wetlands or water of  
17 the United States on the effective date referred  
18 to in subparagraph (A) may petition, after such  
19 effective date, the Secretary for reevaluation of  
20 any decision made before such effective date  
21 concerning (i) a determination of regulatory ju-  
22 risdiction under this section, or (ii) any condi-  
23 tion imposed under the permit. Upon receipt of  
24 a petition for reevaluation, the Secretary shall  
25 conduct the reevaluation in accordance with the

1 provisions of this section. If the Secretary finds  
2 that the provisions of this section apply with re-  
3 spect to activities and lands which are subject  
4 to the permit, the Secretary shall modify, re-  
5 voke, suspend, cancel, or continue the permit as  
6 appropriate in accordance with the provisions of  
7 this section; except that no compensation shall  
8 be awarded under this section to any person as  
9 a result of reevaluation pursuant to this sub-  
10 paragraph and, if the permit covers activities in  
11 type A wetlands, the permit shall continue in  
12 effect without modification. The reevaluation  
13 shall be carried out in accordance with time  
14 limits set forth in subsection (e)(5) and shall  
15 be subject to administrative appeal under sub-  
16 section (i).

17 “(11) DEFINITIONS.—In this section the follow-  
18 ing definitions apply:

19 “(A) ACTIVITY IN WETLANDS OR WATERS  
20 OF THE UNITED STATES.—The term ‘activity in  
21 wetlands or waters of the United States’  
22 means—

23 “(i) the discharge of dredged or fill  
24 material into waters of the United States,

1 including wetlands at a specific disposal  
2 site; or

3 “(ii) the draining, channelization, or  
4 excavation of wetlands.

5 “(B) AGENCY.—The term ‘agency’ has the  
6 meaning given that term in section 551 of title  
7 5, United States Code.

8 “(C) AGENCY ACTION.—The term ‘agency  
9 action’ has the meaning given that term in sec-  
10 tion 551 of title 5, United States Code, but also  
11 includes the making of a grant to a public au-  
12 thority conditioned upon an action by the recip-  
13 ient that would constitute a limitation if done  
14 directly by the agency.

15 “(D) AGRICULTURAL LAND.—The term  
16 ‘agricultural land’ means cropland, pastureland,  
17 native pasture, rangeland, an orchard, a vine-  
18 yard, nonindustrial forest land, an area that  
19 supports a water dependent crop (including  
20 cranberries, taro, watercress, or rice), and any  
21 other land used to produce or support the pro-  
22 duction of an annual or perennial crop (includ-  
23 ing forage or hay), aquaculture product, nurs-  
24 ery product, or wetland crop or the production  
25 of livestock.

1           “(E) CONSERVED WETLANDS.—The term  
2           ‘conserved wetlands’ means wetlands that are  
3           located in the National Park System, National  
4           Wildlife Refuge System, National Wilderness  
5           System, the Wild and Scenic River System, and  
6           other similar Federal conservation systems,  
7           combined with wetlands located in comparable  
8           types of conservation systems established under  
9           State and local authority within State and local  
10          land use systems.

11          “(F) ECONOMIC BASE LANDS.—The term  
12          ‘economic base lands’ means lands conveyed to,  
13          selected by, or owned by Alaska Native entities  
14          pursuant to the Alaska Native Claims Settle-  
15          ment Act, Public Law 92–203 or the Alaska  
16          Native Allotment Act of 1906 (34 Stat. 197),  
17          and lands conveyed to, selected by, or owned by  
18          the State of Alaska pursuant to the Alaska  
19          Statehood Act, Public Law 85–508.

20          “(G) FAIR MARKET VALUE.—The term  
21          ‘fair market value’ means the most probable  
22          price at which property would change hands, in  
23          a competitive and open market under all condi-  
24          tions requisite to a fair sale, between a willing  
25          buyer and a willing seller, neither being under

1 any compulsion to buy or sell and both having  
2 reasonable knowledge of relevant facts, at the  
3 time the agency action occurs.

4 “(H) LAW OF A STATE.—The term ‘law of  
5 a State’ includes the law of a political subdivi-  
6 sion of a State.

7 “(I) MITIGATION BANK.—The term ‘miti-  
8 gation bank’ means a wetlands restoration, cre-  
9 ation, enhancement, or preservation project un-  
10 dertaken by one or more parties, including pri-  
11 vate and public entities, expressly for the pur-  
12 pose of providing mitigation compensation cred-  
13 its to offset adverse impacts to wetlands or  
14 other waters of the United States authorized by  
15 the terms of permits allowing discharges of  
16 dredged or fill material into such wetlands or  
17 waters.

18 “(J) PROPERTY.—The term ‘property’  
19 means land and includes the right to use or re-  
20 ceive water.

21 “(K) SECRETARY.—The term ‘Secretary’  
22 means the Secretary of the Army.

23 “(L) STATE WITH SUBSTANTIAL CON-  
24 SERVED WETLANDS AREAS.—The term ‘State

1 with substantial conserved wetlands areas’  
2 means any State which—

3 “(i) contains at least 10 areas of wet-  
4 lands for each acre of wetlands filled,  
5 drained, or otherwise converted within such  
6 State (based upon wetlands loss statistics  
7 reported in the 1990 United States Fish  
8 and Wildlife Service Wetlands Trends re-  
9 port to Congress entitled ‘Wetlands Losses  
10 in the United States 1780’s to 1980’s’); or

11 “(ii) the Secretary of the Army deter-  
12 mines has sufficient conserved wetlands  
13 areas to provided adequate wetlands con-  
14 servation in such State, based on the poli-  
15 cies set forth in this Act.

16 “(M) WETLANDS.—The term ‘wetlands’  
17 means those lands that meet the criteria for de-  
18 lineation of lands as wetlands set forth in sub-  
19 section (g).”.

20 **SEC. 4. DEFINITIONS.**

21 Section 502 of the Federal Water Pollution Control  
22 Act (33 U.S.C. 1362) is further amended—

23 (1) in paragraph (6)—

24 (A) by striking “dredged spoil,”;

1 (B) by striking “or (B)” and inserting  
2 “(B)”; and

3 (C) by inserting before the period at the  
4 end “; and (C) dredged or fill material”; and

5 (2) by adding at the end thereof the following  
6 new paragraphs:

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

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

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

20 “(24) The term ‘fastlands’ means lands located be-  
21 hind legally constituted man-made structures or natural  
22 formations, such as levees constructed and maintained to  
23 permit the utilization of such lands for commercial, indus-  
24 trial, or residential purposes consistent with local land use  
25 planning requirements.

1       “(25) The term ‘wetlands functions’ means the roles  
2 wetlands serve, including flood water storage, flood water  
3 conveyance, ground water recharge, erosion control, wave  
4 attenuation, water quality protection, scenic and aesthetic  
5 use, food chain support, fisheries, wetlands plant habitat,  
6 aquatic habitat, and habitat for wetland dependent wild-  
7 life.

8       “(26) The term ‘growing season’ means, for each  
9 plant hardiness zone, the period between the average date  
10 of last frost in spring and the average date of first frost  
11 in autumn.

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

17       “(28) The term ‘maintenance’ when used in reference  
18 to wetlands means activities undertaken to assure continu-  
19 ation of a wetland or the accomplishment of project goals  
20 after a restoration or creation project has been technically  
21 completed, including water level manipulations and control  
22 of nonnative plant species.

23       “(29) The term ‘mitigation banking’ means wetlands  
24 restoration, enhancement, preservation or creation for the

1 purpose of providing compensation for wetland degrada-  
2 tion or loss.

3       “(30) The term ‘normal farming, silviculture, aqua-  
4 culture and ranching activities’ means normal practices  
5 identified as such by the Secretary of Agriculture, in con-  
6 sultation with the Cooperative Extension Service for each  
7 State and the land grant university system and agricul-  
8 tural colleges of the State, taking into account existing  
9 practices and such other practices as may be identified  
10 in consultation with the affected industry or community.

11       “(31) The term ‘prior converted cropland’ means any  
12 agricultural land that was manipulated (by drainage or  
13 other physical alteration to remove excess water from the  
14 land) or used for the production of any annual or peren-  
15 nial agricultural crop (including forage or hay),  
16 aquacultural product, nursery product or wetlands crop,  
17 or the production of livestock before December 23, 1985.

18       “(32) The term ‘restoration’ in reference to wetlands  
19 means an activity undertaken to return a wetland from  
20 a disturbed or altered condition with lesser acreage or  
21 fewer functions to a previous condition with greater wet-  
22 lands acreage or functions.

23       “(33) The term ‘temporary impact’ means the dis-  
24 turbance or alteration of wetlands caused by activities

1 under circumstances in which, within 3 years following the  
2 commencement of such activities, such wetlands—

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

5 “(B) display conditions sufficient to ensure,  
6 that without further human action, such wetlands  
7 will return to the conditions in existence prior to the  
8 commencement of such activity.

9 “(34) The term ‘airport hazard’ has the meaning  
10 such term has under section 47102 of title 49, United  
11 States Code.”.

12 **SEC. 5. TECHNICAL AND CONFORMING AMENDMENTS.**

13 (a) VIOLATION.—Section 301(a) of the Federal  
14 Water Pollution Control Act (33 U.S.C. 1311(a)) is  
15 amended—

16 (1) by striking “402, and 404” and inserting  
17 “and 402”; and

18 (2) by adding at the end the following: “Except  
19 as in compliance with this section and section 404,  
20 the undertaking of any activity in wetlands or waters  
21 of the United States shall be unlawful.”.

22 (b) FEDERAL ENFORCEMENT.—Section 309 of the  
23 Federal Water Pollution Control Act (33 U.S.C. 1319) is  
24 amended—

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

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

4           (3) in each of subsections (c)(1)(A) and  
5 (c)(2)(A) by striking “or in a permit” and all that  
6 follows through “State;” and inserting a semicolon;

7           (4) in subsection (c)(3)(A) by striking “or in a  
8 permit” and all that follows through “State, and”  
9 and inserting “and”;

10          (5) by adding at the end of subsection (c) the  
11 following:

12           “(8) TREATMENT OF CERTAIN VIOLATIONS.—  
13 Any person who violates section 301 with respect to  
14 an activity in wetlands or waters of the United  
15 States for which a permit is required under section  
16 404 shall not be subject to punishment under this  
17 subsection but shall be subject to punishment under  
18 section 404(k)(5).”;

19          (6) in subsection (d) by striking “, or in a per-  
20 mit issued under section 404 of this Act by a  
21 State,”;

22          (7) by adding at the end of subsection (d) the  
23 following: “Any person who violates section 301 with  
24 respect to an activity in wetlands or waters of the  
25 United States for which a permit is required under

1 section 404 shall not be subject to a civil penalty  
2 under this subsection but shall be subject to a civil  
3 penalty under section 404(k)(4).”;

4 (8) in subsection (g)(1)—

5 (A) by striking “—” and all that follows  
6 through “(A)”;

7 (B) by striking “or in a permit issued  
8 under section 404 of this Act by a State, or”;  
9 and

10 (C) by striking “(B)” and all that follows  
11 through “as the case may be,” and inserting  
12 “the Administrator”;

13 (9) by adding at the end of subsection (g) the  
14 following:

15 “(12) TREATMENT OF CERTAIN VIOLATIONS.—

16 Any person who violates section 301 with respect to  
17 an activity in wetlands or waters of the United  
18 States for which a permit is required under section  
19 404 shall not be subject to assessment of a civil pen-  
20 alty under this subsection but shall be subject to as-  
21 sessment of a civil penalty under section  
22 404(k)(4).”;

23 (10) by striking “or Secretary”, “or the Sec-  
24 retary”, “or the Secretary, as the case may be,” “or

1 Secretary's", and "and the Secretary" each place  
2 they appear.

3 **SEC. 6. EFFECTIVE DATE.**

4 This Act, including the amendments made by this  
5 Act, shall take effect on the 90th day following the date  
6 of the enactment of this Act.

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