

Wetlands

Briefing

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U.S. Army Corps of Engineers and
U.S. Environmental Protection Agency

Summary Report
Facilitated Alaska Wetlands Roundtable Discussions
Second Series
Juneau, Bethel, Fairbanks, Anchorage
January 4 to January 13, 1994

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INTRODUCTION

This report presents summaries of the second series of four facilitated Alaska wetlands roundtable discussions which took place in Juneau, Bethel, Fairbanks, and Anchorage, Alaska, between January 4 and January 13, 1994. These discussions were part of an effort by the U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA) to obtain input from Alaska interest groups regarding the Clean Water Act Section 404 wetlands permit program, and to consider environmentally appropriate means to provide regulatory flexibility for wetlands permitting in Alaska.

The purpose of the second series of roundtable discussions was to obtain input from primary Alaska wetlands stakeholders on 11 draft Issue Papers prepared by the Corps and EPA entitled Alaska Wetlands Initiative Public Review Draft Issue Papers, December 17, 1993. The Issue Papers were prepared to address concerns about the wetlands permit program in Alaska based upon input from the stakeholders during the first series of roundtable discussions (October 25 - November 5, 1993) and public comment. During the second series of roundtable discussions, the stakeholders were asked to provide input on how well the draft Issue Papers characterized their concerns and how well the proposed recommendations responded to those concerns.

The following summaries of the roundtable discussions attempt to communicate the main comments, concerns, recommendations, and consensus points identified during each discussion. The summaries are based on notes taken by the discussion facilitators, were completed without benefit of the written transcripts, and do not represent a complete or official record of the meetings. As overviews, these summaries do not reflect the amount of time spent on the various topics, nor do they note all of the points raised.

The summaries for the facilitated wetlands roundtable discussions are presented separately for each city. It is assumed that the reader will refer to the Alaska Wetlands Initiative Public Review Draft Issue Papers since stakeholder comments address specific pages or sections of particular Issue Papers. Each meeting summary discusses the Issue Papers in the order discussed during the roundtable discussion. Consequently, in addition to a table of contents for the city roundtable discussion summaries, a cross-reference table of contents is provided for the pages summarizing comments on specific Issue Papers. At the end of each summary is a copy of the stakeholder sign-up list for the particular roundtable discussion.

**FACILITATED ALASKA WETLANDS ROUNDTABLE DISCUSSION
SECOND SERIES**

Juneau Summary Report
January 4, 1994

This facilitated Alaska wetlands roundtable discussion took place in Juneau, Alaska, on January 4, 1994, at Centennial Hall. The roundtable discussion was sponsored by the U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA). The discussion took place between various invited stakeholders representing interest groups with a stake in the management of Alaska wetlands.

The stakeholder interest group participants included: Ms. Mary Nordale (Development interests), Ms. Caryl Boehnert (Environmental), Ms. Tamra Faris (Federal resource agencies), Mr. Dick Hofmann (Commercial fishing), Mr. Peter Hanley (Oil and gas), Mr. Tim Cook (State of Alaska), and Ms. Karen Cowart (Tourism).

The meeting was facilitated by Mr. Dave Hanson of Arktos Associates with assistance provided by Ms. Niki Stewart. Mr. Al Ewing of the U.S. Environmental Protection Agency and Mr. Bob Oja of the U.S. Army Corps of Engineers were present as observers and to provide technical information or program clarification as needed. Mr. John Gooden, representing the White House Interagency Working Group on Wetlands, Washington, D.C., was also present as an observer.

The purpose of the roundtable discussion was to obtain input from the primary wetlands stakeholders in Alaska on 11 draft Issue Papers prepared by EPA and the Corps based upon input received during the first series of wetland roundtable discussions and public comments. The 11 Issue Papers are entitled Alaska Wetlands Initiative Public Review Draft Issue Papers, December 17, 1993. The cover page of the document also contains a qualification reading: "This document was prepared to facilitate discussion. It does not represent agency conclusions."

The stakeholders were asked to provide input on how well the draft Issue Papers characterized their concerns and how well the proposed recommendations responded to those concerns. Specific questions set forth to help focus discussion included: Are these the right issues? Was the stakeholder concern accurately

portrayed? Do the proposed actions adequately address the identified concern? What changes are needed? Does a stakeholder consensus exist that certain Issue Papers or suggested actions are adequate? Does a stakeholder consensus exist that certain Issue Papers need to be changed and/or recommendations altered? Are there important technical errors that need to be corrected?

In the following Issue Paper sections, all "Administration Plan" and "Alaska Specific Action" recommendations are excerpted from the referenced Issue Paper in the Alaska Wetlands Initiative Public Review Draft Issue Papers document. Only the first line of the specified "Administration Plan" or "Alaska Specific Action" recommendation paragraph is restated. The applicable stakeholder comments follow these excerpts and refer to the entire specified recommendation paragraph.

STAKEHOLDER ISSUE PAPER PRIORITIES

The wetlands roundtable discussion began around 9:15 a.m. The stakeholders were asked to identify their priorities for Issue Paper discussions considering which Issue Papers they felt needed the most changes and/or additions. The stakeholders were also asked to identify Issue Papers which appear to be adequate and should receive a low discussion priority. As a result of this stakeholder input, the Issue Paper discussion priorities were set as follows: Issue Paper 7, The Mitigation Sequence; Issue Paper 8, Compensatory Mitigation; Issue Paper 1, No Overall Net Loss of Wetlands Goal; Issue Paper 6, Alternative Permit Processing Procedure; Issue Paper 4, State, Local, and Native Roles; Issue Paper 2, Special Alaskan Circumstances -- Legal Issues; Issue Paper 10, Wetlands Inventory, Classification, and Categorization; Issue Paper 5, The Individual Permit Process; and Issue Paper 9, Advance Planning and Watershed Management.

ISSUE PAPER 7: THE MITIGATION SEQUENCE

Interpretation of "Practicable" (P. 42, ¶¶ 2 and 3):

A stakeholder expressed concern that the term "practicable" was only considered from the standpoint of the permit applicant. It was suggested that the Corps should also take into consideration the cost to other industries, such as the fishing industry, and public values if the project goes forward. Such costs should be considered in determining whether or not certain mitigation measures are practicable for a particular project.

Alaska Specific Action 1: Develop interagency guidance to clarify how physical circumstances in Alaska such as the extent and type of wetlands affect the determination of practicability under the guidelines mitigation requirements.

Though some support was indicated for providing additional interagency guidance, most comments registered concern. These concerns included:

- * Adequate guidance is already available and any additional guidance may adversely impact the current implementation practices in Alaska;
- * The tone of the guidance recommendation implies that some form of exemption for low value wetlands may result from a new guidance document and that rewriting the guidance opens the door to wetlands destruction and counters current regulations which provide for adequate flexibility; and
- * A desire that any guidance specifically refer to Alaska specific situations and that the guidance language mesh closely with current Alaskan wetlands permit practices.

Alaska Specific Action 2: Recommend that the Executive Order on wetlands articulate the flexibility in implementing the Administration's goal of no overall net loss of the Nation's wetlands to reflect particular circumstances in Alaska.

It was suggested that the Executive Order be codified and include the Memorandum of Agreement (MOA) footnote 7, which provides specific direction regarding regional circumstances in Alaska. The concerned stakeholder concluded that it was more important to include the MOA footnote 7 language in the Executive Order than to codify the Executive Order into regulation.

The last clause of the recommendation including "effectively reflects regional circumstances" was discussed. Stakeholders indicated that there were two perspectives on Alaska regional circumstances. One perspective emphasizes the need for flexibility in implementing wetland permitting regulations due to physical circumstances and Alaska conditions. The other perspective emphasizes that wetlands permitting has been implemented too loosely and needs to be tightened up. Consequently, consideration of any regional circumstances should look at the actual data and what might be lost through too much flexibility. Participants had differing opinions on these perspectives and indicated concerns regarding the uniqueness of Alaska which supported greater ease and flexibility to allow development to go forward and, on the other hand, the permitting statistics which were felt to reflect too much flexibility.

Alaska Specific Action 4: Acknowledge pre-application, avoidance, and minimization efforts.

Stakeholders voiced support for greater use of the pre-application process and consideration of avoidance and minimization efforts which are identified during pre-application meetings. The question was posed regarding whether pre-application meetings should be required. Nearly all of the stakeholders did not want it required since that could lead to additional problems and another layer of regulation. However, participants indicated strong support for placing more emphasis on the encouragement of pre-application meetings. It was suggested that efforts to educate, advertise, and encourage applicants to use the pre-application process should receive a high priority. Pre-application meetings should also be encouraged for General Permits and Alternative Permit Procedures as well as individual permit applications.

A cautionary concern was raised that pre-application meetings could be abused. If applicants exaggerate their plans in order to gain avoidance and minimization credits when they scale the project back, the entire permitting process becomes meaningless. The Corps was encouraged to be sensitive to possible exaggerated claims during the pre-application process and not to give avoidance/minimization credit based on inflated plans.

ISSUE PAPER NO. 8: COMPENSATORY MITIGATION

Definition of Compensatory Mitigation:

Participants indicated that a good definition should be provided for compensatory mitigation. In addition, a complete explanation of what the term means in Alaska should be provided in the Issue Paper.

Alaska Specific Action 2: Recommend that the Executive Order on wetlands articulate the flexibility in implementing the Administration's goal of no overall net loss of the Nation's wetlands to reflect particular Alaska circumstances.

Some stakeholders indicated this recommendation was too general. Concern was voiced regarding the ability to quantify the recommendation or evaluate its success. Additional comments indicated that the recommendation may be creating unrealistic expectations and the need to clearly articulate what no net loss means for Alaska.

Alaska Specific Actions 4 and 6: Develop minesite reclamation guidelines; and develop bonding procedures for restoration/reclamation projects.

Participants felt that the two Actions needed to incorporate existing reclamation and bonding requirements. The agencies should build on existing requirements to the extent necessary. Added clarification language should indicate that these actions will not cause duplication of existing regulations.

A stakeholder stressed that the Corps should review bonding requirements on any project which is given credit for compensatory mitigation to make sure the bonding is adequate. If current bonding requirements are not adequate, the Corps should have the freedom to require a higher level of bonding, if appropriate.

Another stakeholder questioned whether or not reclamation projects or accelerated restoration projects should take the place of compensatory mitigation. The stakeholder indicated that reclamation does not really provide compensation for the wetlands which are used during the project. Other stakeholders indicated that compensatory mitigation should not be viewed as a penalty or automatic cost of wetlands use.

Alaska Specific Action 7: Establish mitigation banking pilot project.

The discussion indicated that a definition of mitigation banking was needed as well as an explanation of how it would be implemented in Alaska. The idea of mitigation banking was supported by some stakeholders. One stakeholder did not believe mitigation banking should be used in Alaska since it was too difficult and definitely should not refer to North Slope projects. Other comments voiced strong opposition to requiring mitigation banking for projects outside of Alaska and that any mitigation banking effort should be limited to in-state projects.

The discussion also addressed whether or not accelerated restoration for oil projects was adequate compensatory mitigation. Stakeholders did not agree on this issue.

The discussion also indicated that stakeholders had differences of opinion regarding what was adequate compensatory mitigation. It was pointed out that there was a need to protect other industries and the public interest impacted by the loss of wetlands through compensatory mitigation. Since industries, such as timber or mining, might directly impact other industries through wetlands use, some deemed such compensation appropriate. Other comments indicated a concern that this placed too much hardship on the applicant.

Alaska Specific Action 8: Assess the effectiveness of mitigation efforts in Alaska.

Participants questioned who was going to implement the many promises in this proposed action. It was felt that the recommendation was too broad and needed more specific definition as well as task clarification, timelines and budget specifics. Though these comments indicated a need to improve the recommendation, stakeholders strongly supported the need to assess impacts and the effectiveness of mitigation measures.

ISSUE PAPER 1: NO OVERALL NET LOSS OF WETLANDS GOAL

Participants indicated that the no net loss goal was not adequately addressed in the Issue Paper. The paper does not define the Administration's policy regarding application of no net loss to Alaska. On the one hand, the Issue Paper implies no net loss can't work in Alaska or that attainment is precluded. On the other hand, the paper continues to set forth recommendations as if attainment of the no net loss goal is required. This ambiguity stimulates further anxiety regarding the no net loss policy. The Corps representative indicated it was recognized that no net loss does not work in Alaska and this recognition did not get translated into the Issue Papers.

The discussion identified the need for additional explanation paragraphs after the first paragraph in the "Analysis and Proposed Recommendation" section on p. 4. The additional paragraphs should clearly explain the application of the no net loss policy in Alaska and provide a transition from analysis to actions. It was suggested that this transition explain the role of the Administration Plan and Alaska Specific Actions regarding the no net loss concept. (For example, are the Actions and recommendations presented because we must attain the no net loss goal or to help Alaska do its best to move toward the goal although it is unattainable?)

Questions were also raised about the last line of the first paragraph under the Analysis section. Is an acre-for-acre, value-for-value, function-for-function, or any other no net loss yardstick going to be applied to Alaska? Another stakeholder suggested considering habitat classification and the importance of habitat being considered in applying a no net loss standard.

Recommendations were also made that the "other factors" identified in the fourth sentence of the first paragraph under the Analysis section should be listed and include the human element, the early stage of development in rural Alaska, and other factors.

Alaska Specific Action 5: Recommend written partnerships be established between the Corps and all interested stakeholders on Section 404.

One comment indicated the need for partnerships with other entities in addition to the stakeholders. Another comment emphasized the need to address the inequity of representation between stakeholder groups (i.e., professional representatives v. volunteers).

Human Element:

It was suggested that an additional topic be added to the Alaska Specific Actions which would address consideration of the human element in Alaska wetlands permit processing.

ISSUE PAPER NO. 6: ALTERNATIVE PERMIT PROCESSING PROCEDURES

The discussion initially focused on the relative value of General Permits and understanding the cumulative impacts of such permits. A comment was made that General Permits (GPs) for the North Slope oilfields can progress without a cumulative impact analysis. Others commented that too much emphasis is placed on GPs without having more studies of how the process works or understanding the cumulative impacts. The discussion indicated a difference of opinion between stakeholders regarding how much emphasis should be placed on GPs. Concern was voiced regarding the impact political pressures have on local wetlands development decisions and classifications under municipal or community GPs.

Alaska Specific Action 2: Propose the development of additional General Permits.

Opposition was voiced to developing General Permits for log transfer facilities. Certain stakeholders felt that log transfer facilities were often placed in high value wetland areas and that it was not appropriate to use General Permits for such activities. Since only a few log transfer facilities are permitted each year, and certain high value wetlands may be impacted by their construction, it was recommended that the individual permit process was adequate for addressing such facilities. Some stakeholders recommended that the reference to log transfer facilities be removed from this Action statement.

Alaska Specific Action 3: Conduct cumulative impacts evaluations for General Permits.

Stakeholders voiced support for the language included in this Action recommendation which called for making "cumulative impact analysis available for public review prior to GP implementation." Such public review was felt to be justified and a good idea.

Alaska Specific Action 4: Develop Circle General Permits for Alaskan communities.

Several comments were made questioning the Circle General Permit concept. These included:

- * Circle GPs need to be defined and better explained before they can be evaluated;
- * Why are GPs including Circle GPs needed since system is working fine now;
- * Concept calls for too many leaps of faith and stakeholder was against such permits.
- * Circle GP process needs to incorporate local involvement if it is to be pursued; and
- * Strike Circle GP recommendation since it appears to be a mechanism for destroying wetlands.

General Comments:

- * A comment was made that some areas may not be appropriate for encouraging advance planning in accordance with the first recommendation in the Administration Plan section; and
- * A definition of "minimal impact" was also requested since different parties have dramatically different views of what "minimal impact" means.

ISSUE PAPER 4: STATE, LOCAL, AND NATIVE ROLES

The discussion focused on the need to provide for stronger roles for State, local, and Native representatives in Alaska wetlands management. It was recommended that the process structurally provide for local involvement. In this way, the opportunity to be involved would be guaranteed. A stronger partnership between the Federal government and the State was also suggested. It was assumed that a close Federal/State partnership could lead to State assumption of wetlands management. The participants agreed that the Federal government needed to establish a better partnership with bush communities and Native entities. It was also suggested that the Corps increase personnel available in bush communities. Some stakeholders voiced opposition against more GPs and Circle GPs even though they provide for local participation.

Administrative Plan 3: Increase deference to State, Tribal, regional, and local wetlands decisionmaking.

A strong concern was raised that participants could not endorse providing Programmatic General Permits to local governments or entities which enable them to take over the permit process without knowing the specific circumstances provided for in the guidance referenced in the Plan recommendation. Participants need an opportunity to comment on the guidance before endorsing letting local entities assume control of the program.

ISSUE PAPER 2: SPECIAL ALASKA CIRCUMSTANCES -- LEGAL ISSUES

The discussion focused on the need to encourage Native involvement in the permit process and improve the dialogue with Native entities. It was recommended that the Issue Paper put more emphasis on encouraging communication with Native entities. A recommendation, though not a consensus, was also made that more Corps personnel should be placed in the bush to increase communication and program effectiveness.

The possible special status of statehood grant lands, mental health lands, Alaska Native Claims Settlement Act (ANCSA) lands, and other grant lands was raised. A stakeholder indicated that such lands were conveyed to provide for economic development and since so much acreage was impacted by wetlands, it was incumbent upon the Federal government to compensate the State, Natives, or other owners with more land or money. The Corps representative indicated that a legal review of this subject found no legitimate exemptions and that the grant land status did not provide for a

special exemption status related to wetlands management. Participants agreed that the Issue Paper needs to directly respond to the special status argument and explain the legal findings regarding the exempted status claim for grant lands. Comments also indicated that there was more concern about future wetlands policies impeding economic development on grant lands than the existing policies.

A stakeholder questioned why EPA and the Corps are attempting to make the wetlands permit process more lenient. Since few permits are currently denied, the concern should be oriented toward protecting the wetlands. Another stakeholder indicated that the process is cumbersome and expensive. A stakeholder responded that the permitting process existed to assure that new development is not harmful and thus the expense is justified. The EPA representative clarified that the proposed changes are oriented toward streamlining procedures and allocating resources to higher priority wetlands rather than weakening the regulations.

**ISSUE PAPER NO. 10: WETLANDS INVENTORY,
CLASSIFICATION, AND CATEGORIZATION**

Support was voiced for the Alaska Specific Actions.

Alaska Specific Action 1: Support efforts to identify and collect wetlands data in focus areas (watersheds) where development is likely to occur.

A recommendation was made that this Action be expanded to include the use of local, State, and other entity wetlands information and information systems. The Action recommendation should not be limited to Federal agencies.

Alaska Specific Action 3: Accelerate the National Wetlands Inventory mapping project.

A comment was made that the accelerated National Wetlands Inventory mapping project was not the mechanism to incorporate more detailed wetlands information being developed on a local basis. It was recommended that this be recognized in this Action.

Alaska Specific Action 5: Continue to support activities related to comprehensive wetlands planning.

A comment was made that the use of the word "comprehensive" in "comprehensive wetlands planning" could refer to the giveaway of low and high value wetlands.

Water Dependency:

It was suggested that a new Alaska Specific Action be added to either Issue Paper 10 or Issue Paper 9. This Action should provide a definition of "water dependency" and address how this concept will be used in the wetlands management program.

ISSUE PAPER 5: THE INDIVIDUAL PERMIT PROCESS

The stakeholder representing oil and gas interests made a few suggestions including placement of more emphasis on some form of coordinated permit review process, the need to improve the process and make it more predictable, and the inclusion of some elevation process prior to permit approval.

Administration Plan 2: Adopt an appeals process for jurisdictional determinations, permit denials, and administrative penalties.

Some stakeholders recommended that the proposed appeals process, which only provides for the applicant to appeal, be expanded to provide an appeal right to all affected parties. Other stakeholders disagreed with this recommendation. Another suggestion regarded clarifying that the appeals process should also apply to permit conditions as well as the permit decision. The Corps representative was asked why an expanded appeal process was not included in the Administration Plan recommendation since it had been discussed in the first series of roundtable meetings. It was recommended that the revised Issue Paper discuss these recommendations. The Corps representative recognized that the Administration Plan did not reflect this input and that it would be reflected in the revised Issue Paper.

ISSUE PAPER 9: ADVANCE PLANNING AND WATERSHED MANAGEMENT

Comments included:

- * A working definition of "watershed" is needed throughout the document;
- * It was recommended that a separate Alaska Specific Action provide a general statement regarding watershed planning for Alaska and the definition of watershed;
- * Local entity involvement in wetlands planning should be structured to take place automatically as a part of the Federal planning process.

Alaska Specific Action 1: Provide greater emphasis on the use of advanced planning mechanisms.

This Action recommendation should refer to both specific and comprehensive advance planning. In the second line after "greater use of" insert "specific and," and then continue the line with "comprehensive advance planning;"

FINAL COMMENTS

Participants gave final comments which included the following ideas:

- * Most of the issues and recommendations in the Issue Papers do not reflect a stakeholder consensus;
- * There is a need to revise the drafts and clarify the analysis, recommendations, and Alaska Specific Actions. The draft has a lot of ambiguity and lack of clarity.
- * Combine issues or recommendations where possible to avoid confusion;
- * This process seems more designed to streamline the effort required to get a permit rather than follow the mandate to protect wetlands;
- * One stakeholder wanted the record to show that no net loss as a pure policy does not work in Alaska and to emphasize that a part of the problem is our need to provide basic services in rural communities.

Following the final comments, the wetlands roundtable discussion was adjourned at 5:10 p.m.

**FACILITATED ALASKA WETLANDS ROUNDTABLE DISCUSSION
SECOND SERIES**

Bethel Summary Report
January 6, 1994

This facilitated Alaska wetlands roundtable discussion took place in Bethel, Alaska, on January 6, 1994, at the Kuskokwim Campus. The roundtable discussion was sponsored by the U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA). The discussion took place between various invited stakeholders representing interest groups with a stake in the management of Alaska wetlands.

The stakeholder interest group participants included: Ms. Diane Carpenter (Development interests), Mr. Tony Turrini (Environmental), Mr. David McGillivray (Federal resource agencies), Mr. Tom Bouillner (Municipal government), Mr. Nelson Angapak, Sr. (Native), Mr. Mike Joyce (Oil and gas), Dr. Paul Rusanowski (State of Alaska), and Ms. Karen Cowart (Tourism).

The meeting was facilitated by Mr. Dave Hanson of Arktos Associates with assistance provided by Ms. Niki Stewart. Mr. Al Ewing of the U.S. Environmental Protection Agency and Mr. Bob Oja of the U.S. Army Corps of Engineers were present as observers and to provide technical information or program clarification as needed. Mr. John Gooden, representing the White House Interagency Working Group on Wetlands, Washington, D.C., was also present as an observer.

The purpose of the roundtable discussion was to obtain input from the primary wetlands stakeholders in Alaska on 11 draft Issue Papers prepared by EPA and the Corps based upon input received during the first series of wetland roundtable discussions and public comments. The 11 Issue Papers are entitled Alaska Wetlands Initiative Public Review Draft Issue Papers, December 17, 1993. The cover page of the document also contains a qualification reading, "This document was prepared to facilitate discussion. It does not represent agency conclusions."

The stakeholders were asked to provide input on how well the draft Issue Papers characterized their concerns and how well the proposed recommendations responded to those concerns. Specific questions set forth to help focus discussion included: Are these

the right issues? Was the stakeholder concern accurately portrayed? Do the proposed actions adequately address the identified concern? What changes are needed? Does a stakeholder consensus exist that certain Issue Papers or suggested actions are adequate? Does a stakeholder consensus exist that certain Issue Papers need to be changed and/or recommendations altered? Are there important technical errors that need to be corrected?

In the following Issue Paper sections, all "Administration Plan" and "Alaska Specific Action" recommendations are excerpted from the referenced Issue Paper in the Alaska Wetlands Initiative Public Review Draft Issue Papers document. Only the first line of the specified "Administration Plan" or "Alaska Specific Action" recommendation paragraph is restated. The applicable stakeholder comments follow these excerpts and refer to the entire specified recommendation paragraph.

STAKEHOLDER ISSUE PAPER PRIORITIES

The wetlands roundtable discussion began around 9:10 a.m. The stakeholders were first asked to identify their priorities for Issue Paper discussions based upon the Issue Papers they felt needed the most changes and/or additions. The stakeholders were also asked to identify Issue Papers which appear to be adequate and should receive a low priority for discussion consideration during the session. As a result of this stakeholder input, the Issue Paper discussion priorities were set as follows: Issue Paper 1, No Overall Net Loss of Wetlands Goal; Issue Paper 7, The Mitigation Sequence; Issue Paper 8, Compensatory Mitigation; Issue Paper 2, Special Alaska Circumstances - Legal Issues; Issue Paper 4, State, Local, and Native Roles; Issue Paper 6, Alternative Permit Processing Procedure; and as low priorities, Issue Paper 10, Wetlands Inventory, Classification, and Categorization and Issue Paper 11, Outreach and Education. Three Issue Papers were not identified for discussion.

ISSUE PAPER 1: NO OVERALL NET LOSS OF WETLANDS GOAL

Analysis and Proposed Recommendations for Discussion, p. 4, ¶ 1:
General discussion of no net loss goal.

Several stakeholders indicated that the no net loss Issue Paper was vague and ambiguous regarding the implementation of the no net loss goal in Alaska. Stakeholders focused comments on the first paragraph of the "Analysis and Proposed Recommendations for Discussion" section on p. 4 and specifically the sentence,

"Experience has demonstrated that Alaskan climate and geography, among other factors, generally preclude attainment of no net loss of wetlands through restoration and creation of wetlands." Commentors asked several questions including, "What does this sentence mean?" "Are we trying to achieve or not trying to achieve no net loss in Alaska?" It was re-emphasized that a straight statement on a no net loss policy was needed and that the analysis section was incomplete and unclear.

Several suggestions were made regarding what the no net loss policy in Alaska should be. These included:

- * A clear statement that no net loss is not achievable in Alaska;
- * Focus on no net loss as a national goal and Alaska program has flexibility to work within this national context, but opposed to saying no net loss goal can't work in Alaska;
- * The application of no net loss should be limited to higher value areas;
- * The no net loss goal should be applied on a value-for-value basis rather than an acre-for-acre basis;
- * A recognition that it is a goal and not a requirement or mandate and should only be viewed as a target; and
- * Its purpose is just to retain general functional values of regional wetlands.

Specific language changes and clarifications were suggested for the first paragraph of the section "Analysis and Proposed Recommendations for Discussion." These included:

- * The "other factors" referred to in the "Experience has demonstrated" sentence should be defined and reference be made to "human" factors;
- * The paragraph should clearly state that no net loss does not refer to an acre-for-acre policy nor a mandate, but only a national goal;
- * A statement is needed that no net loss is a "target to retain functional values within a regional perspective;"
- * Need to tie Alaska Specific Actions to the nation as a whole, but not burden Alaska with lower 48 goals, such as no net loss; and

- * The relationship between the Alaska wetlands policy and the national no net loss goals should be clearly stated.

Administration Plan 1: Develop improved analytical tools for wetlands functional assessment.

Several comments were made regarding the referenced Hydrogeomorphic Classification System (HGM). A stakeholder asked whether there are guidelines for HGM development and which agencies or parts of the academic community are involved in their development and review. Another participant suggested that any functional wetlands assessment system must include cultural and community use components. Others felt that community values should not be included in the identification tools for wetlands since that would open it up to local politics. It was recommended by some that an Alaskan Specific Action be added to explain this Administration Plan recommendation and how it relates to Alaska. It was felt that both the Alaskan differences as well as regional differences within Alaska should be recognized by the classification system.

Administrative Plan Addition:

A general comment was made that an additional paragraph should be added to p. 4 regarding the Administration Plan which indicates how the Administrative Plan will specifically recognize Alaska's unique circumstances.

Alaska Specific Action 1: Develop interagency guidance to clarify how physical circumstances in Alaska such as the extent and type of wetlands affect the determination of "practicability" under the Guidelines mitigation requirements.

Comments made regarding the last sentence of this recommendation concerning the need or lack of need for additional "guidance" clarification included:

- * The guidance discussion needs additional clarification and should provide details regarding what the target is and how we get there;
- * Need to clarify who guidance is for and what it will be;
- * Additional categorical clarifications and guidance is not needed since we have plenty of guidance now through the existing Memorandum of Agreements (MOAs). Case-by-case evaluation works fine and the stakeholder was opposed to any new categorical clarifications;

- * Existing and additional guidance documents are not effective, and new enforceable legal agreements are needed; and
- * Rewrite existing guidance for greater clarity.

Comments were also made about the first sentence regarding confusion about how each agency addresses wetlands issues. It was recommended that there be one designated lead agency and that three other agencies provide comments to the lead agency within specific timeframes.

Alaska Specific Action 2: Recommend that the Executive Order on wetlands articulate the flexibility in implementing the Administration's goal of no overall net loss of the Nation's wetlands to reflect particular circumstances in Alaska.

Comments included:

- * Several stakeholders supported the inclusion of an Alaska specific section in the Executive Order and one stakeholder did not feel it was necessary;
- * It was suggested that MOA footnote 7 be used to describe particular Alaska circumstances and the application of the no net loss goal in Alaska;
- * Language should be inserted after the word "implemented" in the last sentence of the recommendation, which states, "To retain wetland functions from a regional perspective or on a regional basis." This language would clarify that no net loss should not be implemented on a case-by-case or acre-per-acre basis. This recommended language insertion was specifically opposed by one participant;
- * No net loss goal should be pursued, not implemented, since it is not attainable; and
- * Make Executive Order a reality which will be implemented through provision of appropriate regulations. Executive Order must include special Alaska provision. One participant opposed having a specific Alaska provision and did not feel additional regulation was needed. Most participants supported the need for a special provision in the Executive Order.

Alaska Specific Action 3: Develop interagency guidance to clarify how circumstances in Alaska, such as the abundance of wetlands, can reduce opportunities to avoid impacts to wetlands and affect how rigorously alternatives are evaluated.

Comments included:

- * Support this recommendation, but need additional mechanisms or agreements to ensure that it is implemented;
- * The effectiveness of this approach was questioned since it only results in guidelines and not regulations;
- * One participant opposed recommendation since there is already enough guidance and that this may be turning into a categorical exemption; and
- * The agencies were cautioned that this recommendation should be consistent with NEPA and its implementing regulations.

Alaska Specific Action 5: Recommend written partnerships be established between the Corps and all interested stakeholders on Section 404.

The main comment regarded the need to provide additional detail on what the agencies expect out of the partnership, how it would operate, and how it relates to the 404 program.

ISSUE PAPER 7: THE MITIGATION SEQUENCE

"Analysis and Proposed Recommendations for Discussion" on p. 43, ¶ 1:

Comments included:

- * Completely support last full sentence on p. 43 that no specific wetland exemptions are needed from the mitigation sequence due to the inherent flexibility of the mitigation sequence program;
- * Flexibility in mitigation sequence should be defined;
- * Last sentence on p. 43 needs additional clarification and needs to be supported by the codification of the language in the MOA;
- * Need additional use of flexibility and assurance of flexibility. Some form of elevation system with specific timelines was suggested;

- * Remember that the purpose of the program is to protect wetlands, not make it easy to get permit;
- * Need to address relationship of mitigation to existing General Permits (GPs). The Corps made a clarification that the word "flexibility" may be misleading and the word "program efficiency" may be more appropriate since it doesn't imply less protection;
- * Not assuming any weakening of wetlands protection through GPs, but rather better efficiency; and
- * Need to place additional emphasis on relative value of wetlands. If a wetland is valuable, it may need compensatory mitigation. Analysis section needs to put more emphasis on a sensitivity to the relative value of wetlands when mitigation sequencing is applied.

Alaska Specific Actions 1 and 2:

An observation was made that the first two Alaska Specific Actions are duplicates of the first two Actions under Issue Paper 1 which was already discussed. Comments from the Issue Paper 1 discussion regarding these Actions should equally apply to Issue Paper 7.

Role of Wetland Functions:

A discussion focused on the appropriate role of wetlands functions. It was suggested that protection of wetlands functions within a region should be the target. If the functions within a region were not impaired on a regional basis, there should be no need for compensatory mitigation. Another stakeholder opposed this view since a loss of some wetlands may still hurt the function of the wetlands in a small part of the region even though it doesn't significantly impair the role of wetlands in the full region. If the wetlands function in a small part of the region is impacted, some loss has occurred and compensatory mitigation may be needed. On the other hand, if it is agreed that no functions or values are lost on a case-by-case basis, it can be agreed no compensatory mitigation is needed.

The Corps representative clarified that compensatory mitigation is not decided solely by the loss of functions and possible loss of wetland values. Even though 50% of the wetland permit cases may impair wetland functions or values, compensatory mitigation may not be applied since it is not "practicable." Another participant stated that it is extremely difficult to come up with any clear requirements regarding compensatory mitigation since there are so many variables and different factors in each

case. Another comment focused on the need to look at the wetlands project, both in the context of the whole wetlands area and on a case-by-case basis.

Mitigation Sequencing Predictability:

The discussion also focused upon the lack of predictability in the mitigation sequencing process. The discussion indicated that it was not possible to provide for such predictability or certainty since the program was subject to flexibility and many variables. In addition, assurance of predictability is different from assuring that the wetlands management program is fair. One participant emphasized that the program was very fair and that the wetlands management program had to be viewed in a totality rather than on one characteristic such as predictability.

Preliminary Determination Evaluation:

A suggestion was made that the preliminary determination evaluation completed by the Corps of Engineers should be made public at the beginning of the permit process. The Corps representative responded that such an action would give the developer the ability to claim that his permit application was prejudged before going through the process.

Alaska Specific Action 3: Issue a Special Public Notice (or Local Supplement to the Mitigation MOA) on application of the mitigation sequence in Alaska.

It was recommended that this Action be included in Issue Paper 11, which addresses outreach and education. The need for additional education and understanding of the program through measures such as public notices was also emphasized.

Alaska Specific Action 4: Acknowledge pre-application avoidance and minimization efforts.

Stakeholders supported this recommendation and suggested that it be incorporated into the Executive Order. It was suggested that additional emphasis be placed on the pre-application meeting and making it available to permit applicants. It was felt that the convenience and usefulness of the pre-application meeting should receive greater emphasis in publications and notices. Another participant recommended that one day a week be set aside for pre-application meetings with applicants.

Additional Alaska Specific Recommendation:

It was suggested that the accelerated restoration/rehabilitation recommendation set forth under Issue Paper 8, Compensatory Mitigation, also be set forth under Issue Paper 7 as an additional recommendation. It was explained that the word "restoration" referred to restoring a development area to its original condition whereas, "rehabilitation" could either mean restoring it to original condition or to some other enhanced condition.

ISSUE PAPER 8: COMPENSATORY MITIGATION

Alaska Specific Action 2: Recommend that the Executive Order on wetlands articulate the flexibility in implementing the Administration's goal of no overall net loss of the Nation's wetlands to reflect particular circumstances in Alaska.

It was recommended that Alaska needs its own Alaska specific Executive Order which would recognize that the differences between the regions of Alaska need to be specifically considered in the wetlands permit process.

Alaska Specific Actions 4 and 6: Develop minesite reclamation guidelines and develop and implement bonding procedures for restoration/reclamation projects.

Participants were concerned about these recommendations since the State already has reclamation and bonding requirements. Agency representatives explained that the permit program would piggyback on the State reclamation and bonding mechanisms. Additional requirements would only be added if they were specifically needed.

The discussion indicated that more explanation was needed under both the reclamation and bonding recommendations to clearly indicate that existing mechanisms would be used to the extent possible.

Alaska Specific Action 4: Develop minesite reclamation guidelines.

It was recommended that the three words "particularly in circumstances" be removed from the next to the last line of this recommendation. The three words immediately follow the words "mitigation requirements." A stakeholder questioned whether or not reclamation could be considered compensatory mitigation. Another participant suggested that a new category of land was needed called "borrowed lands" to deal with wetlands which were temporarily used

for industrial development. Another stakeholder claimed that compensatory mitigation should not be required for Alaska Native Claims Settlement Act (ANCSA) land mining operations.

Alaska Specific Action 5: Develop accelerated restoration program for oil and gas projects.

It was suggested that the Accelerated Restoration Program be renamed Accelerated Rehabilitation Program since "Restoration" limits it to restoring the developed area to its original condition, whereas "Rehabilitation" also provides for restoring an area to an enhanced condition. The discussion also focused on whether accelerated rehabilitation was an adequate compensatory mitigation measure. One participant felt that it should not replace compensatory mitigation obligations though it may contribute to the total mitigation package. Stakeholders felt this recommendation needed to address the role of accelerated rehabilitation and whether it is viewed as compensatory mitigation or as just part of the mitigation package. Additional explanation is also needed for the word "considered." In general, the meaning of this recommendation should be explained as specifically as possible.

Alaska Specific Action 6: Develop and implement bonding procedures for restoration/reclamation projects.

The discussion again emphasized the need to clarify bonding procedures regarding piggybacking on existing regulations. It was also suggested that bonding requirements should not refer just to mining, but should be applied across the board for all appropriate development projects. A strong statement of support for the use of bonding was expressed by one participant. A clarification was also made that bonding was supported as a tool rather than as a mandated requirement.

New Mitigation Banking Requirement:

A stakeholder recommended that a new mitigation banking requirement be included which would require oil and gas interests to buy mitigation credit in other states to provide for compensatory mitigation. Much of the discussion focused on mitigation banking in Alaska and/or mitigation banking outside of Alaska. One participant indicated opposition to any mitigation banking requirement whether it was inside or outside of Alaska and proposed that accelerated rehabilitation could take care of oil industry compensatory mitigation needs. The participant did not feel it was equitable to have the oil industry developer clean up another entity's mess to compensate for its own work. The State representative indicated opposition to any type of out-of-state

mitigation banking, but indicated that the State wants to promote mitigation banking in the State but that mitigation banking should be an alternative for compensatory mitigation, not a requirement. The oil industry representative again indicated that the industry was against mitigation banking and did not ever feel it would be needed for mitigation on the North Slope.

Alaska Specific Action 8: Assess the effectiveness of mitigation efforts in Alaska.

It was suggested that in addition to evaluating the effectiveness of compensatory mitigation, the evaluation should look at the effectiveness of avoidance and minimization efforts in Alaska. It was also suggested that this recommendation be added as an additional paragraph to Issue Paper 7 without its last sentence. Stakeholders requested active involvement as interested parties in the effort to assess the effectiveness of mitigation techniques.

The meaning of the last line of this Action paragraph was questioned and clarification requested. It was suggested that this last sentence does not fit as part of this Alaska Specific Action and may not be feasible. A separate Action paragraph was recommended to call for follow-up studies to assess the effectiveness of past and future options regarding mitigation efforts. The U.S. Fish & Wildlife representative indicated a desire to have a major role in this development and that the new Action should include coming up with a specific guidelines document.

MISSING ISSUES AND QUESTIONS

Stakeholders were given an opportunity to share any general concerns regarding the Issue Papers or process. Comments included:

- * A greater effort is needed to get local participants representing each of the stakeholder interest groups. This would allow a greater diversity of input from the different regions of the State;
- * The Issue Papers should cross-reference duplicate recommendations so the reader is aware certain recommendations are included under more than one issue; and
- * A separate Issue Paper might be required to address the responsibilities of the various agencies and ways in which their interactions could be improved to improve the efficiency of the program.

ISSUE PAPER NO. 4: STATE, LOCAL, AND NATIVE POLES

Existing Program Description:

A Corps of Engineers representative suggestion that a description of existing programs be provided at the beginning of the Issue Papers was well received by the participants. It was felt that such a description would be a good addition.

Administration Plan:

All six recommendations under the Administration Plan focus on State, Tribes, and local governments taking a stronger role in wetlands protection. Several participants voiced strong support for this direction. However, participants felt there should be a stronger commitment in terms of financial assistance and true partnership to make this participation real.

It was emphasized that communities want to have a voice in the permitting process and that local planning should be a clearly identified step in the process. When such planning is completed, it should be used as a basis for actions in a local community. Anxiety was expressed about possible changes in the future which may remove current program flexibility and the new emphasis on sharing responsibility with Tribes and local communities.

Alaska Specific Actions: Additional Action paragraphs.

A comment was made that though all six Administration Plan recommendations call for involvement of Tribes and Native entities as well as local governments, no Alaska Specific Actions address inclusion of Tribes in the program. It was strongly recommended that an Alaskan Specific Action be added which addresses the involvement of Native corporations and Tribes in the program.

A concern was raised that the Alaska Specific Actions failed to discuss dollars or personnel required to assist local involvement in the program. It was suggested that an additional Action paragraph be added to the Alaska Specific Action section which addresses the need for monetary support to educate local participants to take over management and enforcement of the permit program in local areas.

Alaska Specific Action 1: Develop regional General Permits.

Some stakeholders envisioned General Permits (GPs) as a possible vehicle for local assumption of permit management in a local area. It was noted that Tribal entities can assume 404

programs. One participant who supports local program assumption opposed the use of regional GPs as the vehicle. Other participants supported GPs, especially for specific purposes, such as housing, public works, and utilities across a bush area. It was also noted that GPs should not be assumed to result in environmental degradation and that many local area permits are well administered. It was further noted that a GP is granted for a limited amount of time and that the Corps has the ability to reassess the permit during its term or at renewal.

Concern was expressed that GPs could be used to shortcut the process to the detriment of local wetlands. Further discussion clarified that much of the concern about GPs was focused on GPs for large cities. GPs for specific activities such as building houses or putting in water and sewer or for small limited areas engendered much less concern. One participant suggested that GPs be restricted to limited impact activities. Other participants felt that GPs could be appropriately used for village or rural regional areas.

Alaska Specific Action 2: Develop Circle General Permits for Alaskan communities.

Though some participants supported the Circle General Permit concept, participants indicated the Circle GP recommendation needed additional explanation and clarification. The discussion indicated that the Circle GP was probably most appropriate for small rural communities. Thus, a population cap was recommended to limit program application to smaller communities.

Questions were raised about the necessity of Circle GPs and one participant did not feel they were needed. The statement was made that other existing mechanisms such as General Permits for housing, sewer and water projects, or small community GPs, already meet the needs served by the proposed Circle GPs. Other participants responded that a Circle General Permit concept could be useful if it covered several small adjacent villages and enabled them to work together. A Circle GP could provide a basis for integrated planning between the villages, management economies of scale, shared local enforcement efforts, and acceptance of preset conditions regarding permit limitations and responsibilities.

Other concerns identified regarding Circle General Permits included:

- * The need for financial assistance at the beginning if the permit was going to result in real local participation;
- * A lack of resources to complete advance identification of low value wetlands;

- * The need to inter-relate any low value wetlands planning with total watershed planning discussed in Issue Paper 9;
- * Circle General Permits should not be used as a guinea pig which is allowed to exist for five years without good Corps oversight; and
- * A shorter initial timeframe for Circle GPs is probably appropriate.

Other participants indicated that a Circle GP is viewed as a good vehicle for local involvement and shared responsibility in the permitting process.

Alaska Specific Action 5: Recommend written partnerships be established between the Corps and all interested stakeholders on Section 404.

Though participants supported this recommendation, the agencies were urged to make this recommendation real. It was suggested that true partnerships should be established that allow a local hand in community development decisions. It was also suggested that any partnership must be backed up with financial and technical support. EPA and the Corps representatives invited stakeholders to put specific recommendations in writing. A final comment indicated that the Coastal Zone Management Program has an assistance process that could be a model for local partnership assistance.

ISSUE PAPER NO. 6: ALTERNATIVE PERMIT PROCESSING PROCEDURES

Analysis and Proposed Recommendations for Discussion, p. 37, ¶1:

This paragraph indicates that the Corps' ability to monitor activities authorized by a General Permit is by necessity limited. It was suggested that the use of Circle GPs, which combine several communities and provide for self-monitoring, could significantly improve monitoring of wetlands permitting in rural areas. It was also indicated that the GP in the Bethel area was working well and that involvement of the local communities could result in better enforcement. The use of additional advanced planning to help reduce the need for monitoring was also discussed.

Alaska Specific Action 1: Expedite development of Abbreviated Processing Procedures.

Some participants indicated that General Permits should be expanded beyond covering water and sewer or public housing. A stakeholder indicated that a GP should cover a category of related activities, such as all public health related facilities including sewer and water in a rural area. Another participant urged the use of Abbreviated Processing Procedures (APPs) for North Slope oil development activities. Another participant disagreed and felt that APPs may be appropriate for sewer and water, but were not appropriate for commercial developments and large industrial projects such as oil and gas development. This disagreement regarding the appropriateness of APPs for certain types of development was not resolved.

Alaska Specific Action 3: Conduct cumulative impacts evaluations for General Permits.

This Specific Action adds a step in proposed GP application processes which would make the cumulative impact analysis of the General Permit available for public review prior to approval of the GP. This change was supported and wide distribution of such impact analyses encouraged. It was suggested that a comprehensive analysis of impacts associated with different GPs be completed and published. Participants also discussed the use of the word "summary" analysis in the recommendation's final sentence. It was felt that the impact analysis which is distributed should not be only a summary analysis, but rather should be a comprehensive analysis. It was suggested that the word "comprehensive" replace the word "summary."

Additional Specific Action: Elevation Process.

It was suggested that a structured elevation process with set timelines be developed as a part of a permit application review process. This elevation process would be related to specific steps in the permit review process with the applicant included in each step. The Corps representative responded that such an elevation process would greatly reduce permit review efficiency. A participant disagreed with this conclusion and another stakeholder voiced support for the elevation process.

Alaska Specific Action 4: Develop Circle General Permits for Alaskan communities.

The Circle GP recommendation is a duplicate and the comments on the concept in Issue Paper 4 should also apply to this recommendation. A stakeholder made an additional suggestion that

Circle GPs should not require compensatory mitigation for low value wetlands.

**ISSUE PAPER 2: SPECIAL ALASKA
CIRCUMSTANCES -- LEGAL ISSUES**

The Native interest representative (representing the Alaska Federal of Natives - AFN) made reference to the preface of the Issue Papers where it stated that the agencies would initiate meetings with different stakeholders including representatives of Native villages. The Native interest representative indicated that no Native villages had been invited even though 209 villages and 208 village corporations exist. He indicated that an AFN representative was not adequate for providing true representation of the villages. Another stakeholder explained that many times the villages had no idea what was going on in Bethel and that village invitations were needed in certain situations.

Administration Plan 2:

This recommendation calls for the Federal government to expand partnerships with State, Tribal, and local governments, the private sector and individual citizens and to approach wetlands protection and restoration in an ecosystem/watershed context. Though participants supported this approach, they felt the recommendation needed additional information on the nature of the partnerships and the types of action that could be taken.

Alaska Specific Action 2: Propose the development of additional General Permits.

It was recommended that this Action be added to the recommendations in Issue Paper 6. A stakeholder noted that General Permits and Alternative Permit Processes were especially appropriate for oil and gas operations. Another comment emphasized the need for a better explanation and justification in this Issue Paper for the development of additional GPs. Clarification is needed to define and better explain APPs.

Alaska Specific Action 3: Continue to consider the public interest in Section 404 permit actions.

Comments emphasized that local villages and communities needed to have maximum input into the permit process for their areas. It was suggested that this recommendation include a detailed

explanation and more specifics regarding local landowner, Native village, and local resident participation in the process.

Legal Exemption Issues:

Stakeholders noted that the Alaska Specific Actions do not address the legal issues reviewed in the text of this Issue Paper. An important issue which needs more explanation and specific recommendation regards the possible special status and exemptions for State and/or Native lands from permit requirements.

Following closing comments, the second Bethel wetlands roundtable discussion was adjourned at 5:10 p.m.

FACILITATED ALASKA WETLANDS ROUNDTABLE DISCUSSION
SECOND SERIES

Fairbanks Summary Report
January 11, 1994

This facilitated Alaska wetlands roundtable discussion took place in Fairbanks, Alaska, on January 11, 1994, at the Captain Bartlett Inn. The roundtable discussion was sponsored by the U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA). The discussion took place between various invited stakeholders representing interest groups with a stake in the management of Alaska wetlands.

The stakeholder interest group participants included: Mr. Karl Hanneman (Development interests), Mr. Larry Landry (Environmental), Ms. Jeanne Hanson (Federal resource agencies), Mr. Pat Smith (Municipal government), Mr. Nathan Bergerbest (Native), Mr. Mike Joyce (Oil and gas), Mr. Dick Bishop (Sport fishing), Mr. Jules Tileston (State of Alaska), and Ms. Nancy Lethcoe (Tourism).

The meeting was facilitated by Mr. Dave Hanson of Arktos Associates with assistance provided by Ms. Niki Stewart. Mr. Al Ewing of the U.S. Environmental Protection Agency and Mr. Bob Oja of the U.S. Army Corps of Engineers were present as observers and to provide technical information or program clarification as needed. Ms. Cheryl Smith, representing the White House Interagency Working Group on Wetlands, Washington, D.C., was also present as an observer.

The purpose of the roundtable discussion was to obtain input from the primary wetlands stakeholders in Alaska on 11 draft Issue Papers prepared by EPA and the Corps based upon input received during the first series of wetland roundtable discussions and public comments. The 11 Issue Papers are entitled Alaska Wetlands Initiative Public Review Draft Issue Papers, December 17, 1993. The cover page of the document also contains a qualification reading: "This document was prepared to facilitate discussion. It does not represent agency conclusions."

The stakeholders were asked to provide input on how well the draft Issue Papers characterized their concerns and how well the proposed recommendations responded to those concerns. Specific questions set forth to help focus discussion included: Are these

the right issues? Was the stakeholder concern accurately portrayed? Do the proposed actions adequately address the identified concern? What changes are needed? Does a stakeholder consensus exist that certain Issue Papers or suggested actions are adequate? Does a stakeholder consensus exist that certain Issue Papers need to be changed and/or recommendations altered? Are there important technical errors that need to be corrected?

In the following Issue Paper sections, all "Administration Plan" and "Alaska Specific Action" recommendations are excerpted from the referenced Issue Paper in the Alaska Wetlands Initiative Public Review Draft Issue Papers document. Only the first line of the specified "Administration Plan" or "Alaska Specific Action" recommendation paragraph is restated. The applicable stakeholder comments follow these excerpts and refer to the entire specified recommendation paragraph.

STAKEHOLDER ISSUE PAPER PRIORITIES

The wetlands roundtable discussion began around 9:10 a.m. The stakeholders were asked to identify priorities for Issue Paper discussions considering which Issue Papers they felt needed the most changes and/or additions. The stakeholders were also asked to identify Issue Papers which appear to be adequate and should receive a low discussion priority. As a result of this stakeholder input, the Issue Paper discussion priorities were set as follows: Issue Paper 1, No Overall Net Loss of Wetlands Goal; Issue Paper 8, Compensatory Mitigation; Issue Paper 11, Outreach and Education; Issue Paper 6, Alternative Permit Processing Procedure; Issue Paper 7, The Mitigation Sequence; Issue Paper 10, Wetlands Inventory, Classification, and Categorization; Issue Paper 4, State, Local, and Native Roles; Issue Paper 2, Special Alaska Circumstances -- Legal Issues; and Issue Paper 3, Special Alaska Circumstances -- Physical Environment. Issue Papers 5 and 9 were not identified for discussion.

ISSUE PAPER 1: NO OVERALL NET LOSS OF WETLANDS GOAL

Alaska Specific Action 1: Develop interagency guidance to clarify how physical circumstances in Alaska such as the extent and type of wetlands affect determination of "practicability" under the guidelines mitigation requirements.

Comments included:

- * The term "practicable" should include consideration of the costs associated with mitigation and the benefits gained for those costs;
- * The term "practicable" should not only consider cost to applicants, but also the costs and benefits of the wetlands development to other affected industries such as tourism, commercial fishing, etc. and the general public;
- * Need to clarify whether the last line of this recommendation changes the mitigation sequence. If this isn't the case, it needs to be reworked to show that avoidance is still the first step and that the mitigation sequence still applies; and
- * Take out the word "physical" in the first line of the recommendation since more than physical circumstances make Alaska different.

Participants discussed what type of "guidance" might result from this recommendation. Several concerns were noted such as concern that the guidance would make the program too weak or too strong, questions regarding whether the guidance would reflect existing policy or the policy evolving out of this Alaska wetlands initiative process, a comment that the document was too apologetic and a fear that the guidance would further weaken the program, and a comment that the guidance should specifically reflect Alaskan interests.

The discussion resulted in a group consensus on three points: (1) the proposed guidance should be completed and should reflect guidance for the future program based upon the existing program and any changes that evolve out of this Alaska wetlands initiative; (2) this guidance document should be subject to a public comment process; and (3) the stakeholders in the Alaska wetlands initiative should be involved in the process to formulate these guidelines.

No Net Loss Policy:

A discussion regarding the paper's treatment of the no net loss policy focused on the first two paragraphs under "Analysis and Proposed Recommendations For Discussion" on p. 4 as well as the need to adequately address the policy throughout the paper. Participants did not feel the paper adequately explained what the no net loss policy means for Alaska and how it will impact implementation of wetlands permit regulation in Alaska.

Comments included: The need to specifically state that we cannot meet a no net loss goal on an acre-per-acre basis; that no

net loss is a national policy so it is necessary to identify how Alaska relates to that policy and whether we are going to try to meet the goal or ignore the goal; no net loss is a goal and not a mandate; the agency should avoid doublespeak and clearly state what the policy is and how it conforms to the Alaska situation. Other comments emphasized the need for clearer recognition that Alaska is different and that the no net loss goal is not practicable here. The discussion emphasized the need to state what the no net loss goal is in Alaska, make clearer how Alaskan programs relate to this goal, and that the goal is oriented toward function and value of wetlands and not acre-for-acre. Clear delineation of the relationship of the Alaska permit program to the no net loss goal will likely ease anxiety and misperceptions in the Alaskan community.

Mitigation Sequence Clarification:

The question was raised whether the term "practicable" (p. 1, ¶ 2) applies to the minimization step of the mitigation sequence as well as to the avoidance and compensatory mitigation steps. The EPA representative indicated that the term "practicable" referred to all three steps and that the paragraph should be clarified.

Alaska Specific Action 2: Recommend that the Executive Order on wetlands articulate the flexibility in implementing the Administration's goal of no overall net loss of the Nation's wetlands to reflect particular circumstances in Alaska.

Participants indicated that the last sentence of this recommendation was too vague and needed to specifically state what "regional circumstances" means for Alaska. It was recommended that the paragraph be written clearly and specifically state the policy. It was suggested that the Executive Order make very clear what the goal is for Alaska and codify the language in footnote 7 of the Memorandum of Agreement (MOA) into a regulatory form to implement this action.

Alaska Specific Action 3: Develop interagency guidance to clarify how circumstances in Alaska, such as the abundance of wetlands, can reduce opportunities to avoid impacts to wetlands and affect how rigorously alternatives are evaluated.

A comment was made that the last four words of the last line of this recommendation should be changed. The stakeholder felt the emphasis should not be on low value aquatic areas where compensatory mitigation is not required, but rather on high value areas with protection specifically oriented toward such areas.

Alaska Specific Action 4: Develop accelerated restoration program for oil and gas projects.

The oil and gas interests representative requested that the recommendation refer to accelerated rehabilitation since restoration only refers to restoring the wetlands to their original condition when in certain cases the development site can be rehabilitated so that it is returned to a condition which is better than the original condition or some other enhanced condition.

Alaska Specific Action 5: Recommend written partnerships be established between the Corps and all interested stakeholders on Section 404.

A comment was made that this was a good idea, but that it should place additional emphasis on interaction between the regulators and the regulated as well as with the stakeholders.

Property Value Concern:

A comment was made that the loss of property values related to the wetlands permit program was strongly identified as an issue during the first series of meetings, but was not adequately addressed in the Issue Papers. Though the property value concern received mention in Issue Paper 2, the suggestion was made that it receive more emphasis and be addressed directly. If it is a perception problem rather than a real problem, that should be stated, supported, and a plan set forth to properly resolve any perception concerns. The issue could then be addressed under Issue Paper 11 which deals with outreach and public education.

ISSUE PAPER 8: COMPENSATORY MITIGATION

Alaska Specific Actions 1 and 2:

Alaska Specific Actions 1 and 2 which relate to developing interagency guidance and recommend that the Executive Order on wetlands articulate flexibility regarding Alaska circumstances are duplicates of the same two Alaska Specific Actions in Issue Paper 1 and Issue Paper 7. It was requested that the comments made during the Issue Paper 1 discussion on these two Alaska Specific Actions equally apply to these actions in Issue Paper 8 and Issue Paper 7.

Alaska Specific Action 4: Develop minesite reclamation guidelines.

Comments included:

- * Reclamation is already required so it should not count for compensatory mitigation credit;
- * Reclamation should not be used as compensatory mitigation since the wetlands resources are lost while the mining activity is ongoing and compensatory mitigation needs to compensate for this loss;
- * Action recommendation needs to clarify whether it is recommending that mining reclamation be used for compensatory mitigation or only as part of the mitigation process;
- * Reclamation can improve the landscape beyond what it was before the mining and compensatory mitigation credit should be given for such improvement;
- * Use of mining reclamation as compensatory mitigation should reflect a function and value rather than acre-for-acre approach; and
- * Need to be flexible in reviewing specific reclamation projects for mitigation credit.

A discussion regarding mining reclamation requirements and bonding requirements focused on the need to avoid duplication of existing processes. The Section 404 process should use and build upon existing processes rather than creating unnecessary duplication. The Issue Paper recommendation should clearly state that the program will consider and use existing processes and only add additional processes if it is necessary.

The stakeholders developed a consensus recommendation that the wetlands program use existing processes to the extent possible for reclamation and bonding and only add additional processes and requirements to the extent necessary to provide adequate protection.

Alaska Specific Action 5: Develop accelerated restoration program for oil and gas projects.

The stakeholder representing oil and gas interests requested that the term "accelerated restoration" be changed to "accelerated rehabilitation" since restoration only refers to returning a project site to its original state whereas rehabilitation refers to restoring the site to its original state or enhancing a site so that it is environmentally improved over what it was before the

development project. The stakeholder also clarified that some sites are not now required to be reclaimed or restored and that accelerated restoration in these situations would provide additional benefit. It was also clarified that accelerating the rehabilitation of a site (rehabilitating 10 or 15 years earlier than is required) provides an environmental wetlands benefit whereby the wetlands are restored at an earlier time. The stakeholder stated that accelerated rehabilitation following completion of avoidance and minimization steps should be enough for oilfield activities and that compensatory mitigation should not be required.

Other stakeholders expressed concerns about accelerated rehabilitation. It was indicated that if high value habitats were hurt by oilfield activity, it was appropriate for compensatory mitigation to take place. A clarification was noted that high value areas would only be hurt in a rare instance. Another concern was raised that accelerated restoration does not provide for any type of compensation for the period the wetland is used for development. A stakeholder indicated that the Corps may not be doing their job if a wetland was used without adequate compensation for the lost habitat. Another concern was raised that if accelerated restoration was used as compensatory mitigation, it would set a precedent and other projects using similar measures would undercut the meaning of compensatory mitigation. A question was raised regarding what is enough compensation for oil and gas development and that accelerated restoration may be a practical form of mitigation. The importance of assuring that the long-term productivity of a wetlands not be lost was emphasized by one stakeholder as being more important than short-term use.

Alaska Specific Action 6: Develop and implement bonding procedures for restoration/reclamation projects.

Comments on the bonding action included: Bonding should be applied across the board to assure that all project mitigation requirements are implemented rather than limiting it to only restoration and reclamation projects; bonding should be limited to long-term projects where the risk is greater that the follow through would not be completed rather than short-term projects; and existing bonding systems should be used to the extent possible and additional bonding requirements only added if necessary.

As was noted above under Alaska Specific Action 4, a consensus recommendation was made regarding use of existing bonding systems.

Alaska Specific Action 7: Establish mitigation banking pilot project.

Comments included:

- * Not sure pilot project needed and mitigation banking should not refer to oil industry projects;
- * Strong support expressed for mitigation banking both in and/or outside of Alaska;
- * Mitigation banking may not be a good idea if it detracts from advance planning and avoidance efforts for wetland projects;
- * Opposition strongly expressed toward outside mitigation banking;
- * Need to justify that compensatory mitigation is needed before requiring mitigation banking measures;
- * Mitigation banking helps other industries such as fishing or tourism that are hurt by developed wetlands;
- * Compensatory mitigation is needed and mitigation banking on related out-of-state projects, such as for Alaska migratory bird nesting areas, may be appropriate; and
- * Most mitigation banking support assumes in-state mitigation banking projects.

Alaska Specific Action 8: Assess the effectiveness of mitigation efforts in Alaska.

Stakeholders reached consensus that this was a good recommendation which should be implemented and that the effectiveness of different mitigation measures should be assessed. It was recognized that this assessment would be a dynamic and evolutionary process whereby, as more was learned, mitigation measures would be improved.

P. 47, line 5:

A specific comment was made regarding line 5 on p. 47. It was stated that whether a project is low or high value may not be the key, but whether we have significantly hurt wetlands in a particular area is the important consideration.

GENERAL STAKEHOLDER CONCERNS

Stakeholders were given an opportunity to share any general concerns they had about the Issue Papers or the process. A few stakeholders expressed concerns which included:

- * Equity should be a major principle in a wetlands program so that Alaskans are not punished for outside wetlands abuse;
- * Private property rights and values related to wetlands permits, whether perception or fact, should be addressed in the Issue Papers;
- * The Issue Paper should emphasize that protecting wetlands through regulations is good and honorable and there is nothing to apologize about; and
- * Concern was expressed that stakeholders need to get another shot at the Issue Papers before they go to Washington, D.C.

ISSUE PAPER 11: OUTREACH AND EDUCATION

General Comments:

Several general comments were made regarding additions to this Issue Paper. The previously-noted recommendation that the Issue Paper specifically address the property value perception problem was restated.

The idea of establishing an advocate office for permit applicants who have problems with permits was suggested. The discussion indicated that the idea needed to be assessed to determine what was already being provided by the Corps and if additional help was needed. It was agreed that the Corps field office in Fairbanks was good, but it was suggested that the field office staff were not advocates for the applicant. It was suggested that Alaska Specific Action 5, sponsor regulatory coordination positions, may address part of this need. A stakeholder suggested that some form of ombudsman to take on the applicant's cause may be necessary.

Significant support was voiced for additional education and outreach efforts. Since misperceptions and fears were a significant part of the permit program problem, it was felt that additional education could help the public realize the program's

flexibility and neutrality. It was felt that such awareness would minimize misconception and anxiety concerns.

The recommendation was also made that additional funding and staff needs be provided to carry out outreach and education. Though the Corps and EPA representatives indicated such additional funding was not necessary, it was noted that other agencies would also be involved and may need support. There was no consensus on the additional funding issue.

Alaska Specific Action 1: Develop a comprehensive strategy for outreach and education efforts.

Regarding the "specific target audiences" reference, it was recommended that the outreach and education program target audiences which will be impacted by wetlands development as well as wetlands applicant groups. It was felt that groups which might be impacted by wetlands permits, such as tourism representatives, should be educated so they can more fully participate in the process.

Alaska Specific Action 2: Issue a series of special public notices.

It was suggested that in addition to wetlands permit statistics, the public notices should also explain how the permit process works and the types of actions which are taken to get a permit. This explanation should address pre-application processes, and avoidance and minimization efforts which are not reflected in the permit approval or denial statistics. It was also felt that related additional requirements imposed by other agencies should also be recognized.

Alaska Specific Action 5: Sponsor regulatory coordination positions.

It was suggested that this recommendation refer to certain precedents which had already successfully sponsored or coordinated regulatory actions between agencies. These precedents include the joint pipeline coordination office, and the one window placer mining process.

ISSUE PAPER 6: ALTERNATIVE PERMIT PROCESSING PROCEDURES

Alaska Specific Action 1: Expedite development of Abbreviated Processing Procedures (APP).

The oil and gas interest representative recommended that APP processes be used for oil and gas activities and that this recommendation address whether APP procedures will be applied to oil and gas situations. Other stakeholders were cautious and suggested APPs be considered for oil and gas procedures, but would not recommend it as an Action. It was suggested that an insert be added to the final line of the recommendation after "explore future opportunities" which would state "such as oil and gas activities." Some participants felt that the Corps should look at APPs very carefully and concern was expressed regarding the broad scope of General Permits.

Alaska Specific Action 2: Propose development of additional General Permits.

A suggestion was made that mining be added to the list of examples for possible General Permits in the third line of this recommendation on the top of p. 40.

Alaska Specific Action 3: Conduct cumulative impacts evaluations for General Permits.

A stakeholder recommended that cumulative impact assessments be completed before any additional GPs or APPs are granted. It was stressed that the Corps should not go overboard pushing more APPs or GPs until the Corps and the public were aware of the cumulative impacts resulting from the existing GPs and APPs.

Alaska Specific Action 4: Develop Circle General Permits for Alaska communities.

The discussion of Circle General Permits indicated that the concept of Circle General Permits was not adequately described and discussed in the Issue Paper. Participants agreed that a much better explanation was needed of the Circle General Permit process. Specific comments regarding the Circle GPs included:

- * Circle GPs should be flexible to cover any length of time from 1 to 5 years and renewal periods of more than 5 years should be considered;

- * Low value wetland areas for Circle GP purposes should be limited to truly low value areas and should not include any moderate wetlands;
- * The best available wetlands information including information from the various local, State, and national information systems should be considered in delineating low value wetlands;
- * The new Circle General Permit concept should be tried out in a pilot process before using it on a general basis;
- * Strong monitoring from the Corps of Engineers would be needed since many municipalities in bush communities will not have the money to implement the program properly; and
- * As a benefit, Circle GPs provide advance warning regarding which areas are available for development, as low value areas, and which areas require Corps permit processing.

Alaska Specific Action 5: Conduct exit polls or interviews with permit applicants.

It was requested that the exit poll surveys not be limited to applicants, but also include the commenting public and affected industries. By talking to both the applicants and the commenting public, a more balanced picture of how the permit program is working will be achieved.

New Elevation Process:

It was suggested that an elevation process should be established as part of the Corps permitting procedures. This process would go into effect if a deadlock is reached on a permit at one level of the Corps of Engineers. The mechanism would elevate the project to another level within the Corps before a final permit decision is made. Comments on this suggestion emphasized that both the applicant and those protesting the permit should be included in the elevated decision process rather than only the applicant. Some stakeholders felt that as long as both the applicant and the protesting parties were included in the process, that an elevation process may have merit.

ISSUE PAPER 10: WETLANDS INVENTORY, CLASSIFICATION, AND CATEGORIZATION

Comments emphasized the need to target potential development areas for wetlands mapping. This was suggested in the context of providing information to support Circle General Permits. It was also suggested that local representatives be contacted regarding development areas which should be mapped. The Corps representative indicated that the National Wetlands Inventory (NWI) is already oriented toward prime development areas. A stakeholder suggested that local government input into this process was still needed. Another comment was made that the this Issue Paper make it clear that the NWI is used for permitting.

Administration Plan 1:

It was suggested that the first Administration Plan recommendation on p. 62 include a better explanation of how the Hydrogeomorphic Classification System (HGM) fits into the classification program, the NWI program, and how it is used to help permitting in coordination with NWI information.

Explanation of Classification System:

Stakeholders recommended that additional explanation be included regarding the different classification systems and their relationship to different wetland programs. For example, how are low value wetlands classified. This explanation should recognize that classification delineates physical characteristics of areas and does not make decisions. The role of classification should be addressed in the context of the total permit process. The process steps which provide for discretion should be recognized.

Alaska Specific Action 1: Support efforts to identify and collect wetlands data in focus areas (watersheds) where development is likely to occur.

It was noted that definitions were needed for terms such as "watershed" and that examples of "watersheds" should also be provided. Additional terms needing definition throughout the paper include region, watershed, and ecosystem.

Alaska Specific Action 2: Investigate the feasibility of centralizing wetlands information.

It was requested that any centralized wetland information be available to the public. The Corps representative indicated that such availability might be very expensive.

ISSUE PAPER 4: STATE, LOCAL, AND NATIVE ROLES

Recognition Tribe/Native Involvement:

Participants noted that the Administration Plan provides several recommendations regarding involvement of Tribes or Tribal governments in the wetlands program. However, nothing in the Alaska Specific Actions addresses involvement of Tribes or Native villages. It is felt that the Alaska specific recommendations should address Tribe or Native village involvement. This may need to be in the form of a new recommendation under Alaska Specific Actions which would address how Tribes or Native corporations or villages could be involved in the wetlands program, assume part of the program, or participate in an appropriate role in view of the Administration Plan.

Local Government Input:

A comment was made that local government input is not adequately addressed under the Alaska Specific Actions. It was suggested that a new Alaska Specific Action paragraph be added which addresses local government involvement. Some participants felt local comments should be given more weight and elevated to the level of other commenting government agencies. This was felt to be appropriate since the local government is the elected governing body for the people directly affected. Other participants did not believe that local government comments should be weighted more than other interest groups, such as those represented by the stakeholders.

Alaska Specific Action 3: Conduct monitoring of existing and future cumulative wetland impact of General Permits.

Some stakeholders opposed holding up General Permits until cumulative impact assessments could be completed. It was suggested that this action address the timing required for monitoring of impacts. Another participant disagreed and felt it made sense to hold up development under General Permit programs until the cumulative impacts of past programs have been delineated.

It was also suggested that the two forms of cumulative impact assessment recommendations found on p. 25 and p. 40 need to be placed under both Issue Paper 4 and Issue Paper 6. Additional

explanation and clarification of these recommendations is also needed.

ISSUE PAPER 7: THE MITIGATION SEQUENCE

Alaska Specific Action 1: Develop interagency guidance to clarify how physical circumstances in Alaska such as the extent and type of wetlands affect the determination of "practicability" under the guideline mitigation requirements.

Some participants recommended that the guidelines place an emphasis on the economic value of impacted wetlands to industries other than those represented by the permit applicant such as tourism, commercial fishing, recreation, and personal use. Related onsite and offsite impacts should also be considered. It was felt that impacts on other industries and the general public should be addressed in the guidelines to balance the interests of the applicant. It was suggested that all the Issue Papers balance applicant concerns with impacted industry and public concerns.

Alaska Specific Action 4: Acknowledge pre-application avoidance and minimization efforts.

Stakeholders recognized the importance of pre-application meetings and felt that they should be encouraged. It was recognized that avoidance and minimization efforts addressed in the pre-application phase should be considered by both the Corps and public during the permit comment period.

Regional Approach Caution:

A stakeholder stressed that the Corps should be cautious in the use of a regional approach to assessing permit or development project impacts. A regional approach should not erode mitigation sequencing for site specific projects or wetlands protection.

**FACILITATED ALASKA WETLANDS ROUNDTABLE DISCUSSION
SECOND SERIES**

Anchorage Summary Report
January 13, 1994

This facilitated Alaska wetlands roundtable discussion took place in Anchorage, Alaska, on January 13, 1994, at the Egan Civic and Convention Center. The roundtable discussion was sponsored by the U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA). The discussion took place between various invited stakeholders representing interest groups with a stake in the management of Alaska wetlands.

The stakeholder interest group participants included: Ms. Becky Gay (Development interests), Mr. Cliff Eames (Environmental), Mr. David McGillivray (Federal resource agencies), Ms. Paula Easley (Municipal government), Mr. Nelson Angapak, Sr. (Native), Mr. Peter Hanley (Oil and gas), Mr. Jeff Parker (Sport fishing), Mr. Jules Tileston (State of Alaska), and Ms. Karen Cowart (Tourism).

The meeting was facilitated by Mr. Dave Hanson of Arktos Associates with assistance provided by Ms. Niki Stewart. Mr. Al Ewing of the U.S. Environmental Protection Agency and Mr. Bob Oja of the U.S. Army Corps of Engineers were present as observers and to provide technical information or program clarification as needed. Ms. Cneryl Smith, representing the White House Interagency Working Group on Wetlands, Washington, D.C., was also present as an observer.

The purpose of the roundtable discussion was to obtain input from the primary wetlands stakeholders in Alaska on 11 draft Issue Papers prepared by EPA and the Corps based upon input received during the first series of wetland roundtable discussions and public comments. The 11 Issue Papers are entitled Alaska Wetlands Initiative Public Review Draft Issue Papers, December 17, 1993. The cover page of the document also contains a qualification reading: "This document was prepared to facilitate discussion. It does not represent agency conclusions."

The stakeholders were asked to provide input on how well the draft Issue Papers characterized their concerns and how well the proposed recommendations responded to those concerns. Specific questions set forth to help focus discussion included: Are these

the right issues? Was the stakeholder concern accurately portrayed? Do the proposed actions adequately address the identified concern? What changes are needed? Does a stakeholder consensus exist that certain Issue Papers or suggested actions are adequate? Does a stakeholder consensus exist that certain Issue Papers need to be changed and/or recommendations altered? Are there important technical errors that need to be corrected?

In the following Issue Paper sections, all "Administration Plan" and "Alaska Specific Action" recommendations are excerpted from the referenced Issue Paper in the Alaska Wetlands Initiative Public Review Draft Issue Papers document. Only the first line of the specified "Administration Plan" or "Alaska Specific Action" recommendation paragraph is restated. The applicable stakeholder comments follow these excerpts and refer to the entire specified recommendation paragraph.

STAKEHOLDER ISSUE PAPER PRIORITIES

The wetlands roundtable discussion began around 9:10 a.m. The stakeholders were asked to identify priorities for Issue Paper discussions considering which Issue Papers they felt needed the most changes and/or additions. The stakeholders were also asked to identify Issue Papers which appear to be adequate and should receive a low discussion priority. As a result of this stakeholder input, the Issue Paper discussion priorities were set as follows: Issue Paper 1, No Overall Net Loss of Wetlands Goal; Issue Paper 7, The Mitigation Sequence; Issue Paper 8, Compensatory Mitigation; Issue Paper 10, Wetlands Inventory, Classification, and Categorization; Issue Paper 6, Alternative Permit Processing Procedure; Issue Paper 4, State, Local, and Native Roles; Issue Paper 9, Advance Planning and Watershed Management; Issue Paper 11, Outreach and Education; and Issue Paper 2, Special Alaska Circumstances -- Legal Issues. Issue Papers 3 and 5 were not identified for discussion.

ISSUE PAPER 1: NO OVERALL NET LOSS OF WETLANDS GOAL

General discussion of no net loss goal including paragraphs under heading "Analysis and Proposed Recommendations for Discussion" on p. 4.

Comments included:

- * The main issue is whether or not we are endorsing no net loss (NNL) concept. Sport fishing interests endorse NNL concept;

- * Need to articulate that the goal of NNL is in conflict with Alaskan circumstances. In sentence on p. 4, which begins "experience has demonstrated," delete the word "generally" and conclude the sentence after the words "no net loss of wetlands";
- * "Experience has demonstrated . . ." sentence is poorly written and should refer to NNL of wetlands functions rather than acre-per-acre approach and also provide examples. Alaska doesn't preclude meeting NNL goal for wetlands functions;
- * Several comments emphasized NNL should be considered a goal not a mandate;
- * The real question is whether you can restore or realistically create useable wetland habitats in Alaska;
- * NNL refers to overall no net loss as a goal in the whole country and balances achievement of the goal through many programs rather than expecting achievement of NNL in every project;
- * Support goal of NNL, can achieve it through program flexibility, and should attempt to achieve overall NNL goal;
- * NNL policy won't work in Alaska and it is necessary to integrate any NNL efforts into good land use practices and emphasize fairness; and
- * What is the NNL goal and what does it mean? Does it refer to functions and values or fall back on an acre-per-acre and project-per-project approach?

Stakeholder Consensus: The NNL policy and goal needs clarification in this Issue Paper and especially on p. 4. How is NNL measured (function-for-function, value-for-value, acre-for-acre, etc.)? What do these terms mean? How is national NNL goal to be applied in Alaska?

Comments on preface and first paragraph on p. 1.

A comment was made that the use of guidelines as referenced on p. 1, instead of regulations, does not provide an opportunity for public comment on the guidance being developed for program implementation. The Executive Order refers to regulatory flexibility and thus any new guidelines should be regulations to assure an opportunity for public comment. The EPA representative

responded that the status of these guidelines and whether or not they will be regulations needs to be clarified.

A comment was made that the preface to the Public Review Draft Issue Papers refers to the Administration's Wetlands Plan statement that the agencies would initiate meetings with representatives of Native villages in this process. The Native interest stakeholder emphasized that Native villages have not been represented in the process since AFN cannot provide adequate representation for all Native villages.

Administrative Plan 1: Develop improved analytical tools for wetlands functional assessment.

The reference to Hydrogeomorphic Classification System (HGM) methodology should be better explained and its relationship to wetlands classification and mapping efforts clarified.

Administrative Plan 2: Endorse use of mitigation banking under Section 404 regulatory program.

One stakeholder suggested that the phrase "in certain circumstances" be removed from the first sentence of this Administrative Plan recommendation and that the recommendation needs to be stronger. Agency representatives responded by encouraging participants to focus on the Alaska Specific Actions rather than the Administration Plan since the group would have more impact on the Alaska Specific Actions.

Alaska Spec. Action 1: Develop interagency guidance to clarify how physical circumstances in Alaska, such as the extent and type of wetlands, affect the determination of "practicability" under the guidelines mitigation requirements.

Comments included:

- * Support need for interagency guidance but word "physical" should be deleted from "recommendation" since other non-physical circumstances also apply;
- * The word "practicability" needs to be clarified and perhaps language from earlier decisions, such as the Pt. McIntire decision, can be used to explain this term;
- * This recommendation paragraph needs to be rewritten to clarify that "avoidance" rather than "minimization" is the first step in the mitigation sequence;

- * It is necessary to attempt to attain NNL for higher value wetlands;
- * Compensatory mitigation can be completed for certain Alaska wetlands and compensatory mitigation opportunities do exist in Alaska;
- * A form of compensatory mitigation might be the use of conservation easements to preserve wetlands;
- * Strong objection was raised to requiring conservation easements on Native lands; and
- * Comments made regarding first Alaska Specific Action should also automatically be applied to duplicated statement of this guidance recommendation in other Issue Papers.

The discussion also focused on the questions: what are the special circumstances in Alaska that make compensatory mitigation more or less "practicable" than outside? and why is it not practicable? A brief discussion identified some of the reasons Alaska was different. These reasons included: a lack of disturbed acres for restoration; a lot less science regarding how successful or constructive compensatory mitigation is in Alaska; short growing season; higher costs due to remoteness of locations; different climate; hard to rehabilitate areas; huge abundance of wetlands so less need for compensatory mitigation; and by-product impact of some projects aids wildlife (over wintering areas for fish on North Slope).

Alaska Specific Action 2: Recommend that the Executive Order on wetlands articulate the flexibility in implementing the Administration's goal of no overall net loss of the Nation's wetlands to reflect particular circumstances in Alaska.

Some stakeholders suggested that this recommendation be eliminated since they did not feel that a national Executive Order should single out Alaska and that the existing program provided adequate flexibility. They felt that decisions regarding NNL should reflect individual circumstances not particular regions. A comment was also made that the recommendation was vague and general and thus should be deleted.

Most stakeholders, however, felt strongly that this recommendation was needed, and that Alaska was already singled out as being unique. Most stakeholders felt that an Executive Order was needed to officially specify and assure program flexibility, recognize Alaska's uniqueness, and to provide assurance program requirements will not change.

Stakeholders also noted several changes that were needed to clarify the intent of Alaska Specific Action 2. These recommended changes included:

- * Clarification language from footnote 7 of the January 24, 1992, Memorandum of Agreement (MOA) should be used in the Executive Order;
- * Executive Order (EO) should clearly reflect Alaska circumstances and be codified in legislation or regulation to assure public input;
- * EO should acknowledge abundance and values of wetlands and the trust responsibilities of the various government agencies;
- * The word "Alaska" should be deleted from the first sentence of this Alaska Specific Action paragraph; and
- * EO should emphasize the uniqueness of Alaska and reflect the Alaska situation.

Alaska Specific Action 3: Develop interagency guidance to clarify how circumstances in Alaska, such as the abundance of wetlands, can reduce opportunities to avoid impacts to wetlands and affect how rigorously alternatives are evaluated.

Comments included:

- * Need to place more emphasis on high value wetlands. The phrase "low value aquatic areas" at the end of the recommendation paragraph needs definition and it is not a good policy to ultimately promote the sacrifice of low value wetlands with no compensatory mitigation;
- * Place emphasis on the abundance of low value wetlands and recognize the greater value of the less abundant high value wetlands. Abundance is the key;
- * Recommendation needs to be clarified to clearly indicate what the intent of the recommendation is as well as what "flexibility" means and how it works;
- * Recommendation paragraph is too vague and is based on the wrong assumption that an abundance of wetlands means you do not have to be accountable or responsible for their use through compensatory mitigation. Some abundant low value wetlands are important and should be subject to compensatory mitigation; and

- * This recommendation should clearly recognize the regional differences within Alaska, specifically reference these in-state regional differences, and note how wetlands policies are applied to address these differences.

Consensus recommendation regarding more stakeholder input on Issue Papers:

After some discussion, the stakeholders agreed there should be an additional opportunity for stakeholder public comment on the revised Issue Papers that result from this process. Consequently, a consensus stakeholder recommendation was that a two-week comment period for the receipt of written comments on the revised Issue Papers should be provided to the stakeholders and the general public.

ISSUE PAPER 7: THE MITIGATION SEQUENCE

Alaska Specific Action 3: Issue a special public notice on application of the mitigation sequence in Alaska.

The discussion initially considered the current status of mitigation sequencing and whether the public notice would have any impact on its legal status. A comment was made that the recommendation should be eliminated if the notices would tend to institutionalize the mitigation sequence. Other participants clarified that the mitigation sequence was already codified and established in law. Consequently, the public notices would not impact the status of the mitigation sequence process but rather would provide clarification for what it means in Alaska.

Other comments included:

- * Clarification is needed on how the public notices would relate to the Executive Order and other guidance documents;
- * It was suggested that the public notices clearly address how the mitigation sequence will be applied in Alaska, discuss what the mitigation sequence means, and provide clarification regarding the inherent flexibility in the application of the mitigation sequence process;
- * It was recommended that the public notices reflect mitigation sequencing as it exists after completion of the current Alaska Wetlands Initiative process and that any added mitigation sequencing flexibility be noted; and

- * It was questioned whether or not compensatory mitigation should be a required part of the mitigation sequence in Alaska.

Alaska Specific Action 4: Acknowledge pre-application avoidance and minimization efforts.

Some stakeholders felt that a much greater acknowledgment of pre-application avoidance and minimization efforts should be provided as part of the permit process. A stakeholder suggested that applicants be given credit for pre-application avoidance and minimization efforts. After some discussion, a qualification was noted that such credit or recognition should only be given where the avoidance and minimization efforts were legitimate and should be considered as part of the mitigation sequence process. Other commentors felt that this happened to some extent now.

Stakeholders suggested that more importance should be placed upon the pre-application meetings and greater use of such meetings encouraged.

It was also suggested that the Corps should do a better job of stating what actions the applicant has taken to avoid or minimize impacts as part of the public notice. The Corps representative indicated that efforts were being made to fairly inform the public of how much the applicant had already done to meet avoidance and minimization steps.

A stakeholder suggested that the preliminary draft public notice on the permit application should also state the Corps preliminary draft conclusion regarding the project. It was felt that informing the public of the Corps's preliminary draft recommendation regarding the project would increase the meaningfulness of public comments. Another stakeholder clarified that the Corps public notice cannot be prejudiced and thus could not set forth preliminary judgments. The Corps representative also pointed out that the Corps' neutrality needed to be preserved throughout the permit application process until a final decision was made.

It was suggested that the Corps also identify potential opportunities for avoidance and minimization in the public notice regarding pending permit applications. The Corps representative indicated that the permit processing timeframes place a practical limitation on the Corps' ability to complete a draft evaluation of alternatives for the public notice.

Another suggestion was that the Corps indicate whether or not an applicant participated in a pre-application meeting as part of the notice to the public.

It was suggested that the two recommendations regarding pre-application meetings in Issue Paper 11: Outreach And Education also be included in Issue Paper 7 following the pre-application recommendation.

GENERAL COMMENTS ON THE PROCESS

Stakeholders were given an opportunity to share general comments on the process and Issue Papers. As part of this discussion, stakeholders shared their views regarding the recent request from the Chairman of the State House and State Senate Resources Committees to extend the comment period on the existing version of the Issue Papers for 45 days. While participants did not want to be against public comment opportunities, they did not believe that any extension should take place which would hold up or damage the Alaska Wetlands Initiative process. Specific comments ranged from stating that such an extension and committee hearings were not necessary to an expression of neutrality regarding this subject.

A participant emphasized that the NNL should be considered as a goal and also requested information regarding whether the Issue Papers were written in Alaska or D.C. The agency representatives indicated that the papers were written in Alaska with assistance from the Washington, D.C. level. The process provided for the papers being drafted here and receiving some modifications in D.C. as part of a collective effort.

Another stakeholder made several comments including:

- * The Issue Papers do not focus enough on the conservation of wetlands, but rather only on how the Corps relates to other parties;
- * The papers are generally too vague and need to be more specific;
- * Criteria need to be developed;
- * The papers don't provide for the identification of higher or lower priorities for watershed planning (i.e., high value anadromous fishstreams, etc.); and
- * A clear statement of the purpose of Section 404 is needed.

ISSUE PAPER 8: COMPENSATORY MITIGATION

It was noted that the first two Alaska Specific Action recommendations in Issue Paper 8 were duplicates of the first two Action recommendations in Issue Papers 1 and 7. It was confirmed that all comments made on these two recommendations as part of the Issue Paper 1 discussion would also be applied to these recommendations in Issue Paper 7 and Issue Paper 8.

Alaska Specific Action 3: Incorporate mitigation into advance planning efforts.

Comments included:

- * Mitigation and advanced wetlands identification efforts should be integrated into local planning efforts and result in placing more emphasis on local and regional plans for wetlands and watershed protection;
- * Mitigation efforts should focus on how to minimize impacts on wetlands;
- * The words "mitigation" and "compensatory mitigation" are used throughout this Issue Paper and it is not clear whether the reference to "mitigation," such as in this recommendation, is in fact referring to compensatory mitigation. The use of these two terms needs to be clarified;
- * A discussion is needed regarding the use of flexibility in applying compensatory mitigation;
- * The recommendation should refer to mitigation sites instead of restoration sites since it refers to more than merely restoration sites; and
- * The advanced identification and planning efforts should also catalog possible sites for mitigation credit such as areas where conservation easements could be used to save a wetland and gain mitigation credit.

Alaska Specific Actions 4 and 6: Develop minesite reclamation guidelines and develop and implement bonding procedures for restoration/reclamation projects.

The discussion of these two recommendations emphasized that existing regulations regarding minesite reclamation and bonding should not be duplicated by the wetlands permit program. It was suggested that existing regulations be used to the extent possible

and if additional reclamation or bonding requirements are needed, they should be in addition to the existing requirements. It was suggested that bonding requirements should not be limited to restoration and reclamation projects, but should be applied equally across the board to all projects which require restoration, rehabilitation, reclamation, or some form of delayed compensatory mitigation.

Alaska Specific Action 5: Develop accelerated restoration program for oil and gas projects.

This discussion focused on both the mining reclamation recommendation in Alaska Specific Action 4 as well as the oil and gas restoration recommendation. Some stakeholders strongly felt that reclamation and restoration were not compensatory mitigation and that these recommendations should be removed. Concern was also voiced that using accelerated restoration should not mean that an applicant is receiving double credit for efforts already required or planned. Following a Corps representative explanation that accelerated restoration was not viewed as compensatory mitigation, but as a general mitigation measure, it was agreed that this recommendation needed to be clarified. Another stakeholder felt that accelerated restoration should be used in lieu of compensatory mitigation so that the oil industry had some predictability. Other stakeholders disagreed with this comment and felt that you still had to consider compensatory mitigation and could not make an advance judgment nor suggest that the Corps categorically say compensatory mitigation is not needed. A comment was made that compensatory mitigation needs to remain in the bag of mitigation tools.

It was requested that "accelerated restoration" be replaced with "accelerated rehabilitation" since "restoration" only refers to returning the site to its original condition whereas "rehabilitation" can refer to returning a site to an improved condition as well as its original condition.

A stakeholder noted that compensatory mitigation will rarely be needed to protect the function of wetlands lost due to oil and gas activity.

Alaska Specific Action 7: Establish mitigation banking pilot project.

Comments included:

- * Several statements were made against mandatory out-of-state mitigation banking;

- * Keep any mitigation banking sites as close as possible to the disturbed area, in the immediate watershed or definitely in-state;
- * Off-site compensatory mitigation should not be used;
- * Alaska has plenty of areas where mitigation banking and appropriate compensatory mitigation can take place;
- * The pilot project should be in the same watershed that is impacted by the permitted action;
- * Pilot project is a waste of money and we don't need mitigation banking;
- * This is a worthwhile project; and
- * Specific opposition was expressed towards mitigation banking for North Slope projects.

The stakeholder representing sport fishing interests identified several appropriate sites for off-site compensatory mitigation which included four dams on Fish Creek; the Chester Creek dam; and the Big Lake dam; water table issues in the Meadow Creek drainage; and a Cooper Creek lake tap.

Alaska Specific Action 8: Assess the effectiveness of mitigation efforts in Alaska.

It was suggested that the last sentence be placed as a separate Alaska Specific Action recommendation. It was also suggested that Alaska Specific Action 8 paragraph be duplicated as an Alaska Specific Action in Issue Paper 7.

Possible New Alaska Specific Action Recommendation:

A stakeholder suggested that the following new recommendation be added:

For the purposes of developing a program for compensatory mitigation, the Corps, EPA, and other State and Federal agencies in cooperation with stakeholders will:

- (a) Identify existing permits, categories of permits, or locales of permits where loss of wetland values and functions is significant; and

- (b) Identify wetlands including riparian wetlands or zones where loss of value could occur if permits were sought.

This recommendation was not discussed.

**ISSUE PAPER 10: WETLANDS INVENTORY,
CLASSIFICATION, AND CATEGORIZATION**

General Comments:

General comments included:

- * Whatever inventory system is developed, the system needs to be useful to a wide variety of applicants and regulatory agencies;
- * The classification process known as Advance Identification (ADID) needs improvement. The Colville Delta, where the system found none of the lands suitable for development, is a good example of its weakness; and
- * The Colville Delta is not a good example of the weakness of the ADID system.

The general comments also focused on the relationship between the Advanced Identification system and local planning efforts. One comment indicated that the land use planning effort in Juneau was a good example of how local planning efforts could be interrelated with Advanced Identification of wetlands classifications. A stakeholder recommended that ADID be integrated with, and coordinated with, local planning processes. Another stakeholder disagreed and favored ADID efforts over local planning. The Corps representative indicated that the situation varied between communities and that some communities do not have planning efforts.

Other comments questioned the inclusion of social functions in the first paragraph of p. 58 as a part of the classification system. It was suggested that this would be more appropriate under categorization and the classification system should be based on biological and physical values. It was also suggested that the word "watershed" be defined and that Alaska examples be given indicating what the Corps means when it refers to watersheds in Alaska.

Alaska Specific Action 1: Support efforts to identify and collect wetlands data in focus areas (watersheds) where development is likely to occur.

Discussion focused on the wetland functions which need to be addressed as part of this recommendation. Some stakeholders felt that social and economic functions of the wetlands should be included, especially if you are already including such things as subsistence use. Stakeholders disagreed regarding the resolution of this question. It was also recommended that the inventory of wetlands data should make reference to the abundance or scarcity of certain types of wetlands or particular wetland characteristics.

Alaska Specific Action 2: Accelerate the National Wetlands Inventory (NWI) mapping project.

Comments included:

- * The NWI needs to become more useful to permitting by integrating NWI into local mapping systems;
- * Question whether more money should be spent on NWI if we are not at the same time integrating local information systems;
- * Need money for local area wetlands mapping rather than NWI general mapping; and
- * NWI is a useful system, represents the only information we have for certain areas, and is being coordinated with local information.

Alaska Specific Action 4: Continue to support the State's effort to select and apply a wetlands classification method.

Comments included:

- * Explain relationship between State's effort to get a General Permit and the recommended classification mapping effort. State effort may be a waste of money and perhaps recommendation should be deleted;
- * State is trying to use available data base and get other more detailed information into the system which will be coordinated with NWI as a worthwhile effort;
- * Agree State effort is worthwhile; and
- * Need better explanation of how HGM relates to the State system.

Additional Alaska Specific Action:

A stakeholder recommended that an additional Alaska Specific Action be added which provides for the certification of consultants to complete wetlands jurisdictional determinations across Alaska.

ISSUE PAPER 6: ALTERNATIVE PERMIT PROCESSING PROCEDURES

Alaska Specific Action 1: Expedite development of Abbreviated Processing Procedures (APP).

Comments included:

- * APPs should be evaluated for the North Slope and thus suggest inserting after "future opportunities" in the second sentence the words "such as oil and gas activities;" and
- * A stakeholder was skeptical of APPs, questioned their legality, and recommended this recommendation be deleted.

Alaska Specific Action 2: Propose the development of additional General Permits.

Comments included:

- * GPs are good on the North Slope;
- * No additional GPs should be allowed until adequate impact evaluations are completed for existing GPs; and
- * Several stakeholders indicated their support for GPs.

Alaska Specific Action 3: Conduct cumulative impacts evaluations for general permits.

Comments included:

- * Add to recommendation that results should evaluate appropriateness of existing GPs and possible GP modifications, suspensions, and revocations that may be required;
- * Need better impact assessments which take into account comprehensive impact; and

- * Several statements of support for conducting cumulative impact evaluations.

Alaska Specific Action 4: Develop Circle General Permits for Alaskan communities.

Comments included:

- * Need to clarify how potential impacts will be assessed and suspect that small impacts should be reviewed more lightly than large impacts;
- * Suspect Circle General Permits not legal and probably would lead to overlooking projects that may have significant impacts;
- * Support Circle General Permits and feel they can help local government decision making and consolidate paper reporting requirements;
- * Advanced identification takes a lot of resources and this needs to be considered if we are going to set up a pre-identification of low value areas for Circle General Permits; and
- * Several stakeholders indicated support of Circle General Permits and the other recommendations of this Issue Paper.

ISSUE PAPER 4: STATE, LOCAL, AND NATIVE ROLES

Alaska Specific Action 1: Develop regional General Permits.

A stakeholder expressed skepticism about regional permits and generally did not feel they should be used. The stakeholder then added a qualification that if GPs are tied into watershed plans, they are more acceptable.

Alaska Specific Action 4: Provide technical assistance for State assumption.

Comments included:

- * State would like to assume Section 404 permitting authority if it makes sense, but State doesn't know enough about assumption requirements at this time; and

- * A stakeholder voiced opposition to State assumption and recommended dropping this Alaska Specific Action.

ISSUE PAPER 9: ADVANCE PLANNING AND WATERSHED MANAGEMENT

Alaska Specific Action 3: Develop a watershed-based demonstration project.

Comments included:

- * Add possibility of greater number of demonstration projects at a less detailed level;
- * Need to coordinate and bring together the various planning projects including watershed planning; and
- * Need a clearer definition of "watershed" and examples of Alaskan watersheds which might be used for a pilot project.

ISSUE PAPER 11: OUTREACH AND EDUCATION

Alaska Specific Action 1: Develop a comprehensive strategy for outreach and education efforts.

A comment was made that a timeline should be added to this recommendation paragraph.

Alaska Specific Action 2: Issue a series of special public notices.

A comment was made that additional information on mitigation sequences should be provided in the special public notices.

Alaska Specific Action 5: Sponsor regulatory coordination positions.

It was suggested that weekly or bi-weekly pre-application meeting days be set aside with the various agency representatives coming together to deal with applicant pre-application concerns.

General Comments:

It was felt that this Issue Paper was very important. It was further recommended that the people in the various agencies dealing with public affairs and outreach get involved in implementation of these recommendations. One stakeholder suggested that the Issue Paper 11 recommendations have the highest priority.

ISSUE PAPER 2: SPECIAL ALASKA CIRCUMSTANCES -- LEGAL ISSUES

Alaska Native Claims Settlement Act (ANCSA) land concerns:

The stakeholder representing Native interests emphasized the need to treat ANCSA lands differently regarding compensatory mitigation requirements. The Corps representative indicated that the 404 program applies irrespective of ownership. A review of whether or not any legal reason existed for an exemption of ANCSA lands from the Section 404 program did not find any justification for such an exemption. This was also true for State lands. It was suggested that the Native landowners and State officials focus on how the program can work better to meet their needs. One stakeholder suggested deleting Issue Paper 2 since it did not have a basis in law. Comments were made that the paper was needed to explain the legal situation regarding the 404 program in the different land ownership situations.

Arreage correction, p. 8:

It was suggested that the reference to "384 million surface acres of land in the State of Alaska" on p. 8 be checked since it was probably not correct.

**ISSUE PAPER 3: SPECIAL ALASKA CIRCUMSTANCES --
PHYSICAL ENVIRONMENT**

Comments included:

- * The last paragraph on p. 14 should also refer to the values of recreational and subsistence fisheries;
- * In the first full paragraph on p. 15, on the last line, the "52.7%" needs to be corrected.

PUBLIC COMMENT PERIOD EXTENSION

During the Anchorage roundtable discussion, it became apparent that certain stakeholders could not complete their written comments without looking at parts of the transcript from other roundtable discussions. Unfortunately, the transcripts are not scheduled to be available before the end of the comment period on January 21, 1994. Consequently, the stakeholders felt it was only fair to extend the comment period long enough to have access to the transcripts before completing their written comments.

Following stakeholder closing remarks, the second series Anchorage roundtable discussion was adjourned at 5:10 p.m.

List of Attachments

Attachment A. August 24, 1993. Clinton Administration Wetlands Policy.

Attachment B. October 12, 1993. News Release announcing initiation of wetlands meeting in Alaska and assorted backup material. U.S. Army Corps of Engineers and Environmental Protection Agency.

Attachment C. October 18, 1993. Letter from John Sandor, Commissioner, Alaska Department of Environmental Conservation, To U.S. Army Corps of Engineers and Environmental Protection Agency, and October 22 response to Commissioner Sandor from the Corps and EPA.

Attachment D. October 19, 1993. Letter from Governor Hickel to President Clinton on the Alaska Initiative of the Clinton Administrations wetlands policy.

Attachment E. October 25, 1993. State of Alaska comments at Juneau wetlands meeting. Tim Cook, Associate Director of Fisheries and the Environment, Office of the Governor, Washington, D.C.

Attachment F. November 4, 1993. State of Alaska comments at Anchorage wetlands meeting. Dr. Paul Rusanowski, Director, Division of Governmental Coordination, Office of the Governor.

Attachment G. December 17, 1993. News Release. Announcing release of issue papers and January meetings. U.S. Army Corps of Engineers and Environmental Protection Agency.

Pulled out
and
duplicated
as separate
document.

Attachment H. December 17, 1993. Alaska Wetlands Initiative, Public Review Draft Issue Papers. 69 pages. U.S. Army Corps of Engineers and Environmental Protection Agency.

Attachment I. December 17, 1993. State of Alaska news release on receipt and review of U.S. Army Corps of Engineers and Environmental Protection Agency issue papers.

Attachment J. December 27, 1993. Draft State of Alaska position on issue papers. Division of Governmental Coordination.

Attachment K. January 3, 1994. State of Alaska News Release on Alaska Wetlands Initiative from Dr. Paul Rusanowski, Director, Division of Governmental Coordination, Office of the Governor.

Attachment L. January 4, 1994. State of Alaska comments prepared for January Juneau wetlands meeting. Tim Cook, Associate Director of Fisheries and the Environment, Office of the Governor, Washington, D.C.



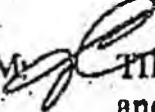
Attachment A


WALTER J. HICKEL
GOVERNORSTATE OF ALASKA
OFFICE OF THE GOVERNOR
WASHINGTON, D.C.

August 24, 1993

MEMORANDUM

TO: THE HONORABLE WALTER J. HICKEL, Governor
PAT RYAN, Chief of Staff

FROM:  TIM COOK, Associate Director for Fisheries, Environment,
and Human Resources

THROUGH:  JOHN W. KATZ, Director of State/Federal Relations
and Special Counsel to the Governor

SUBJECT: CLINTON ADMINISTRATION'S WETLANDS POLICY

The Clinton Administration's wetlands policy will be formally released today. In it, we expect that the Alaska 1% exception will be deleted. There is not any specific provision that will recognize nor ameliorate the impact that these regulations will have on Alaska, save for the vague promise of meetings with State officials and interest groups, and further study.

Yesterday, during a briefing by Will Stelle from the White House, Mike Davis (Corps. of Engineers), Bob Wayland (EPA), and others, it was stated that under the Alaska 1% exception, "as much as 1.5 million acres of Alaska's coastal wetlands could be lost." Although Bob Wayland backed off somewhat from this position (after I pointed out that National Parks, Wilderness Areas, the Coastal Zone Management Plan, and other protections made this impossible), it was clear that their position had been greatly influenced by certain environmental groups.

The President's proposal does, however, offer some of the things that we have sought:

- greater use of Programmatic General Permits
- 90 day (proposed) deadline for permitting
- agency-wide use of the 1987 Delineation Manual
- advance planning and mitigation banking
- an Administrative appeals process
- easing State assumption

Hopefully, as this moves through the legislative process, we can work with the Congress to add provisions that will recognize the unique situation in Alaska. However, without Administration support, it is unlikely that we will be able to resurrect the 1% exception.

We will send the text of the proposal as soon as we receive it.

Attachment

cc: Resource Cabinet
Attorney General Cole
Commissioner Campbell
Bill Overstreet
Brian Malnak
Dr. Paul Rusanowski
John Manly

THE WHITE HOUSE
OFFICE ON ENVIRONMENTAL POLICY

FOR IMMEDIATE RELEASE
TUESDAY, August 24, 1993

NEW FEDERAL WETLANDS POLICY OFFERS FAIR, FLEXIBLE APPROACH
ENDS AGENCY INFIGHTING AND GRIDLOCK WITH STRONG AGREEMENT

WASHINGTON -- A new federal policy that offers a fair, flexible and comprehensive approach to managing America's wetlands was unveiled today (8/24) by nine federal agencies, ending years of agency infighting and gridlock.

"This plan is balanced and fair. By bringing together all the interested parties, we've moved beyond polarization and paralysis and arrived at a plan that is flexible and effective," said Kathleen McGinty, Director of the Office on Environmental Policy.

Nine federal agencies were involved in the development of the new wetlands initiative announced today, including the U.S. Environmental Protection Agency, the Department of Agriculture, and the Army Corps of Engineers. Since June, an interagency group convened by the White House Office on Environmental Policy has heard from farmers, environmentalists, developers, scientists, state and local public officials, and members of Congress about our nation's wetlands.

The interagency working group was formed in response to a request to President Clinton from seven U.S. Senators asking that the White House take the lead in resolving the contentious wetlands issues that have been the center of controversy and disagreements for years.

"The new agreement is a significant advance in protecting American wetlands, which are currently being lost at a rate of nearly 300,000 acres per year," said Carol M. Browner, Administrator of the U.S. Environmental Protection Agency. "The agreement is fair to landowners at the same time that it protects our water quality and wildlife."

Agriculture Secretary Mike Espy said, "This new wetlands policy is meaningful reform -- for the environment and for the farmers and ranchers of America. It is a fair and flexible policy that simplifies the process of identifying wetlands and provides farmers a simpler method for identifying federal requirements for wetland conservation."

(MORE)

The wetlands initiative includes more than 40 changes to current wetlands policy, including establishing a more effective process so that landowners and farmers can seek review of permit decisions without having to go to court.

Wetlands protection efforts in recent years have been controversial, leading to years of protracted disagreements between federal agencies that undercut the effectiveness of the program and caused confusion and frustration among the states and with the public. The plan unveiled today breaks the gridlock caused in the past by warring federal agencies and reflects a new consensus on a wide-ranging set of improvements to the program.

"The cooperation fostered in the interagency working group will translate into better coordination in the field, more effective wetlands protection, and a more efficient regulatory program," said G. Edward Dickey, Acting Assistant Secretary of the Army for Civil Works.

Gerald B. Digeress, President of the National Association of Conservation Districts and a dairy farmer said, "After years of confusion and conflict regarding wetlands protection and regulation, America's conservation districts welcome what appears to be a fair, flexible and technically feasible approach that recognizes the environmental, economic and social benefits of these valuable resources."

The plan will better protect wetlands by closing a loophole in regulations that allowed certain destructive activities, such as draining wetlands, to go unregulated. It also expands a wetlands reserve program to allow farmers to sell easements to the government for wetlands restoration purposes.

The plan includes several administrative actions that will take effect over the next several months, as well as legislative recommendations for Congress this fall as part of the reauthorization of the Clean Water Act.

Specifically, the wetlands plan will:

-- Establish a new, efficient, money- and time-saving administrative appeals process so that farmers and other landowners can seek review of permit decisions without going to court;

-- Continue use by all agencies of the 1987 wetlands delineation manual pending completion and review of the National Academy of Sciences study, expected in September 1994. Any future revisions to the manual will be subject to a public rule-making process;

(MORE)

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-- Impose deadlines and provide additional guidance so that permitting decisions will be made in a timely and more predictable fashion;

-- Increase emphasis on state, tribal and local government roles, as well as voluntary wetlands protection and restoration programs with landowners;

-- Reduce duplication and inconsistency for American farmers, by designating the Soil Conservation Service of the U.S. Department of Agriculture as the lead agency for wetlands determinations on agricultural lands;

-- Withdraw a proposed rule that would have left critical Alaskan wetlands unprotected.

#

A SUMMARY OF**"PROTECTING AMERICA'S WETLANDS:
A FAIR, FLEXIBLE, AND EFFECTIVE APPROACH"**

August 24, 1993

INTRODUCTION

The Clinton Administration is proposing a comprehensive package of improvements to the Federal wetlands program that reflects a new broad-based consensus among Federal agencies. For years, many have argued that the Federal government badly needed to improve its wetlands program to make it fairer and more effective. But for too long, contradictory policies from feuding Federal agencies have blocked progress, creating uncertainty and confusion. This wetlands package reflects a sharp break through the past gridlock caused by warring Federal agencies and contains a balanced, common sense, workable set of improvements that will make the program simpler, fairer, better coordinated with state and local efforts and more effective at protecting wetlands.

BACKGROUND

The Nation's wetlands perform many functions that are important to society, such as improving water quality, recharging groundwater, providing natural flood control, and supporting a wide variety of fish, wildlife and plants. The economic importance of wetlands to commercial fisheries and recreational uses is also enormous.

The Nation has lost nearly half of the wetland acreage that existed in the lower 48 States prior to European settlement. The Nation's wetlands continue to be lost at a rate of hundreds of thousands of acres per year due to both human activity and natural processes. This continued loss occurs at great cost to society.

Notwithstanding the importance of wetland resources, Federal regulatory programs to protect wetlands have caused considerable controversy. Critics of Federal wetlands regulatory programs have effectively characterized those programs as unfair, inflexible, inconsistent, and confusing. Supporters of wetlands protection have responded -- with equal effectiveness -- by emphasizing the environmental and economic benefits associated with protecting the Nation's wetlands.

As both sides have voiced their strongly held opinions, the debate over Federal wetlands policy has become increasingly divisive, with agencies fighting agencies and generating enormous confusion among the public and the states and stalling needed reforms in the program. In short, wetlands policy had become one of the most controversial environmental issues facing the Federal government, slowing work on the reauthorization of the overall Clean Water Act.

THE INTERAGENCY WORKING GROUP ON FEDERAL WETLANDS POLICY

The Administration convened the Interagency Working Group on Federal Wetlands Policy in early June with the goal of developing a package of Clinton Administration initiatives to end the wetlands wars, break the deadlock over Federal wetlands policy and develop a set of workable improvements to the program. The group has been chaired by the White House Office on Environmental Policy and has included the participation of the Environmental Protection Agency (EPA), the Army Corps of Engineers (Corps), the Office of Management and Budget, and the Departments of Agriculture (USDA), Commerce, Energy, Interior, Justice, and Transportation.

The working group sought the views of a broad range of stakeholders representing all perspectives in the wetlands debate. For example, the group has received presentations that have included: a bipartisan group of eight members of the U.S. Congress; representatives of State and local government; environmentalists; the development community; agricultural interests; scientists; and others.

After listening to this broad range of interests, the working group established five principles that serve as the framework for the Administration's comprehensive package of wetlands reform initiatives.

FIVE PRINCIPLES FOR FEDERAL WETLANDS POLICY

- 1) The Clinton Administration supports the interim goal of no overall net loss of the Nation's remaining wetlands, and the long-term goal of increasing the quality and quantity of the Nation's wetlands resource base;
- 2) Regulatory programs must be efficient, fair, flexible, and predictable, and must be administered in a manner that avoids unnecessary impacts upon private property and the regulated public, and minimizes those effects that cannot be avoided, while providing effective protection for wetlands. Duplication among regulatory agencies must be avoided and the public must have a clear understanding of regulatory requirements and various agency roles;
- 3) Non-regulatory programs, such as advance planning; wetlands restoration, inventory, and research; and public/private cooperative efforts must be encouraged to reduce the Federal government's reliance upon regulatory programs as the primary means to protect wetlands resources and to accomplish long-term wetlands gains;
- 4) The Federal government should expand partnerships with State, Tribal, and local governments, the private sector and individual citizens and approach wetlands protection and restoration in an ecosystem/watershed context; and
- 5) Federal wetlands policy should be based upon the best scientific information available.

A COMPREHENSIVE PACKAGE OF REFORMS

Building upon these principles, the working group has developed a comprehensive package of initiatives that will significantly reform Federal wetlands policy, while maintaining protection of this vital natural resource. This package includes regulatory reforms and innovative, non-regulatory policy approaches; it includes administrative actions that will take effect immediately, and legislative recommendations for Congress to consider during the reauthorization of the Clean Water Act. The Clinton Administration looks forward to working closely with the Congress to implement this new approach to Federal wetlands policy.

The reform package includes the following initiatives:

- To affirm its commitment to conserving wetlands resources, the Administration will issue an Executive Order embracing the interim goal of no overall net loss of the Nation's remaining wetlands resource base, and a long-term goal of increasing the quality and quantity of the Nation's wetlands;
- To increase fairness in the wetlands permitting process, the Corps will establish an administrative appeals process so that landowners can seek speedy recourse if permits are denied without having to go to court;
- To make sure that decisions are made without delay, the Corps will establish deadlines for wetlands permitting decisions under the Clean Water Act;
- To reduce uncertainty for American farmers, yesterday the Corps and EPA issued a final regulation ensuring that approximately 53 million acres of prior converted cropland -- areas which no longer exhibit wetlands characteristics -- will not be subject to wetlands regulations;
- To reduce duplication and inconsistency for American farmers, the Soil Conservation Service will be the lead Federal agency responsible for identifying wetlands on agricultural lands under both the Clean Water Act and the Food Security Act;
- To close a loophole that has led to the degradation and destruction of wetlands, yesterday the Corps and EPA issued a final regulation to clarify the scope of activities regulated under the Clean Water Act;
- To emphasize that all wetlands are not of equal value, yesterday EPA and the Corps issued guidance to field staff highlighting the flexibility that exists to apply less vigorous permit review to small projects with minor environmental impacts;
- To ensure consistency and fairness, the Army Corps of Engineers, the Environmental Protection Agency, the Soil Conservation Service, and the Fish and Wildlife Service will all use the same procedures to identify wetland areas;

- To increase the predictability and environmental effectiveness of the Clean Water Act regulatory program and to help attain the no overall net loss goal, the Administration endorses the use of mitigation banks;
- To reduce the conflict that can result between wetlands protection and development when decisions are made on a permit-by-permit basis, the Administration strongly supports incentives for States and localities to engage in watershed planning;
- To provide effective incentives for farmers to restore wetlands on their property, the Administration will continue to support increased funding for the USDA's Wetland Reserve Program; and
- To help attain the long-term goal of increasing the quantity and quality of the Nation's wetlands, the Administration will promote the restoration of damaged wetland areas through voluntary, non-regulatory programs.

CONCLUSION

This package breaks the gridlock that has paralyzed wetland policy in the past and represents a major advance in reforming and improving the wetlands program nationwide. It reflects the President's broader commitment to "reinventing" government to make it more responsive, more effective and more efficient.

The critics of the wetlands regulatory program have performed a service to the country by highlighting the need for meaningful reform in the administration of wetland regulatory programs. Many of the much needed reforms contained in this package -- such as permit deadlines, an appeals process, mitigation banking, and increasing the role of state and local government in wetlands regulation -- have been proposed by those seeking improvements in the operation of the current regulatory program.

The supporters of wetlands protection have also performed a service by helping to inform the Nation of the environmental and economic importance of wetlands, a valuable natural resource that was once routinely destroyed. Their strong commitment to protecting and restoring this vital resource is also reflected in this package. For example, a loophole has been closed in Federal regulations that allowed the degradation and destruction of wetlands; the "Alaska 1% rule," which would have greatly relaxed wetlands protection in Alaska, will be withdrawn; and the Administration will draft an Executive Order affirming its commitment to the preservation and restoration of wetland areas.

By adopting an approach based upon the effective protection of an important natural resource in a manner that is fair and flexible, the Clinton Administration proposes a wetlands policy that recognizes both the value of wetland resources and the need to minimize regulatory burdens.

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PROTECTING AMERICA'S WETLANDS:**I. INTRODUCTION**

The Clinton Administration is proposing a comprehensive package of improvements to the Federal wetlands program that reflects a new broad-based consensus among Federal agencies. For years, many have argued that the Federal government badly needed to improve its wetlands program to make it fairer and more effective. But for too long, contradictory policies from feuding Federal agencies have blocked progress, creating uncertainty and confusion. This wetlands package reflects a sharp break through the past gridlock caused by warring Federal agencies and contains a balanced, common sense, workable set of improvements that will make the program simpler, fairer, better coordinated with state and local efforts and more effective at protecting wetlands.

The Nation's wetlands perform many functions that are important to society, such as improving water quality, recharging groundwater, providing natural flood control, and supporting a wide variety of fish, wildlife and plants. The economic importance of wetlands to commercial fisheries and recreational uses is also enormous. The Nation has lost nearly half of the wetland acreage that existed in the lower 48 States prior to European settlement. The Nation's wetlands continue to be lost at a rate of hundreds of thousands of acres per year due to both human activity and natural processes. This continued loss occurs at great cost to society.

Notwithstanding the importance of wetland resources, efforts to protect wetlands have caused considerable controversy. It is estimated that 75 percent of the Nation's wetlands in the lower 48 States are located on private property. It is, therefore, imperative to recognize and consider fully the impacts of wetlands protection policies on individuals who own wetland property. Statutory, regulatory, and policy objectives should be accomplished in a manner that avoids unnecessary impacts upon such landowners.

Given the environmental and economic significance of wetlands, the alarming rate of wetlands loss, and concerns for private landowners, the Interagency Working Group on Federal Wetlands Policy began developing a comprehensive package of initiatives in June. The policy positions contained in this paper strongly support the effective protection and restoration of the Nation's wetlands, while advocating much-needed reforms to increase the fairness and flexibility of Federal regulatory programs.

II. A DIVISIVE DEBATE

Federal programs to protect the Nation's wetlands have been the focus of considerable controversy in recent years. Much of the attention focused upon the 1989 Interagency Wetlands Delineation Manual (1989 Manual). The 1989 Manual was prepared jointly by the U.S. Army Corps of Engineers (the Corps), the Environmental Protection Agency (EPA), the Fish and Wildlife Service (FWS) of the Department of the Interior, and the Department of Agriculture's Soil Conservation Service (SCS). It was developed in response to criticism that Federal agencies

A FAIR, FLEXIBLE, AND EFFECTIVE APPROACH

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were not using a single set of common procedures to "delineate" — or identify — wetlands under the jurisdiction of programs administered by these agencies.

But rather than alleviating concerns about inconsistency, the 1989 Manual only further fueled the controversy. Critics claimed that the 1989 Manual represented a major expansion of regulatory jurisdiction without opportunity for public participation. In response, the Bush Administration embarked upon a closed-door effort to revise the 1989 Manual. This process resulted in the technically flawed 1991 Manual that would have dramatically and indefensibly reduced the amount of wetlands subject to protection. The proposed 1991 Manual generated even further controversy and resulted in even greater polarization of the debate on Federal wetlands policy.

In addition to assailing the 1989 Manual, critics of Federal wetlands regulatory programs effectively characterized those programs as unfair, inflexible, inconsistent, and confusing. Supporters of wetlands protection responded — with equal effectiveness — by emphasizing the environmental and economic benefits associated with protecting the Nation's wetlands.

As both sides voiced their strongly held opinions, the debate over Federal wetlands policy became increasingly divisive. The opposition that developed to both the 1989 and 1991 Manuals demonstrated the policy deadlock that had developed. Wetlands policy has become one of the most controversial environmental issues facing the Federal government, just as Congress embarks upon the reauthorization of the Clean Water Act.

III. THE INTERAGENCY WORKING GROUP ON FEDERAL WETLANDS POLICY

The Administration convened the Interagency Working Group on Federal Wetlands Policy in early June with the goal of developing a package of Clinton Administration initiatives to break the deadlock over Federal wetlands policy. The group has been chaired by the White House Office on Environmental Policy and has included the participation of the EPA, the Army (the Corps of Engineers), the Office of Management and Budget, and the Departments of Agriculture, Commerce, Energy, Interior, Justice, and Transportation.

The working group sought the views of a broad range of stakeholders representing all perspectives in the wetlands debate. For example, the working group has received presentations that have included: a bipartisan group of eight members of the U.S. Congress; representatives of State and local government; environmentalists; the development community; agricultural interests; scientists and others.

After listening to this broad range of interests, the working group began its policy deliberations by establishing the following five principles that serve as the framework for the Administration's comprehensive package of wetlands reform initiatives.

PROTECTING AMERICA'S WETLANDS:**IV. FIVE PRINCIPLES FOR FEDERAL WETLANDS POLICY**

- 1) The Clinton Administration supports the interim goal of no overall net loss of the Nation's remaining wetlands, and the long-term goal of increasing the quality and quantity of the Nation's wetlands resource base;
- 2) Regulatory programs must be efficient, fair, flexible, and predictable, and must be administered in a manner that avoids unnecessary impacts upon private property and the regulated public, and minimizes those effects that cannot be avoided, while providing effective protection for wetlands. Duplication among regulatory agencies must be avoided and the public must have a clear understanding of regulatory requirements and various agency roles;
- 3) Non-regulatory programs, such as advance planning; wetlands restoration, inventory, and research; and public/private cooperative efforts must be encouraged to reduce the Federal government's reliance upon regulatory programs as the primary means to protect wetlands resources and to accomplish long-term wetlands gains;
- 4) The Federal government should expand partnerships with State, Tribal, and local governments, the private sector and individual citizens and approach wetlands protection and restoration in an ecosystem/watershed context; and
- 5) Federal wetlands policy should be based upon the best scientific information available.

V. A COMPREHENSIVE PACKAGE OF REFORMS

Building upon these principles, the working group has developed a comprehensive package of initiatives that will significantly reform Federal wetlands policy, while maintaining protection of this vital natural resource. This package includes regulatory reforms and innovative, non-regulatory policy approaches; it includes administrative actions that will take effect immediately, and legislative recommendations for Congress to consider during the reauthorization of the Clean Water Act. The Clinton Administration looks forward to working closely with the Congress to implement this new approach to Federal wetlands policy. In addition, the Administration will establish an ongoing interagency working group, to be chaired by the Office on Environmental Policy, to monitor the implementation of the initiatives contained in the reform package.

The reform package includes the following initiatives:

- To affirm its commitment to conserving wetlands resources, the Administration will issue an Executive Order embracing the interim goal of no overall net loss of the Nation's remaining wetlands resource base, and a long-term goal of increasing the quality and quantity of the Nation's wetlands;

A FAIR, FLEXIBLE, AND EFFECTIVE APPROACH**5**

- To increase fairness in the wetlands permitting process, the Corps will establish an administrative appeals process so that landowners can seek recourse short of going to court;
- To increase fairness and efficiency in the wetlands permitting process, the Corps will establish deadlines for wetlands permitting decisions under the Clean Water Act;
- To reduce uncertainty for American farmers, yesterday the Corps and EPA issued a final regulation ensuring that approximately 53 million acres of prior converted cropland -- areas which no longer exhibit wetlands characteristics -- will not be subject to wetlands regulations;
- To reduce duplication and inconsistency for American farmers, the Soil Conservation Service will be the lead Federal agency responsible for identifying wetlands on agricultural lands under both the Clean Water Act and the Food Security Act;
- To close a loophole that has led to the degradation and destruction of wetlands, yesterday the Corps and EPA issued a final regulation to clarify the scope of activities regulated under the Clean Water Act;
- To emphasize that all wetlands are not of equal value, yesterday EPA and the Corps issued guidance to field staff highlighting the flexibility that exists to apply less vigorous permit review to small projects with minor environmental impacts;
- To ensure consistency and fairness, the Army Corps of Engineers, the Environmental Protection Agency, the Soil Conservation Service, and the Fish and Wildlife Service will all use the same procedures to identify wetland areas;
- To increase the predictability and environmental effectiveness of the Clean Water Act regulatory program and to help attain the no overall net loss goal, the Administration endorses the use of mitigation banks;
- To reduce the conflict that can result between wetlands protection and development when decisions are made on a permit-by-permit basis, the Administration strongly supports incentives for States and localities to engage in watershed planning;
- To provide effective incentives for farmers to restore wetlands on their property, the Administration will continue to support increased funding for the USDA's Wetland Reserve Program; and

PROTECTING AMERICA'S WETLANDS:

- To attain the long-term goal of increasing the quantity and quality of the Nation's wetlands, the Administration will promote the restoration of damaged wetland areas through voluntary, non-regulatory programs.

The complete package of reform initiatives follows. (Some initiatives are listed under more than one heading for the sake of clarity.) By proposing an approach based upon effective protection and restoration of the Nation's wetlands, while adopting much-needed reforms to increase the fairness and flexibility of regulatory programs, the Administration's reform package offers a tremendous opportunity to move beyond the divisiveness that has characterized the wetlands policy debate in recent years.

A. ADDRESSING LANDOWNER CONCERNS

Issue Definition: The program that regulates wetlands under Section 404 of the Clean Water Act has been criticized as being slow, unpredictable and unfair. For example, it has been claimed that permits take too long to obtain; that wetlands delineations are sometimes slow, inaccurate, and inconsistent; and that it is unfair that the Corps does not provide a process by which landowners can appeal a jurisdictional determination or the denial of a wetlands permit short of suffering the expense of going to court.

Administration Position: The Clinton Administration believes that the Federal government has a responsibility to the public to conduct such regulatory programs in a manner that is efficient, responsive and fair. Therefore, the Administration supports the following reforms that will reduce the impact of regulation on the public, while meeting our objectives to protect wetlands:

● **Deadlines for Permit Action** Within one year the Corps will modify its regulations, through a public rulemaking process, to establish regulatory deadlines for reaching decisions regarding permit applications. The regulations will generally require the Corps to reach permit decisions within 90 days from the date of issuance of the public notice, unless precluded by other laws, such as the National Environmental Policy Act. The Administration will strongly support the additional personnel and funding necessary to meet these deadlines for permit action.

● **The Adoption of an Appeals Process** Within one year, the Corps will develop an administrative appeals process under the Section 404 regulatory program. The process, which will be implemented after a public rulemaking, will be designed to allow for administrative appeals of the Corps' determination that it has regulatory jurisdiction over a particular parcel of property, permit denials, and administrative penalties. The process will allow third parties to participate in applicant appeals of permit denials and will require that applicants exercise their right to appeal before initiating judicial action. The Administration will strongly support the additional personnel and funding necessary to implement successfully the appeals process.

A FAIR, FLEXIBLE, AND EFFECTIVE APPROACH

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The USDA already has an appeals process in place and landowners will be able to appeal SCS wetlands delineations through that administrative process.

• *Delineation Training and Certification* All employees of Federal agencies who conduct wetlands delineations will be required to complete the interagency wetlands delineation training program to improve accuracy and consistency in delineation in Federal wetlands programs or have comparable training and experience. As appropriate, State and Tribal agencies will also be encouraged to participate in the Federal training program. In addition, by the end of 1993, the Corps will propose regulations for implementing a certification program for private sector delineators.

By requiring training of Federal delineators, jurisdictional determinations can be done more accurately and consistently across the country. By encouraging the growth of a pool of certified private sector wetlands consultants, jurisdictional determinations can be performed far more quickly than if the job is solely the responsibility of Federal agency personnel. In addition, the Corps will streamline the process by which it considers and accepts delineations performed by certified wetlands consultants.

• *Promote Voluntary, Cooperative Programs.* With 75 percent of the Nation's remaining wetlands in the lower 48 States located on privately owned property, it is clear that cooperation with the private sector in implementation of wetlands protection and restoration activities is critical. Advance planning (see next issue) offers an excellent opportunity to involve the public in general, and property owners in particular, in developing and implementing wetlands protection and restoration plans. The Administration will support planning activities that include cooperative activities with property owners, and will increase support for programs that assist landowners in the implementation of such plans through restoration, technical assistance and information programs.

B. ADVANCE PLANNING AND WATERSHED MANAGEMENT

Issue Definition: Typically, decisions affecting wetlands are made on a project-by-project, permit-by-permit basis. This often precludes the effective consideration of the cumulative effects of piecemeal wetlands loss and degradation. It also hampers the ability of State, Tribal, regional, and local governments to integrate wetlands conservation objectives into the planning, management, and regulatory tools they use to make decisions regarding development and other natural resource issues. This can often result in inconsistent and inefficient efforts among agencies at all levels of government, and frustration and confusion among the public.

In contrast, advance planning, particularly comprehensive planning conducted on a watershed basis, offers the opportunity to have strong participation by State, Tribal, and local governments and private citizens in designing and implementing specific solutions to the most pressing environmental problems of that watershed. Advance planning generally involves at least the

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identification, mapping, and preliminary assessment of relative wetland functions within the planning area. More comprehensive advance planning may identify wetlands that merit a high level of protection and others that may be considered for development, and may also incorporate wetlands conservation into overall land use planning at the local level. Advance planning can provide greater predictability and certainty to property owners, developers, project planners, and local governments.

Administration Position: To encourage greater use of comprehensive advance planning, particularly with State, Tribal, regional, and local involvement, and to identify wetlands protection and restoration needs, opportunities, and concerns, the Administration supports the following actions:

● **Provide Incentives for States/Locals to Integrate Watershed and Wetlands Planning.** The Clean Water Act should authorize the development of State watershed protection programs, which should include local and regional involvement and Federal approval of the State programs. Wetlands should be incorporated into the overall watershed approach, with minimum standards for wetlands protection and restoration planning. Approved watershed plans would receive a high priority for technical and financial support for activities such as mitigation banking, advance identification, and watershed-based categorization under the Section 404 regulatory program. There would also be a high priority given to developing Programmatic General Permits that defer to local regulatory programs implementing approved watershed plans.

● **Endorse State/Tribal Wetlands Conservation Plans.** Congress should endorse the development of State/Tribal comprehensive wetland plans, with the goal of supporting State and Tribal efforts to protect and manage their wetlands resources. EPA is currently funding the development of 22 State Wetlands Conservation Plans; Congress should provide EPA the authority to use its Wetlands Grants program to fund both their development and implementation.

● **Provide for Greater Integration of Advance Planning Into the Section 404 Regulatory Program.** The Administration will support efforts to better integrate advance planning into the Section 404 regulatory program, including appropriate local or watershed-based categorization frameworks and regionalized improvements to implementation of the existing Nationwide Permit 26 in headwaters and isolated waters. Such opportunities are expected to grow as States, Tribes, and regional and local governments progress on watershed plans, State Wetlands Conservation Plans, and other wetlands-related planning processes. Where State, Tribal, regional, or local governments have approved watershed plans that address wetlands, EPA and the Corps will give high priority to assisting with the development of categorization of wetland resources for the purpose of Section 404. Categorization approaches should be local or regional in nature, and reflect the full range of impacts and functions that affect wetlands within the watershed or planning area.

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● **Programmatic General Permits (PGPs) Under Section 404.** The Corps will issue guidance which specifies the circumstances under which State, Tribal, regional, and local governments with existing regulatory programs may assume a more active role in wetlands protection - while reducing duplication with Federal programs. PGPs are extremely useful in reducing unnecessary duplication between Federal and non-Federal regulatory programs and in generally enhancing the role of State and local governments and of advance planning, in decisions regarding wetlands and other aquatic resources. The Administration recommends that Congress amend Section 404(e) of the Clean Water Act to provide explicitly for issuance of PGPs, with appropriate environmental safeguards, for approved State, Tribal, regional, and local regulatory programs.

● **Improve Nationwide Permit 26 Through Regionalization.** In order to improve the implementation of existing Nationwide Permit 26 (NWP 26) in isolated waters and in headwater areas, the Corps, in coordination with appropriate Federal, State, and Tribal agencies, and with the opportunity for public notice and comment, will undertake a field level review of NWP 26 to develop regional descriptions of the types of waters, and the nature of activities in those waters that will not be subject to authorization under NWP 26. Advance planning efforts that have assessed the functions and values of local isolated wetlands and headwaters, and have considered factors such as cumulative losses and scarcity of particular classes of waters, will be used to facilitate this effort.

● **Mitigation Banking.** Wetland mitigation banking refers to the restoration, creation, enhancement, and, in certain defined circumstances, preservation of wetlands expressly for the purpose of providing compensatory mitigation in advance of discharges into wetlands authorized under the Section 404 regulatory program. Advance planning can be used to identify appropriate locations for, and uses of, mitigation banks. EPA and the Corps have issued guidance to their field staff that clarifies the manner in which wetlands mitigation banking fits in the Section 404 regulatory program. Congress should endorse the appropriate use of banking, with environmental safeguards, as a compensatory mitigation option under the Section 404 regulatory program, and explicitly allow use of the State Revolving Fund to capitalize mitigation banks.

● **Promote Voluntary, Cooperative Programs.** With approximately 75 percent of the Nation's remaining wetlands in the lower 48 States located on privately owned property, it is clear that cooperation with the private sector in implementation of wetlands protection and restoration activities is critical. Advance planning offers an excellent opportunity to involve the public in general, and property owners in particular, in developing and implementing wetlands protection and restoration plans. The Administration will support planning activities that include cooperative activities with property owners, and will increase support for programs that assist landowners in the implementation of such plans through restoration, technical assistance, and education and information programs.

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• *Revise the Executive Order on Wetlands.* The existing Executive Order on wetlands (E.O.11990) will be revised to direct the Federal agencies to take a watershed/ecosystem approach to wetlands protection and restoration. In addition, it will require Federal agencies that conduct or assist with multi-objective natural resource planning to incorporate wetlands protection into their programs to the extent practicable.

• *Provide Better and Coordinated Information and Technical Assistance on Wetland Issues.* The Federal agencies will coordinate efforts to provide States, Tribes, regional and local governments, and the public with timely, consistent information concerning wetlands programs. The agencies will develop a strategic plan for delivering information on regulatory programs, and encourage the development of innovative education and outreach materials and initiatives to assist the public in understanding wetlands issues.

The Administration will also direct the Wetlands Subcommittee of the Federal Geographic Data Committee to complete reconciliation and integration of all Federal agency wetland inventory activities. In addition, the Administration will coordinate wetlands restoration, research, inventory, monitoring, cooperative programs, and information and education activities.

C. AGRICULTURE

Issue Definition: Two Federal statutes regulate certain activities in wetlands on agricultural lands. The Food Security Act Wetlands Conservation provision, which is known as the Swampbuster program, is administered by the Soil Conservation Service (SCS) of the U.S. Department of Agriculture, in consultation with the Fish and Wildlife Service of the Department of the Interior. The Clean Water Act Section 404 program is administered jointly by the Department of the Army and the Environmental Protection Agency. American farmers have at times been subjected to needless duplication and frustrating inconsistency in the implementation of these two statutes.

Administration Position: The Administration recognizes the valuable contribution of agricultural producers to the Nation's economy and more generally to the American way of life. We also appreciate the challenges faced by farmers as they try to comply with wetlands regulations, as well as other environmental requirements affecting farm operations. As a result, the Administration is committed to ensuring that Federal wetlands programs do not place unnecessary restrictions or burdens on farmers and other landowners, while providing necessary environmental safeguards.

The Administration has identified a number of actions that can be taken to reduce the impact of these two wetlands protection programs on American agriculture. At the heart of this effort is a commitment on the part of all Federal agencies involved to work closely and cooperatively to coordinate their work under these two statutes so as to increase efficiency, minimize duplication, and reduce inconsistencies between the programs.

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The following initiatives demonstrate our commitment to protect and restore the Nation's wetlands and eliminate unnecessary impacts on the farm community:

• ***Prior Converted Cropland Rulemaking.*** EPA and the Corps have just completed a rulemaking which assures American farmers that an estimated 53 million acres of prior converted cropland will not be subject to regulation under Section 404 of the Clean Water Act. These lands were converted from wetlands to croplands prior to the passage of the Food Security Act of 1985, which established the Swampbuster program, and no longer exhibit wetlands characteristics. The Administration is also recommending that Congress include in the Clean Water Act a definition of "waters of the United States" that explicitly excludes from Clean Water Act jurisdiction areas determined to be prior converted cropland.

• ***A Package to Eliminate Duplication and Inconsistency***

The SCS, EPA, the Corps, and FWS signed an interagency agreement on August 23, 1993 that will reduce existing overlap and inconsistencies in the implementation of Federal wetlands programs affecting agricultural lands by undertaking, within 120 days, the following initiatives:

• ***Make the SCS the Lead Agency on Agricultural Lands.*** The SCS, the Corps, EPA, and FWS will develop procedures to provide that SCS wetland delineations will represent the final government position on the extent of Swampbuster and Clean Water Act jurisdiction on agricultural lands. Interagency training programs will be developed to ensure that agency field staff are properly trained, that standard, agreed-upon methods are utilized in making delineation and mitigation determinations, and that EPA and the Corps, consistent with their statutory authorities, have the ability to monitor SCS determinations on a programmatic basis. SCS, EPA and the Corps will also coordinate enforcement responsibilities on agricultural lands to ensure that the Federal government's activities are equitable, and consistent.

• ***Guarantee Consistency in Delineations on Agricultural Lands.*** In order to ensure consistency in identifying wetlands on agricultural lands, the Corps, EPA, SCS, and FWS will all use the same procedures to delineate wetlands. The agencies will develop field guidance for implementing the 1987 Wetlands Delineation Manual to establish procedures for identifying wetlands in areas managed for agriculture. The agencies will also expedite current efforts to revise the SCS Food Security Act Manual to eliminate inconsistencies between wetlands delineation procedures in the FSA Manual and the 1987 Manual.

• ***Greatly Increase Farmers' Certainty in Agency Decisions.*** The Corps, in coordination with EPA, SCS, and FWS, will propose a Nationwide General Permit for discharges associated with "minimal effects" and "frequently cropped with mitigation" conversions determined by SCS and FWS to qualify for exemption

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from Swampbuster provisions. This will provide greater certainty to the Nation's farmers that they can rely on SCS/FWS mitigation determinations. While the Nationwide permit will include appropriate conditions to protect valuable wetlands, an individual review by the Corps and EPA will generally not be required.

• *Clarify that Certain Man-Made Wetlands Are Not Jurisdictional.* The Corps and EPA will incorporate examples of certain man-made wetlands, such as non-tidal drainage and irrigation ditches excavated on upland, and irrigated lands that would revert to upland if irrigation ceased, into their regulations to clarify the types of waters that are generally not subject to Clean Water Act jurisdiction because they are created out of upland.

• *Wetlands Reserve Program.* The Wetlands Reserve Program (WRP) offers a significant opportunity to assist farmers who are interested in restoring wetlands on their property. Response by farmers to the nine State pilot program was overwhelming, with proposals for 250,000 acres of restoration by over 2300 farmers. The 1994 Appropriations conference report provides for 75,000 new acres to be enrolled in the WRP. When passed this will more than double — to 20 — the number of states where producers can participate in the program. The recent Midwest flood has created a particularly pressing need to assist farmers in the voluntary restoration of wetlands that have historically provided valuable flood protection. Congress should fully fund the Administration's budget requests for the WRP in 1995, and should expand the program in the 1995 Farm Bill.

D. CATEGORIZATION

Issue Definition: A persistent criticism of the Section 404 regulatory program is that the permit process is inflexible to the extent that "all wetlands are treated the same" from a regulatory perspective. Such criticisms have led to calls for a nationwide categorization system to rank wetlands based upon their relative function and importance to society.

One proposed approach would require that all of the Nation's wetlands be mapped and categorized "up front" as either "high-", "medium-", or "low-value." The ranking based upon this *a priori* categorization would, in turn, govern the regulatory response at the time of a specific permit application.

Administration Position: While conceptually *a priori* categorization and ranking may seem attractive, its technical, fiscal and environmental implications make it unworkable. For example, simply mapping the lower 48 States at a scale suitable for detailed regulatory use would involve a mammoth undertaking yielding nearly 14 million maps and costing in excess of \$500 million. Assessing the functions of every wetland in the country would be a far larger and more complicated task and would require staffing and funding many times that necessary to complete mapping alone.

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There is currently no scientific basis for a nationwide ranking of functionally distinct and diverse wetland types; any such scheme would be extremely difficult and require many years to develop. The suggestion contained in one legislative proposal that the Federal government buy all "high-value" wetlands would be infeasible from a budgetary standpoint. The Congressional Budget Office estimates the acquisition costs alone for the lower 48 States to range between \$10 billion and \$45 billion.

Finally, an *a priori* categorization and ranking approach would not provide for consideration of the individual impacts associated with specific projects. This makes little sense from the standpoint of either development or wetlands protection. For example, small projects with minor impacts would be arbitrarily prevented from proceeding in a "high-value" wetland area. At the same time, large and environmentally damaging projects would be automatically approved if they were located in "low-value" wetland areas. A nationwide *a priori* categorization scheme would further complicate the Section 404 program and would conflict with the Administration's goals of administering a scientifically sound regulatory program that is efficient, predictable and understandable.

In contrast to nationwide *a priori* categorization, opportunities exist to provide greater predictability and certainty in the regulatory process while increasing participation at the State and local levels. Local or regionally developed advance planning at the watershed level can provide a scientifically sound and workable framework for early consideration of variations in wetland functions within the Section 404 program. Appropriate functional assessment techniques can be applied to all wetlands within the boundaries of a particular watershed or planning area, and reasonably foreseeable development needs can be superimposed upon this inventory and assessment to identify appropriate regulatory responses in advance of specific permit applications. Highly functional and ecologically significant wetlands can be identified as deserving a very high standard of protection; conversely, wetlands with limited function and ecological significance, or activities that would cause minimal environmental harm, can be identified as appropriate for general permits or other regulatory streamlining methods.

In the context of individual permit reviews, the Section 404(b)(1) Guidelines currently provide the Corps and EPA with the flexibility to appropriately scale the regulatory response to reflect the relative function of the affected wetland, the character of the proposed discharge, and the probable environmental impact.

The Administration recognizes that "all wetlands are not the same" and that permit applicants deserve a timely and predictable regulatory response that is appropriate for the project being proposed. To this end, the Administration proposes the following actions:

● *Issue Section 404(b)(1) Guidelines Flexibility Guidance.* EPA and the Corps have issued guidance to their field staff to clarify and standardize implementation of the flexibility afforded by the 404(b)(1) Guidelines to make regulatory decisions regarding the analysis of project alternatives based on the relative severity of the environmental

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impact of proposed discharges. This guidance clarifies that small projects with minor impacts are subject to less rigorous permit review than larger projects with more substantial environmental impacts.

• *Develop Improved Analytical Tools for Wetlands Functional Assessment.* The agencies will expedite development of a new approach for wetland functional assessment known as the Hydrogeomorphic Classification System (HGM). The HGM methodology is being developed by the agencies and the academic community as an improved analytical tool to make timely and accurate assessments of wetland functions. This tool will assist the agencies in assessing the relative severity of environmental impact of proposed discharges to determine an appropriate regulatory response consistent with the 404(b)(1) Guidelines flexibility guidance referenced above.

• *Encourage Advance Planning Efforts.* The agencies will provide technical assistance for advance planning efforts addressing wetlands conservation, and will counsel planning participants on methods to link local or regional planning with Section 404 regulatory decision making. Wetland categorization will be supported within the context of an approved advance plan to provide landowners with early identification and characterization of wetlands on their property, streamlined permit review, and more flexible mitigation sequencing where appropriate.

• *Regionalize General Permits for Activities in Defined Categories of Waters.* The Section 404 program already embodies a form of wetlands categorization through use of Nationwide Permit 26 (NWP 26), a "category of waters" general permit that authorizes discharges into isolated waters and headwaters. The Corps will undertake, in close coordination with relevant State and Federal agencies, a field level review and evaluation of NWP 26 for the purpose of regionalizing and improving its use. Congress should amend Section 404(e) to recognize the concept of regionalized "category of waters" general permits.

E. GEOGRAPHIC JURISDICTION

The term "geographic jurisdiction" encompasses a set of wetlands issues that concern the determination of which waters fall within the jurisdiction of the Section 404 program of the Clean Water Act. These issues include the delineation manual that specifies the methodology by which wetlands are identified; the definitions of "wetlands" and "waters of the United States;" "artificial" wetlands; and isolated waters. (For "Delineation Training and Certification" see ADDRESSING LANDOWNER CONCERNS.)

Issue Definition: Delineation Manual

As previously indicated, there has been a great deal of controversy surrounding the manuals that Federal agencies use in the field to delineate wetlands. The 1989 Manual was strongly criticized by some who claimed that it was an attempt by the bureaucracy to greatly expand the geographic

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jurisdiction of wetlands regulation without opportunity for public involvement. The proposed 1991 Manual that followed was roundly criticized by those who claimed that it would greatly reduce the scope of geographic jurisdiction applied to wetlands. In an attempt to resolve this controversy, in the fall of 1992 the Congress directed EPA to fund a National Academy of Science (NAS) study of wetlands delineation. That study is expected to be completed in the Fall of 1994. Since January 1993, both the Corps and EPA have adopted the 1987 Manual, which was in use in some parts of the country prior to the issuance of the 1989 Manual.

Administration Position: The Clinton Administration supports the use of the 1987 Wetlands Delineation Manual by the Corps, EPA, SCS, and FWS pending the evaluation of the NAS study. (See "Guarantee Consistency in Delineations on Agricultural Lands" under AGRICULTURE.) The use of the 1987 Manual by the Corps and EPA has increased confidence and consistency in identifying wetlands and has diminished the controversy associated with the 1989 and 1991 manuals. If the Federal agencies jointly conclude that the 1987 Manual should be revised to respond to recommendations of the NAS, any proposed changes will be the subject of a process that will provide full opportunity for public comment. In addition, any proposed changes will be field tested by the agencies prior to final adoption to determine their impact in the real world.

To increase public confidence in the Section 404 regulatory program, the Administration recommends that the Congress endorse the continued use of the 1987 Manual in the reauthorization of the Clean Water Act, pending recommendations that may result from the NAS study.

Issue Definition: Defining "Waters of the U.S." and "Wetlands"

The Clean Water Act regulates discharges to "navigable waters," which are defined in the statute as "waters of the United States." However, the Act does not contain a definition of "waters of the United States." Similarly, while the Act refers to "wetlands," the statute does not define the term. Explicit definitions of these terms in the statute, consistent with longstanding regulatory definitions, would clarify Congressional intent with regard to the scope of geographic jurisdiction under the Act.

Administration Position: The Administration recommends that Congress incorporate the definition of "waters of the United States" contained in existing EPA and Corps implementing regulations. To provide additional consistency among Clean Water Act and Food Security Act programs, Congress should also incorporate the definition of "wetlands" contained in the Clean Water Act regulatory definitions, which is essentially identical to the wetlands definition in the 1990 Farm Bill. (The Clean Water Act regulatory definition of wetlands is preferable because some States have used the definition in State wetlands statutes. To adopt a different definition at Federal and State levels of government would only create further confusion in the regulatory program.)

The EPA/Corps definition of "waters of the United States" explicitly includes recently promulgated language clarifying that "prior converted croplands" are not waters of the

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United States for purposes of the Clean Water Act. Congress should include this clarifying language in statute as well.

The Administration also recommends that Congress add examples of "isolated waters" (e.g., prairie potholes, vernal pools, and playa lakes) to the statutory definition of wetlands. From a scientific standpoint, isolated wetlands perform many of the same vital functions performed by other aquatic areas widely accepted as wetlands, such as flood control and groundwater recharge, as well as providing critical habitat for migratory waterfowl and other wildlife, and contribute to achieving the objectives of the Clean Water Act both individually and as a class.

Issue Definition: "Artificial" Wetlands

Neither the Clean Water Act nor its implementing regulations distinguishes between natural and created wetlands. However, certain "artificial" wetlands do not normally exhibit the values and functions typically attributed to natural wetlands. These artificial wetlands are created inadvertently from upland by human activity and would revert to upland if such activity ceased. The fact that these areas are not specifically excluded from the jurisdiction of the Clean Water Act in either statute or regulation has caused confusion.

Administration Position: The EPA and the Corps will incorporate examples of artificial wetlands, such as non-tidal drainage and irrigation ditches excavated on upland, into their regulations to clarify the types of waters that are generally not subject to Clean Water Act jurisdiction because they are created out of upland.

F. MITIGATION AND MITIGATION BANKING

Issue Definition: Mitigating the harmful effects of necessary development actions on the Nation's waters is a central premise of Federal wetland regulatory programs. The Section 404 regulatory program relies upon a sequential approach to mitigating these harmful effects by first avoiding unnecessary impacts, then minimizing environmental harm, and, finally, compensating for remaining unavoidable damage to wetlands and other waters through, for example, the restoration or creation of wetlands.

Mitigation banking refers to a wetland restoration, creation, or enhancement effort undertaken expressly for the purpose of compensating for unavoidable wetland losses in advance of development actions, when compensatory mitigation is not appropriate, practicable, or as environmentally beneficial at the development site. Units of restored or created wetland are expressed as "credits", and accumulated credits are subsequently withdrawn to offset "debits" incurred at the development site.

Administration Position: The sequential approach to mitigation provides a logical, predictable, and reasonable framework for mitigating impacts associated with proposed

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development actions. The Administration supports the use of mitigation banking in appropriate circumstances as a means of compensating for authorized wetland impacts.

The Administration is proposing the following actions to ensure that mitigation of environmental impacts within the Section 404 program is effective, predictable, and consistent with a watershed management perspective:

• *Issue Mitigation Planning Guidance.* The Corps, in coordination with EPA, FWS, SCS, and the National Marine Fisheries Service (NMFS), will issue guidance to their field staff to clarify the requirements for developing compensatory mitigation conditions in Section 404 permits. This guidance is intended to increase the success of mitigation projects in offsetting impacts to wetlands and other waters resulting from permitted activities. This guidance will assist permit applicants by providing greater consistency and certainty with regard to how Section 404 mitigation requirements are applied.

• *Endorse the Use of Mitigation Banking Under the Section 404 Regulatory Program.* While a number of technical and procedural questions regarding the establishment and long term management of mitigation banks remain, conceptually mitigation banking, with appropriate environment safeguards, offers numerous advantages. Banking provides for greater certainty of successful compensatory mitigation in the permit process by requiring mitigation to be established before permits are issued. Banks are often ecologically advantageous because they consolidate fragmented wetland mitigation projects into one large contiguous parcel that can more effectively replace the lost wetland functions within the watershed. Mitigation banks also provide a framework for financial resources, planning and technical expertise to be brought together in a fashion often not possible with smaller mitigation projects.

Recognizing the advantages offered by mitigation banking to compensate for wetlands losses, Congress should endorse the appropriate use of banking as a compensatory mitigation option under the Section 404 regulatory program, within environmentally sound limits. Congress should also explicitly allow use of the State Revolving Fund by States to capitalize mitigation banks.

• *Issue Mitigation Banking Guidance.* EPA and the Corps, in coordination with FWS, NMFS, and SCS have issued guidance to their field staff to clarify the manner in which wetlands mitigation banking is appropriately used within the Section 404 regulatory program. This guidance provides interim direction pending the results of additional studies, but will encourage, within environmentally sound limits, the use of mitigation banks for compensatory mitigation under Section 404.

• *Develop Improved Analytical Tools.* The agencies will expedite current efforts being coordinated by the Corps Waterways Experiment Station to develop an improved wetland functional assessment tool, the Hydrogeomorphic Classification System, to assist in conducting impact analysis and determining appropriate and effective mitigation measures.

G. RESTORATION

Issue Definition: This Nation has lost nearly half of the wetland acreage that existed in the lower 48 States prior to European settlement. Much of this loss was due to Federal policies from an earlier era that encouraged the drainage of wetlands. The effect of this wetland loss is reflected in declining populations of fish, waterfowl, and other living things dependant upon the aquatic environment; in degraded water quality; and, most recently, in the extent of flooding in the Midwest.

The Section 404 regulatory program under the Clean Water Act and the Swampbuster provisions under the Food Security Act are attempts to stem this loss of wetlands. At best, the regulatory approach can ensure no further overall net loss. But to achieve a positive increase in the Nation's wetlands will require the restoration of some damaged wetlands.

Our ability to restore wetlands, particularly inland wetlands in agricultural areas, has been well-established over the last decade. A number of private and governmental entities have successfully restored degraded or lost wetlands to productive status. For example, the Fish and Wildlife Service, in cooperation with private landowners across the Nation, has implemented 9,500 restoration projects affecting 200,000 acres. Last year, a 50,000 acre pilot of the USDA Wetlands Reserve Program received proposals from 2,300 farmers to restore 500,000 acres.

Administration Position: Restoring some former wetlands that have been drained previously or otherwise destroyed to functioning wetlands is key to achieving the Administration's interim goal of no overall net loss of the Nation's remaining wetlands, and its long term goal to increase the quality and quantity of the Nation's wetlands base.

In support of a broad-based effort to restore a portion of the Nation's historic wetlands base that has been destroyed or degraded in the past, the Administration proposes to take the following actions:

• **Wetlands Reserve Program.** The fiscal year 1994 Agriculture Appropriations conference report provides for 75,000 new acres to be enrolled in the Wetlands Reserve Program. When passed this will also more than double - to 20 - the number of States eligible for participation in the program. The Administration will also use this program in the Midwest to restore wetlands in the course of providing financial assistance to farmers and improved flood protection for all those affected by the recent flooding. The Administration will also pursue full funding of the President's budget request for the Wetlands Reserve Program in FY 1995, and will seek to have this program expanded in the 1995 Farm Bill.

• **Promote Wetlands Restoration through Voluntary, Cooperative Programs and Outreach Activities.** Wetlands conservation efforts have historically focused largely on wetlands regulation and acquisition. These programs continue to be essential to a

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comprehensive strategy for achieving the Administration's wetlands goals. However, stemming the net loss of the Nation's wetlands base and achieving a long-term increase in wetlands acreage is dependent upon restoring wetlands that have been drained, diked, or otherwise destroyed in the past.

The universe of restorable former wetlands is predominantly on private lands, and the Administration presently has in place a number of Federal programs that focus on or incorporate voluntary, cooperative efforts to restore wetlands on private lands (e.g., FWS's Partners for Wildlife program, Bay and Estuary program, and North American Waterfowl Management Plan Joint Ventures; USDA's Wetlands Reserve, Water Bank, Water Quality Incentives, Forestry Incentives, and Stewardship Incentives programs.) The Administration will review existing Federal programs that seek to restore wetlands through cooperative, voluntary agreements and outreach efforts with private and other non-Federal landowners, and will examine opportunities to expand such programs, including education and outreach activities.

• *Revise the Executive Order on Wetlands.* The existing executive order on wetlands will be revised to incorporate the Administration's interim and long term wetland goals and to establish wetlands restoration as an essential vehicle for Federal and quasi-Federal agencies to achieve those goals through a voluntary approach.

H. ROLES OF FEDERAL AGENCIES

Issue Definition: Public support for Federal wetlands protection programs, such as the Clean Water Act Section 404 regulatory program and the Food Security Act Swampbuster program, has suffered during recent years from a perception that multiple agency roles in the Administration of these programs has contributed to confusion, delays, overlap, and a general sense that no single agency is "in charge".

Administration Position: The Administration is initiating steps to streamline the implementation of Federal wetlands protection programs by reducing duplication, overlap, and delay. For example, a memorandum of agreement has recently been signed to give the Soil Conservation Service, in consultation with the Fish and Wildlife Service, the lead agency for making wetlands delineations and mitigation decisions on agricultural land (see AGRICULTURE).

The Administration is committed to providing for effective and timely participation by the agencies with roles in Federal programs affecting wetlands while emphasizing the ultimate role of a single Federal agency decisionmaker. This increased coordination among the relevant agencies will be accomplished through the following mechanism:

• *Continue Implementation of the 1992 Interagency Section 404(q) MOAs.* EPA, the Corps, FWS, and NMFS have issued guidance to their field staff to improve interagency

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coordination procedures established in the 1992 Memoranda of Agreement under Section 404. These MOAs define a process for expedited review and resolution of agency concerns regarding individual permit decisions. The MOAs also establish procedures for resolving concerns involving the implementation of Section 404 program policy that can be accomplished without delaying individual permit decisions.

The agencies will continue to use the 1992 MOAs and, based on this experience, determine whether additional guidance or revisions to the MOAs are necessary. It is critical to the ultimate effectiveness of the Section 404 program to preserve the responsibilities of Federal resource agencies such as the EPA, FWS and NMFS to reflect their relative expertise and authorities while reducing duplication, overlap, and delay. It is equally critical to recognize and understand the Corps' leadership and final decision-making role as "project manager" for the evaluation of permit applications under the Section 404 regulatory program.

I. ROLE OF STATE, TRIBAL, AND LOCAL GOVERNMENT

Issue Definition: Decisions on where and how to protect or restore wetlands can be often most appropriately made at State, Tribal, or local levels. However, the current Section 404 regulatory program is run at the Federal level, except for certain waters in one State (Michigan). Many States, Tribes, and local governments have their own wetlands programs, which often overlap, are inconsistent with, or are simply distinct from Federal programs. This has resulted in inefficiency, frustration by the regulated public, and significant confusion.

Administration Position: The Administration is committed to increasing State, Tribal, and local government roles in Federal wetlands protection and restoration efforts. To increase consistency and clarity and reduce the confusion generated by the current relationship between the Federal government and State, Tribal, and local governments in wetlands protection and restoration, and to bring decision making to more appropriate levels, the Administration is taking the following actions:

• **Assist States, Tribes, and Local Governments in Taking a Stronger Role in Wetlands Protection.** The Administration will provide technical and financial assistance and guidance to States, Tribes, and local governments to assist them in taking more of a leadership role in wetlands protection, e.g., through State/Tribal assumption of Section 404, development of comprehensive State/Tribal Wetland Conservation Plans, application of State/Tribal Section 401 Certification authority to wetlands, development of Programmatic General Permits under Section 404, and better coordination between State, Tribal, and local permit programs and the Section 404 program.

• **Provide Incentives for States, Tribes, and Regional and Local Governments to Integrate Watershed and Wetlands Planning.** The Clean Water Act should authorize the development of State/Tribal watershed protection programs, requiring local and regional

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involvement and Federal approval of the State/Tribal programs. Wetlands should be incorporated into the overall watershed approach, with minimum requirements for wetlands protection and restoration planning. Approved watershed plans would receive a high priority for technical and financial support for activities such as mitigation banking, advance identification, and categorization under the Section 404 regulatory program. There would also be a high priority given to developing Programmatic General Permits that defer to local regulatory programs implementing approved watershed plans.

• *Increase Deference to State, Tribal, Regional, and Local Wetlands Decisionmaking.* The Corps will issue guidance which specifies the circumstances under which State, Tribal, regional, and local programs can effectively regulate Section 404 activities, through issuance of Programmatic General Permits (PGPs). The guidance will also clarify the safeguards required to ensure that these programs adequately protect wetlands and other waters.

The use of PGPs is designed to increase the roles of State, Tribal, regional, and local governments in wetlands protection, provide an incentive for watershed planning efforts, and reduce redundancy and overlap between these programs and the Federal Section 404 program. The Administration recommends that Congress amend Section 404(e) of the Clean Water Act to provide explicitly for issuance of PGPs with appropriate environmental safeguards for approved State, Tribal, regional, and local regulatory programs.

• *Endorse State/Tribal Wetlands Conservation Plans.* Congress should endorse the development of State/Tribal comprehensive wetland plans, with the goal of supporting State and Tribal efforts to protect and manage their wetlands resources. EPA is currently funding the development of 22 State Wetlands Conservation Plans; Congress should provide EPA the authority to use its Wetlands Grants program to fund both their development and implementation.

• *Encourage State/Tribal Assumption of Section 404.* Congress should provide EPA the authority to use its Wetlands Grants program to fund both development and implementation of State assumption of the Section 404 program. In addition, Congress should authorize partial assumption of the Section 404 program by States and Tribes as an interim step toward full assumption. By authorizing partial assumption of discrete areas within State or Tribal jurisdiction, the State/Tribe can get experience with the program as it develops full statutory equivalency, and the Federal government can defer to the State/Tribe as early as possible.

• *Provide States/Tribes with Access to Wetlands Delineation Training.* State and Tribal agencies will be encouraged to participate in the Federal interagency wetlands delineation training and certification programs to strengthen their abilities to conduct wetlands delineations, and to improve consistency in wetlands identification among State and Federal wetlands programs.

J. SCOPE OF REGULATED ACTIVITIES

Issue Definition: The Clean Water Act Section 404 program regulates "discharges" of dredged and fill material to wetlands and other waters of the United States. In the past, these terms have been interpreted in a way that created regulatory "loopholes" under which certain projects could be designed, using expensive and sophisticated methods, so that they did not require Section 404 authorization.

The environmental effects of these projects on wetlands are no different than less sophisticated projects involving discharges of dredged or fill material, which have been regulated under Section 404. Also, these loopholes have led to inconsistencies in how the Section 404 program has been implemented around the country.

Administration Position: The Administration has issued a final regulation, and is asking Congress to take corresponding legislative action, to close these regulatory loopholes by clarifying the types of activities that involve discharges of dredged or fill material subject to Section 404 review.

The following actions will result in better protection of wetlands, and improve the fairness, predictability, and consistency of the Section 404 program.

• **Clarify Definition of "Discharge of Dredged Material."** Under the final rule, this term is defined to ensure that discharges into wetlands and other waters of the United States will be consistently regulated when they are associated with excavation activities, such as ditching, channelization, or mechanized landclearing, that have environmental effects of concern. The rule explicitly excludes from Section 404 regulation discharges associated with activities that have only *de minimis*, or inconsequential, environmental effects. In an effort to reduce the impact of these changes on the regulation of minor activities with only minimal adverse environmental effects, the Corps will coordinate with EPA to develop additional general permits authorizing such minor activities. The revised definition does *not* affect the existing exemptions in Section 404(f) for ongoing farming, ranching, and silvicultural activities.

• **Clarify Definition of "Discharge of Fill Material."** The agencies also are clarifying the definition of "discharge of fill material" to ensure that activities in waters of the United States that involve the non-traditional use of pilings (e.g., shopping malls, parking garages) will require Clean Water Act authorization. In an effort to reduce the impact of these changes on the regulation of minor activities with only minimal adverse environmental effects, the Corps will coordinate with EPA to develop additional general permits that authorize such activities.

- *Legislative Clarification of Scope of Activities Regulated Under Section 404.* Congress should amend the Clean Water Act to make it consistent with the agencies' rulemaking.

K. STATE OF ALASKA

Issue Definition: The extent and nature of Alaska wetlands reflect, in part, climatological and physiographic conditions found in no other State. More than 99 percent of Alaska's wetlands remain, and much of the State's developable lands are wetlands. This abundance of wetlands in combination with Alaska's short building season, leads some to claim that the Section 404 program places a heavier burden on Alaskans than on the rest of the country.

The previous Administration attempted to address some of these concerns by proposing the "Alaska 1% rule" which would have exempted wetlands in Alaska from mitigation requirements until one percent of Alaska's wetland resources had been developed. The "Alaska 1% rule" was published for public comment in November 1992, and 83 percent of the over 6,500 comments received objected to the rule, raising concerns about its potential impact on the environment.

Objections to the proposed rule focused on several key considerations:

- An additional 1.5 million acres of Alaska's wetlands would be destroyed before the one percent threshold would be met, including potentially all of Alaska's 345,000 acres of extremely valuable coastal wetlands. Wetlands losses in Alaska have historically been greatest in coastal areas where the State's population is concentrated. For example, losses of high value coastal wetlands near the cities of Anchorage and Juneau are estimated to exceed 50 percent of their historic base. True?
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- Although full in-kind compensation is often not possible or practicable, opportunities do exist for restoration or rehabilitation of disturbed areas in proximity to a proposed development that have the potential to benefit affected fish and wildlife populations.
- There is enough flexibility in the existing Section 404 regulatory program to respond to Alaska's unique concerns administratively. During the last 20 years, of the approximately 4,000 permit applications received by the Corps' Alaska District, only 108 (2.7 percent) were denied; the remaining applications were either issued as individual or general permits, or withdrawn. Of the more than 3,000 individual permits issued, only 15 (0.5 percent) required compensatory mitigation.

PROTECTING AMERICA'S WETLANDS:

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The EPA and the Corps will, within the next 90 days, initiate meetings with the Federal resource agencies, State and local government agencies, representatives of native villages, industry groups including oil and fishing interests, and environmental groups, to consider other environmentally appropriate means to assure regulatory flexibility and the feasibility of alternative permitting procedures in Alaska.

In addition, the Administration is proposing a number of actions to improve implementation of the Section 404 regulatory program nationwide (e.g., issuing guidance on flexibility in the Section 404(b)(1) Guidelines, mitigation banking, mitigation planning, advance planning, programmatic general permits; establishing an administrative appeals process; providing for more explicit consideration of wetland functions; and regionalizing Nationwide Permit number 26. See earlier discussion for details). These actions, in combination with any Alaska-specific proposals developed as a result of the process outlined above, should contribute significantly to addressing Alaska's concerns with implementation of the Section 404 regulatory program.

L. TAKINGS

Issue Definition: Some critics of the Section 404 regulatory program have asserted that Federal efforts to protect wetlands constitute a "taking" of private property and require compensation under the Fifth Amendment of the Constitution. Critics of the program have proposed legislation that would characterize permit denial decisions, and other Section 404 regulatory actions, as "takings" requiring compensation.

Administration Position: The Administration strongly supports private property rights. The equitable administration of any Federal regulatory program involves more than strict technical considerations and must include sensitivity to the rights and expectations of citizens. Implementation of the Section 404 program often requires a balancing of environmental protection, public interests, and individual interests.

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However, in rare instances the public interest in conserving wetlands may substantially interfere with the rights of landowners. In such instances, Federal action will be based

Wetlands
Stephen

A FAIR, FLEXIBLE, AND EFFECTIVE APPROACH

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on the proposition that restrictions on the actions of the property owners in question are called for in order to protect the property rights, safety, environmental or economic interests of other individuals or the community at large.

In those situations where the necessary restrictions on use amount to a taking of the property, the owner will, of course, be entitled to compensation. Moreover, where a property owner believes that government action amounts to a taking, the courts are available to review such claims and to determine whether compensation is due. Due to the unique nature of each situation, these issues must be considered on a case-by-case basis. Therefore, the Administration does not support a legislative approach to this issue.

The Administration is strongly committed to reducing the impact of the 404 program on landowners. Many of the Administration positions that have been described in this paper are designed to make the program as efficient, predictable, consistent, and equitable as possible (see ADDRESSING LANDOWNER CONCERNS, AGRICULTURE and CATEGORIZATION).

VI. CONCLUSION

This comprehensive reform package represents a tremendous opportunity to move beyond the unnecessary polarization that has characterized the wetlands policy debate in recent years. While divisive, that debate has not been without value.

The critics of the wetlands regulatory program have performed a service to the country by highlighting the need for meaningful reform in the administration of wetland regulatory programs. Many of the much-needed reforms contained in this package -- such as permit deadlines, an appeals process, the use of mitigation banks, and increasing the role of State and local government in wetlands regulation -- have been proposed by critics of the current regulatory program.

The supporters of wetlands protection have also performed a service by helping to inform the Nation of the environmental and economic importance of wetlands, a vital natural resource that was once routinely destroyed. Their strong commitment to protecting and restoring this vital resource is also reflected in this package.

There will, no doubt, be individuals on each side of this divisive debate who will not be entirely pleased with every element of this reform package. But our approach provides effective protection of an important natural resource in a manner that is both fair and flexible, thus recognizing both the value of wetland resources and the need to minimize regulatory burdens.

PROTECTING AMERICA'S WETLANDS:**VII. POSTSCRIPT: LESSONS FROM THE FLOOD**

The entire Nation shares the pain of those Americans experiencing the physical destruction and economic loss caused by the disastrous floods that have devastated the Nation's heartland. Many lives have been lost, and billions of dollars in damage have been caused to property and crops. In the short term, we must use the tools available to us to assist those struggling to deal with severe economic hardship due to the floods. We must concentrate our attention on helping people rebuild their lives by protecting our riverfront communities and providing assistance to businesses and the agricultural community adversely affected by the floods.

We must also look to the future, and learn from these floods how to more effectively protect human health and safety, property, and the environment. Many scientists have concluded that past manipulation of the rivers in the Midwest has contributed to the current level of devastation by separating the river channels from their natural floodplains, eliminating millions of acres of additional flood storage capacity. Wetlands within the floodplain and higher in the watershed reduce floods by absorbing rain, snow melt, and floodwaters and releasing it slowly, thereby reducing the severity of downstream flooding.

We must be cautious not to repeat policies and practices which may have added to the destruction caused by these floods. One way to assist landowners while alleviating some flood risks is through funding wetlands restoration and acquisition programs targeted to help those in flood-ravaged areas. Programs such as the USDA Wetlands Reserve Program provide farmers with much needed support and increase the quantity of flood-absorbing wetlands in this region.

Of course, we recognize that wetlands and river system restoration and protection alone will not suffice. It will be critically important that we quickly rebuild many of the flood control structures. However, we have learned the importance of also looking at alternative non-structural measures that may provide as much or better flood damage reduction at the same or lower cost. Such measures would include using more natural river corridor systems and wetlands. In the longer term, it is important that *all* potential flood control measures, both structural and non-structural, be considered and evaluated from a pragmatic and cost-benefit standpoint.

It is not a question of whether to protect cities and farms; it is a question of how best to protect them. In the case of riverfront communities, protective levees may be the only reasonable answer, but in other circumstances, non-structural measures may make more sense. We can identify ways to protect and restore our river and wetlands systems so that they work *for us*, integrated with structural flood control measures. Of course, wetlands that provide flood control generally will also provide other important functions, such as fish and wildlife habitat, water quality improvement, and recreational opportunities. In our response to this flood-borne tragedy, the Administration will pursue measures that are the most effective means to prevent this catastrophe from happening again. Doubtless this will involve a combination of repair and construction of flood control structures together with restoration of natural flood attenuating river and wetlands systems.

EPA/Army Corps of Engineers
Wetlands Discussions
Round 2

Alaska Wetlands Initiative Draft Paper:
Outline of Recommendations

Alaska Wetlands Initiative

Outline: Issue Paper - 1

(page 1)

Subject: No Overall Net Loss of Wetlands Goal

Issue: How can the goal of "no overall net loss" of the Nation's wetlands be fairly applied in Alaska?

Administration Plan - Page 4

- Develop improved analytical tools for wetlands functional assessment.
- Endorse the use of mitigation banking under the Section 404 regulatory program.
- Issue mitigation banking guidance.
- Issue mitigation planning guidance.

Alaska Specific Actions- Page 5

- Develop interagency guidance to clarify how physical circumstances in Alaska such as the extent and type of wetlands affect determination of "practicability" under the Guidelines mitigation requirements.
- Recommend that the Executive Order on wetlands articulate the flexibility in implementing the Administrations goal of no overall net loss of the Nation's wetlands to reflect particular circumstances in Alaska.
- Develop Interagency Guidance to clarify how circumstances in Alaska such as the abundance of wetlands can reduce opportunities to avoid impacts to wetlands and affect how rigorously alternatives are evaluated.
- Develop accelerated restoration program for oil and gas projects.
- Recommend written partnerships be established between the Corps and all interested stakeholders on Section 404

Alaska Wetlands Initiative

Outline: Issue Paper - 2

(page 7)

Subject: Special Alaska Circumstances -- Legal Issues

Issue: How can the Section 404 program be best implemented in light of the Alaska Native Claims Settlement Act (ANCSA), Alaska National Interest Lands Conservation Act (ANILCA) and Statehood Acts?

Administration Plan - Page 11

Administration's Aug. 24 plan est. five principles. Two are pertinent to this issue.

-- Regulatory programs must be efficient, fair, flexible, and predictable.....avoids unnecessary impacts on private property or minimizes it. Duplication amongst federal agencies must be avoided...public must have deeper understanding of regulations and agency roles.

-- The Federal government should expand partnerships with State, Tribal and local governments, the private sector and individual citizens and approach wetlands protections and restoration in ecosystem/watershed context.

Alaska Specific Actions- Page 11

-- Increase use of alternate permit procedures (APP).

-- Propose the development of additional General Permits (G.P.)

-- Continue to Consider the public interest in Section 404 permit actions.

-- Continue to develop regionalized General Permits based on comprehensive wetlands plans.

Alaska Wetlands Initiative

Outline: Issue Paper - 3

(page 13)

Subject: Special Alaska Circumstances -- Physical Environment

Issue: How can the Section 404 program be best implemented to reflect the physical environment and wetland characteristics in Alaska?

Administration's Wetland Plan - Page 18

- Develop improved analytical tools for wetlands functional assessments.
- Issue Section 404 (b)(1) flexibility guidance.
- Encourage advance planning efforts.
- Regionalize General Permits for activities in defined categories of waters.
- Support the use of the 1987 Wetland delineation manual by the Corps, EPA, Soil Conservation Service, and USFWS pending evaluation of the NAS study.
- Recommend that Congress add examples of "isolated water" to the statutory definition of wetlands.
- Increase state, local, and tribal roles in wetlands protection and regulation.

Alaska Specific Actions- Page 19

- Evaluate the need for further Alaska specific regionalization of the 1987 wetlands delineation manual.
- Continue to develop regionalized general permits (GP).
- Develop the Hydrogeomorphic Classification System within Alaska for wetland functional assessments.
- Provide Alaska priority status in terms of funding for development of Wetland Conservation Plans.
- Provide technical assistance on wetland categorization for advanced planning efforts.
- Supplementally fund acceleration of the NWI mapping efforts in certain areas.

Alaska Wetlands Initiative

Outline: Issue Paper - 4

(page 21)

Subject: State, Local, and Native Roles

Issue: How can the role of State and local governments, and Native interests be improved in the protection and regulation of Alaska's wetlands?

Administration Plan - Page 23

- Assist States, Tribes, and Local Governments in taking a stronger role in wetlands protection.
- Provide incentives for States, Tribes, and regional and local governments to integrate watershed and wetlands planning.
- Increased deference to State, Tribal, regional and local wetlands decision making.
- Endorse State/Tribal wetland conservation plans.
- Encourage State/Tribal assumption of Section 404.
- Provide State/Tribes with access to wetland delineation training.

Alaska Specific Actions- Page 24

- Develop regional General Permits (GP).
- Develop Circle General Permits for Alaskan communities.
- Conduct monitoring of existing and future cumulative wetland impact of General Permits.
- Provide technical assistance for State Assumption.
- Recommend written partnerships be established between the Corps and all interested stakeholders on Section 404.

Alaska Wetlands Initiative
Outline: Issue Paper - 5
(page 26)

Subject: The individual Permit Process

Issue: How can the Section 404 individual permit process be best implemented in a fair flexible, and efficient manner in Alaska?

Administration Plan - Page 32

- Establish deadlines for permit action.
- Adopt an appeals process for jurisdictional determinations, permit denials, and administrative penalties.
- Issue Section 404(b)(1) flexibility guidance.

Alaska Specific Actions- Page 33

- Develop interagency guidance to clarify how circumstances in Alaska such as the abundance of wetlands can reduce opportunities to avoid impacts to wetlands and affect how rigorously alternatives are evaluated.
- Conduct exit polls or interviews with permit applicants.
- Ensure sufficient regulatory resources.

Alaska Wetlands Initiative
Outline: Issue Paper - 6
(page 34)

Subject: Alternative Permit Processing Procedures

Issue: How can alternative permit processing procedures be best implemented in a fair, flexible, and efficient manner in Alaska?

Administration Plan - Page 39

- Encourage advance planning efforts.
- Regionalize General Permits for activities in defined categories of waters.

Alaska Specific Actions- Page 39

- Expedite Development of Abbreviated Processing Procedures (APP).
- Propose the development of additional General Permits.
- Conduct cumulative impacts evaluations for General Permits.
- Develop circle General Permits for Alaskan communities.
- Conduct exit polls or interviews with permit applicants.

Alaska Wetlands Initiative

Outline: Issue Paper - 7

(page 41)

Subject: The mitigation sequence

Issue: How can the mitigation sequence best be applied in Alaska?

Administration Plan - Page 44

- Issue mitigation planning guidance.
- Develop improved analytical tools.

Alaska Specific Actions- Page 44

- Develop interagency guidance to clarify how physical circumstances in Alaska such as the extent and type of wetlands affect the determination of "practicability" under the Guidelines mitigation requirements.
- Recommend that the Executive Order on wetlands articulate the flexibility in implementing the Administration's goal of no overall net loss of the Nation's wetlands to reflect particular circumstances in Alaska.
- Issue a Special Public Notice (or local supplement to the mitigation MOA) on application of the mitigation sequence in Alaska.
- Acknowledge pre-application avoidance and minimization efforts.

Alaska Wetlands Initiative

Outline: Issue Paper - 8

(page 46)

Subject: Compensatory Mitigation

Issue: How can compensatory mitigation be best implemented in Alaska?

Administration Plan - Page 49

- Endorse the use of mitigation banking under the Section 404 regulatory program.
- Issue mitigation banking guidance.
- Issue mitigation planning guidance.

Alaska Specific Actions- Page 49

- Develop interagency guidance to clarify how physical circumstances in Alaska such as the extent and type of wetlands affect the determination of "practicability" under the Guidelines mitigation requirements.
- Recommend that the Executive Order on wetlands articulate the flexibility in implementing the Administration's goal of no overall net loss of the Nation's wetlands to reflect particular circumstances in Alaska.
- Incorporate mitigation into advance planning efforts.
- Develop mine site reclamation guidelines.
- Develop accelerated restoration program for oil and gas projects.
- Develop and implement bonding procedures for restoration/reclamation projects.
- Establish mitigation banking pilot project.
- Assess the effectiveness of mitigation efforts in Alaska.

Alaska Wetlands Initiative

Outline: Issue Paper - 9

(page 52)

Subject: Advance planning and watershed management

Issue: How can advance planning and watershed management be best implemented to improve the predictability and effectiveness of the Section 404 permitting process and the protection of wetland resources?

Administration Plan - Page 55

- Encourage advance planning efforts.
- Provide incentives for States/Locals to integrate watershed and wetlands planning.
- Endorse State/Tribal wetlands conservation plans.
- Provide for greater integration of advance planning in to the Section 404 regulatory program.
- Revise the Executive Order on wetlands.

Alaska Specific Actions- Page 56

- Provide greater emphasis on the use of advanced planning mechanisms.
- Continue efforts to provide technical assistance for wetland planning.
- Develop a watershed-based demonstration project.

Alaska Wetlands Initiative
Outline: Issue Paper - 10
(page 58)

Subject: Wetlands inventory, classification, and categorization

Issue: How can wetlands inventory, classification, and categorization be best implemented to improve the predictability and effectiveness of the Section 404 permitting process and to protect wetland resources?

Administration Plan - Page 62

- Develop improved analytical tools for wetlands functional assessment.
- Encourage advance planning efforts.
- Regionalize General Permits for activities in defined categories of waters,

Alaska Specific Actions- Page 62

- Support efforts to identify and collect wetlands data in focus areas (watersheds).
- Investigate the feasibility of centralizing wetlands information.
- Accelerate the National Wetlands Inventory mapping project,
- Continue to support the State's effort to select and apply a wetland classification method.
- Continue to support activities related to comprehensive wetlands planning.

Alaska Wetlands Initiative

Outline: Issue Paper - 11

(page 64)

Subject: Outreach and Education

Issue: How can education and outreach efforts be improved to best inform the public of the value of wetlands and the provisions of Section 404?

Administration's Wetland Plan - Page 67

-- Provide better and coordinated information and technical assistance on wetlands issues.

Alaska Specific Actions- Page 68

- Develop a comprehensive strategy for outreach and education efforts.
- Issue a series of special Public Notices.
- Conduct informal teaching workshops.
- Train staff for interaction with "bush" communities.
- Sponsor regulatory coordination positions.
- Increase emphasis on preapplication meetings.
- Initiate mobile regulatory information office.
- Recommend written partnerships be established between the Corps and all interested stakeholders on Section 404.

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Excerpt from Clinton Administration
Wetland Policy for Alaska.

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PROTECTING AMERICA'S WETLANDS:

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Alaska State Legislature

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January 24, 1994

Alvin L. Ewing
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Environmental Protection Agency
Alaska Operations Office
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Anchorage, Ak 99513-7588

Robert K. Oja, Chief
Regulatory Branch
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P.O. Box 898
Anchorage, Ak 99506-0898

Dear Mr. Ewing and Mr. Oja:

Thank you for granting an extension of the comment period on the wetlands issues papers. Wetlands policy is of vital importance to Alaska and we are glad that there will be a bit more time for the legislature and public to take a look at and respond to the Alaska Wetlands Initiative Issue Papers.

As we stated in our letter to you on January 12, we plan to schedule hearings in our respective Resources Committees on the wetlands issues. We have tentatively chosen Wednesday, February 2 for both hearings (House Resources Committee at 8:00 a.m. in Room 124 of the Capitol Building in Juneau, and Senate Resources at 3:30 p.m. in Room 205). We would like to invite both of you, or your designees, to attend those meetings to brief the committees on the current status of the federal activity regarding Alaska's wetlands, summarize the Wetlands Issue Papers, and explain the positions and plans of your agencies pertaining to wetlands policy in our state. In addition, we plan to invite Paul Rusanowski, Director of the Division of Governmental Coordination in Governor Hickel's office, to follow your presentation with a briefing on the State Administration's perspective.

Please contact our offices to let us know if you are able to accept our invitation for February 2. (Sen. Miller at 465-4907, Rep. Williams at 465-3715). We look forward to seeing you and working with.

Sincerely,

Handwritten signature of Mike Miller in black ink.

Senator Mike Miller, Chairman
Senate Resources Committee

Handwritten signature of Bill Williams in black ink.

Rep. Bill Williams, Chairman
House Resources Committee

REPLY TO
ATTENTION:DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, ALASKA
P.O. BOX 898
ANCHORAGE, ALASKA 99506-0898

31 JANUARY 1994

Regulatory Branch

Senator Mike Miller
Chair, Senate Resources Committee

and,

Representative Bill Williams
Chair, House Resources Committee
State Capitol
Juneau, Alaska 99801-1182

Dear Chairman Miller and Chairman Williams:

Thank you for your letters of January 12 and 24, 1994, regarding the Alaska Wetlands Initiative. I am glad an extension of time for you to comment on the issue papers was possible, and look forward to hearing your viewpoints.

By telephone, I informed your staff member that Mr. Al Ewing from the U.S. Environmental Protection Agency will brief your respective committees regarding the initiative process. After the White House Interagency Wetlands Working Group issues its action plans to the Corps of Engineers, I would be happy to brief your staffs or the committees themselves. The action plans are tentatively scheduled for completion in the March-April 1994 timeframe.

Thanks for your interest.

Sincerely,

Handwritten signature of Robert K. Gja in cursive.

Robert K. Gja
Chief, Regulatory Branch



US Army Corps of Engineers
Alaska District

Attachment B

News Release



Region 10

93-61

Contact: Al Ewing
EPA/Anchorage
(907) 271-5083

October 12, 1993

FOR IMMEDIATE RELEASE

Now that the Clinton Administration has proposed a package of improvements to the national wetlands program, the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers intend to consult with people in Alaska to help make the program responsive to the special circumstances of the state.

A series of two-day meetings in Juneau, Bethel, Fairbanks and Anchorage will begin later this month to involve Alaskans in a process for identifying problems with current wetlands regulation and for proposing workable solutions to those problems, according to Al Ewing, director of EPA's Alaska operations office in Anchorage.

"The goal of the agencies is to provide appropriate protection for Alaska's wetlands while eliminating unnecessary expense and administrative burdens for people needing wetlands permits," Ewing said.

The meeting schedule:

- Juneau.....Monday and Tuesday, October 25 and 26
- Bethel.....Thursday and Friday, October 28 and 29
- Fairbanks.....Tuesday and Wednesday, November 2 and 3
- Anchorage.....Thursday and Friday, November 4 and 5

All meetings will be open to the public.

"We're dead serious about hearing all points of view from Alaskans who have a stake in wetlands regulation," said Ewing. "At each meeting location, we have invited participation from the oil and gas industry, from developers, from native groups, from environmental organizations, from people who represent sports and commercial fishing, from tourism, from forestry and from government. You name it, they'll be there."

(more)

-2-

Persons invited to the meetings will make their presentations to a broad panel of stakeholders, including the interest groups mentioned above as well as state and federal governmental officials representing Governor Hickel, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the U.S. Department of Energy, the Corps of Engineers and EPA.

Also attending each of the meetings will be a representative of the White House inter-agency working group on wetlands.

EPA and the Corps of Engineers plan another set of public meetings in the same four locations in early January.

The purpose of the second round is for the Corps of Engineers and EPA to present a summary of the issues and any preliminary recommendations to the participants from the first round meetings, and to receive further stakeholder input. Following these discussions, the Corps and EPA will submit a report to the White House Interagency Working Group on Wetlands. The report will be used as the basis for an action plan to improve the wetlands regulatory program in Alaska.

While both rounds of meetings are open to the public, the panel of stakeholders will hear oral presentations only from the interest groups invited to the sessions. Written comment from anyone else is welcomed. Instructions on how to submit written comments will be given in an upcoming public notice.

STAKEHOLDERS PANEL NOMINATION INVITATION CONTACTS

ENVIRONMENTAL - all locations

Tony Turrini, Counsel PH 258-4800
National Wildlife Federation FAX 258-4811
Alaska Natural Resources Center
750 West Second Avenue, Suite #200
Anchorage, AK 99501-2168

COMMERCIAL FISHING - all locations

Jerry McCune, Executive Director PH 586-2820
United Fishermen of Alaska FAX 463-2545
211 4th No. 112
Juneau, AK 99701

SPORTFISHING - all locations

Phil Cutler, President PH 564-5828
Alaska Sportfishing Association FAX 564-4637
3605 Arctic Blvd.
Anchorage, AK 99503

OIL & GAS - only Anchorage, Juneau & Fairbanks

Judith Brady, Executive Director PH 272-1481
Alaska Oil and Gas Association FAX 279-8114
121 Fireweed Lane, Suite 207
Anchorage, AK 99503

FORESTRY - only Anchorage, Juneau & Fairbanks

Troy Reinhart, Director PH 225-6114
Alaska Forestry Association FAX 225-5920
111 Stedman St., Suite 200
Ketchikan, AK 99901

NATIVE - all locations

Julie E. Kitka, President PH 274-3611
Alaska Federation of Natives FAX 276-7989
1577 "C" St., Suite 100
Anchorage, AK 99501

DEVELOPMENT INTERESTS - all locations

Becky Gay, Executive Director PH 276-0700
Resource Development Council for Alaska FAX 276-3887
121 Fireweed Lane, Suite 250
Anchorage, AK 99503

TOURISM - all locations

Karen Cowart, Executive Director
Alaska Visitors Association
3201 C Street
Anchorage, AK 99503

PH 561-5733
FAX 561-5727

MUNICIPAL GOVERNMENT - all locations

Kent Swisher, Executive Director
Alaska Municipal League
217 Second St. Suite 200
Juneau, AK 99801

PH 586-1325
FAX 463-5480

STATE OF ALASKA - all locations

Governor Walter J. Hickel
Office of the Governor
State Capitol MS0101
PO Box 110001
Juneau, AK 99811-0301

PH 465-3500
FAX 463-3454

FEDERAL RESOURCE AGENCIES - all locations w/one rep between them:

US FISH & WILLIFE SERVICE

Walter O. Stieglitz
Regional Director, Region 7
U.S. Department of Interior
Fish and Wildlife Service
1011 E. Tudor Road
Anchorage, AK 99503

PH 786-3542
FAX 786-3306

NATIONAL MARINE FISHERIES SERVICE

Steven Pennoyer
U. S. Department of Commerce
National Marine Fisheries Service
Director, Alaska Region
PO Box 21668
Juneau, AK 99802-1668

PH 586-7221
FAX 586-7249

DEPARTMENT OF ENERGY

EPA HQ will send letter

Attachment 1

Stakeholder's Panel

Co-chairs

Alvin Ewing - EPA
Bob Oja - Corps
(Observer - Federal Interagency Working
Group on Wetlands)

Members

Environmental
Commercial Fishing
Sportfishing
Oil and Gas
Forestry
Native
Development Interests
Tourism
Municipal Government
State of Alaska
U.S. Fish & Wildlife
Service / National
Marine Fisheries Service
Dept. of Energy

Attachment 2

Schedule

Sept 21 - 23 Army Corps and EPA Headquarters and Alaska staff meet to discuss President's plan for Alaska and meet with State, Native community, and other interest groups

Oct 12 Finalize Process and mail letters to Stakeholder's Panel with description of process (including ground rules) and request for nomination of representatives

Press release describing process and providing contact points

Editorial Board Briefings on the Process
Fairbanks Daily News Miner, Juneau Empire, and Anchorage Daily News

Oct 18 Press release and public notice outlining meeting schedules and soliciting public input distributed Statewide

Distribute Fact Sheets to interest groups and press on 404 Program (see attachment 5)

Oct 25 & 26 Juneau meetings

Oct 28 & 29 Bethel meetings

Nov 2 & 3 Fairbanks meetings

Nov 4 & 5 Anchorage meetings

Nov 10 Deadline for receipt of written comments

Nov 17 Distribute compilation of identified problems and proposed solutions by Stakeholders and the public

Dec 17 Distribute draft issue papers for January meetings

Press briefing

Jan 4 Juneau meeting

Jan 6 Bethel meeting

Jan 11 Fairbanks meeting

Jan 13 Anchorage meeting

- Jan 31 Final draft issue papers with recommendations sent to Army Corps and EPA Headquarters. EPA and Army will finalize issue papers and action plan in coordination with the White House Interagency Working Group on Wetlands.
- Feb 22 Final recommendations report with implementation schedule, distributed to all involved agencies, congressional offices, and interest groups.
- Press release and press briefing

A SUMMARY OF

*"PROTECTING AMERICA'S WETLANDS:
A FAIR, FLEXIBLE, AND EFFECTIVE APPROACH"*

August 24, 1993

INTRODUCTION

The Clinton Administration is proposing a comprehensive package of improvements to the Federal wetlands program that reflects a new broad-based consensus among Federal agencies. For years, many have argued that the Federal government badly needed to improve its wetlands program to make it fairer and more effective. But for too long, contradictory policies from feuding Federal agencies have blocked progress, creating uncertainty and confusion. This wetlands package reflects a sharp break through the past gridlock caused by warring Federal agencies and contains a balanced, common sense, workable set of improvements that will make the program simpler, fairer, better coordinated with state and local efforts and more effective at protecting wetlands.

BACKGROUND

The Nation's wetlands perform many functions that are important to society, such as improving water quality, recharging groundwater, providing natural flood control, and supporting a wide variety of fish, wildlife and plants. The economic importance of wetlands to commercial fisheries and recreational uses is also enormous.

The Nation has lost nearly half of the wetland acreage that existed in the lower 48 States prior to European settlement. The Nation's wetlands continue to be lost at a rate of hundreds of thousands of acres per year due to both human activity and natural processes. This continued loss occurs at great cost to society.

Notwithstanding the importance of wetland resources, Federal regulatory programs to protect wetlands have caused considerable controversy. Critics of Federal wetlands regulatory programs have effectively characterized those programs as unfair, inflexible, inconsistent, and confusing. Supporters of wetlands protection have responded — with equal effectiveness — by emphasizing the environmental and economic benefits associated with protecting the Nation's wetlands:

As both sides have voiced their strongly held opinions, the debate over Federal wetlands policy has become increasingly divisive, with agencies fighting agencies and generating enormous confusion among the public and the states and stalling needed reforms in the program. In short, wetlands policy had become one of the most controversial environmental issues facing the Federal government, slowing work on the reauthorization of the overall Clean Water Act.

WETLANDS REGULATORY FLEXIBILITY IN ALASKA

ISSUE:

Concern has been expressed in Alaska that the Section 404 regulatory program is not responsive to the unique circumstances in the State. The "Alaska 1?" rule was proposed in November 1992 in part to address this concern. A review of the public comments on this proposal indicated that the proposal would not effectively address the perceived problems and, in fact, could cause serious impacts to critically valuable wetlands in Alaska and would contribute to significant problems in administration of the program. On August 24, 1993 President Clinton issued a comprehensive package of improvements to the wetlands program that included withdrawing the proposed "Alaska 1?" rule and initiating a process involving concerned stakeholders in Alaska to consider environmentally appropriate means of increasing regulatory flexibility in Alaska.

GOAL:

Provide a process, involving the primary stakeholders in Alaska, for identifying and addressing Alaska's legitimate concerns with Federal regulation of wetlands in Alaska. Explicitly, the goal is to provide appropriate protection for Alaska's wetlands while eliminating unnecessary expense and administrative burden for those needing wetland permits.

PROCESS OUTLINE:

- Identify stakeholders and allow them to identify representatives to participate in the consultive process.
- Process will involve meetings in Bethel, Fairbanks, Juneau and Anchorage carried out in two sessions. The two sessions will be about 60 days apart. All meetings will be open to the public and the press. While oral comments will be accepted only from representatives of the Stakeholder's Panel (See Attachment 1), the public will be invited to submit written comments. The headquarters components of the Corps and EPA will also be continuously apprised of the progress of the meetings.
- The first session will involve two meetings in two different formats on consecutive days at each of the specified locations. The meeting on the first day will involve presentations of not more than 20 minutes each by invited stakeholder representatives. Presentations will be made to the Stakeholder's Panel. This Panel will be co-chaired by the Corps of Engineers and the

Environmental Protection Agency. A representative of the White House Interagency Working Group on Wetlands will also attend all of the meetings. The purpose of presentations will be to document legitimate problems with the way the Section 404 program operates in Alaska and propose workable solutions to those problems. Presentations would also focus on aspects of the program that are working in a satisfactory manner that representatives would not like to see changed. The Panel co-chairs will ensure that points that are presented are clearly understood to facilitate discussion the following day. Panel members will reserve questions and discussion for the following day.

The meeting on the second day will involve the same invited representatives but will be conducted as a facilitated roundtable discussion. The purpose of this meeting is to allow more in-depth analysis of conflicting points of view which are expected to be identified in the meeting of the previous day. Out of this meeting, in addition to a better understanding of divergent points of view, may come areas of consensus on problems with the program that need to be dealt with, solutions to those problems, appropriate ways to measure program success, and perhaps also, parts of the program that are working well and should not be tampered with.

At the conclusion of the first session, all of the gathered information will be compiled and distributed by the Corps and EPA. The Corps and EPA, with the assistance of other Federal representatives, will then meet to evaluate the information and organized it into separate issue papers. Each issue paper will identify a problem raised, discuss options for resolving it, and present any preliminary recommendations that can be made. Both administrative and legislative options for addressing problems may be included. The draft issue papers will be distributed to the stakeholders (and available to the public) and will serve as the focus of the second round of meetings.

The second session will involve the same Stakeholders Panel (these meetings will again be open to the public) and will be held in the same four locations. The format for this round of meetings will be a one day facilitated roundtable. The purpose of this round of meetings would be to share and explain tentative findings of the Corps and EPA as articulated in the draft issue papers, and to get the benefit of the Stakeholder's opinion on how well their views on identified problems have been characterized and how

responsive the proposed solutions are to identified legitimate problems. Based on these discussions, the Corps and EPA will make appropriate further refinements to the issue papers and develop an action plan to submit to their headquarters components.

- The draft issue papers and action plan will be reviewed by the Corps and EPA headquarters components. The Corps and EPA will finalize the issue papers and action plan in coordination with the White House Interagency Working Group on Wetlands.
- The Corps and EPA will distribute their findings and implement the final action plan.

Attachment 1 (Stakeholder's Panel)
Attachment 2 (Schedule)

THE INTERAGENCY WORKING GROUP ON FEDERAL WETLANDS POLICY

The Administration convened the Interagency Working Group on Federal Wetlands Policy in early June with the goal of developing a package of Clinton Administration initiatives to end the wetlands wars, break the deadlock over Federal wetlands policy and develop a set of workable improvements to the program. The group has been chaired by the White House Office on Environmental Policy and has included the participation of the Environmental Protection Agency (EPA), the Army Corps of Engineers (Corps), the Office of Management and Budget, and the Departments of Agriculture (USDA), Commerce, Energy, Interior, Justice, and Transportation.

The working group sought the views of a broad range of stakeholders representing all perspectives in the wetlands debate. For example, the group has received presentations that have included: a bipartisan group of eight members of the U.S. Congress; representatives of State and local government; environmentalists; the development community; agricultural interests; scientists; and others.

After listening to this broad range of interests, the working group established five principles that serve as the framework for the Administration's comprehensive package of wetlands reform initiatives.

FIVE PRINCIPLES FOR FEDERAL WETLANDS POLICY

- 1) The Clinton Administration supports the interim goal of no overall net loss of the Nation's remaining wetlands, and the long-term goal of increasing the quality and quantity of the Nation's wetlands resource base;
- 2) Regulatory programs must be efficient, fair, flexible, and predictable, and must be administered in a manner that avoids unnecessary impacts upon private property and the regulated public, and minimizes those effects that cannot be avoided, while providing effective protection for wetlands. Duplication among regulatory agencies must be avoided and the public must have a clear understanding of regulatory requirements and various agency roles;
- 3) Non-regulatory programs, such as advance planning, wetlands restoration, inventory, and research; and public/private cooperative efforts must be encouraged to reduce the Federal government's reliance upon regulatory programs as the primary means to protect wetlands resources and to accomplish long-term wetlands gains;
- 4) The Federal government should expand partnerships with State, Tribal, and local governments, the private sector and individual citizens and approach wetlands protection and restoration in an ecosystem/watershed context; and
- 5) Federal wetlands policy should be based upon the best scientific information available.

A COMPREHENSIVE PACKAGE OF REFORMS

Building upon these principles, the working group has developed a comprehensive package of initiatives that will significantly reform Federal wetlands policy, while maintaining protection of this vital natural resource. This package includes regulatory reforms and innovative, non-regulatory policy approaches; it includes administrative actions that will take effect immediately, and legislative recommendations for Congress to consider during the reauthorization of the Clean Water Act. The Clinton Administration looks forward to working closely with the Congress to implement this new approach to Federal wetlands policy.

The reform package includes the following initiatives:

- To affirm its commitment to conserving wetlands resources, the Administration will issue an Executive Order embracing the interim goal of no overall net loss of the Nation's remaining wetlands resource base, and a long-term goal of increasing the quality and quantity of the Nation's wetlands;
- To increase fairness in the wetlands permitting process, the Corps will establish an administrative appeals process so that landowners can seek speedy recourse if permits are denied without having to go to court;
- To make sure that decisions are made without delay, the Corps will establish deadlines for wetlands permitting decisions under the Clean Water Act;
- To reduce uncertainty for American farmers, yesterday the Corps and EPA issued a final regulation ensuring that approximately 53 million acres of prior converted cropland — areas which no longer exhibit wetlands characteristics — will not be subject to wetlands regulations;
- To reduce duplication and inconsistency for American farmers, the Soil Conservation Service will be the lead Federal agency responsible for identifying wetlands on agricultural lands under both the Clean Water Act and the Food Security Act;
- To close a loophole that has led to the degradation and destruction of wetlands, yesterday the Corps and EPA issued a final regulation to clarify the scope of activities regulated under the Clean Water Act;
- To emphasize that all wetlands are not of equal value, yesterday EPA and the Corps issued guidance to field staff highlighting the flexibility that exists to apply less vigorous permit review to small projects with minor environmental impacts;
- To ensure consistency and fairness, the Army Corps of Engineers, the Environmental Protection Agency, the Soil Conservation Service, and the Fish and Wildlife Service will all use the same procedures to identify wetland areas;

- To increase the predictability and environmental effectiveness of the Clean Water Act regulatory program and to help attain the no overall net loss goal, the Administration endorses the use of mitigation banks;
- To reduce the conflict that can result between wetlands protection and development when decisions are made on a permit-by-permit basis, the Administration strongly supports incentives for States and localities to engage in watershed planning;
- To provide effective incentives for farmers to restore wetlands on their property, the Administration will continue to support increased funding for the USDA's Wetland Reserve Program; and
- To help attain the long-term goal of increasing the quantity and quality of the Nation's wetlands, the Administration will promote the restoration of damaged wetland areas through voluntary, non-regulatory programs.

CONCLUSION

This package breaks the gridlock that has paralyzed wetland policy in the past and represents a major advance in reforming and improving the wetlands program nationwide. It reflects the President's broader commitment to "reinventing" government to make it more responsive, more effective and more efficient.

The critics of the wetlands regulatory program have performed a service to the country by highlighting the need for meaningful reform in the administration of wetland regulatory programs. Many of the much needed reforms contained in this package — such as permit deadlines, an appeals process, mitigation banking, and increasing the role of state and local government in wetlands regulation — have been proposed by those seeking improvements in the operation of the current regulatory program.

The supporters of wetlands protection have also performed a service by helping to inform the Nation of the environmental and economic importance of wetlands, a valuable natural resource that was once routinely destroyed. Their strong commitment to protecting and restoring this vital resource is also reflected in this package. For example, a loophole has been closed in Federal regulations that allowed the degradation and destruction of wetlands; the "Alaska 1% rule," which would have greatly relaxed wetlands protection in Alaska, will be withdrawn; and the Administration will draft an Executive Order affirming its commitment to the preservation and restoration of wetland areas.

By adopting an approach based upon the effective protection of an important natural resource in a manner that is fair and flexible, the Clinton Administration proposes a wetlands policy that recognizes both the value of wetland resources and the need to minimize regulatory burdens.

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Attachment 1 (Stakeholder's Panel)
Attachment 2 (Schedule)

ALASKA CLEAN WATER ACT SECTION 404
PROGRAM EVALUATION WORKSHOPS
SCHEDULES

Juneau

Meeting Dates: October 25 & 26, 1993

Meeting place: Gastineau Salmon Hatchery
Visitor Center
2697 Channel Drive
Juneau, Alaska 99801
Phone: (907)463-5114

Meeting times: October 25, 1993

9:00 - 9:30 am Welcome and process
description

9:30 - 9:50 Presenter #1
9:50 - 10:10 Presenter #2

10:10 - 10:30 Coffee break

10:30 - 10:50 Presenter #3
10:50 - 11:10 Presenter #4
11:10 - 11:30 Presenter #5
11:30 - 11:50 Presenter #6

11:50 - 1:10 Lunch

1:10 - 1:30 Presenter #7
1:30 - 1:50 Presenter #8
1:50 - 2:10 Presenter #9
2:10 - 2:30 Presenter #10

2:30 - 2:50 Coffee Break

2:50 - 3:10 Presenter #11
3:10 - 3:30 Presenter #12
3:30 - 3:50 Presenter #13

3:50 - 4:30 Closing comments and/or
questions

RECEIVED
OCT 14 1993
ADEC
COMMISSIONER'S OFFICE

Juneau (Continued)

October 26, 1993 Facilitated Roundtable Discussions

- 8:30 - 8:45 Opening an process description
- 8:45 - 10:00 Facilitated Discussions
- 10:00 - 10:20 Coffee Break
- 10:20 - 11:50 Facilitated Discussions
- 11:50 - 1:15 Lunch
- 1:15 - 2:00 Facilitated Discussions
- 3:00 - 3:20 Coffee Break
- 3:20 - 5:00 Facilitated Discussions

ALASKA CLEAN WATER ACT SECTION 404
PROGRAM EVALUATION WORKSHOPS
SCHEDULES

Bethel

Meeting Dates: October 28 & 29, 1993

Meeting Place: Pacific Guest Hotel
Box 1298
Bethel, Alaska 99559
Phone: (907)543-4305

Meeting Times:

9:30 -	9:50	Presenter #1
9:50 -	10:10	Presenter #2
10:10 -	10:30	Coffee break
10:30 -	10:50	Presenter #3
10:50 -	11:10	Presenter #4
11:10 -	11:30	Presenter #5
11:30 -	11:50	Presenter #6
11:50 -	1:10	Lunch
1:10 -	1:30	Presenter #7
1:30 -	1:50	Presenter #8
1:50 -	2:10	Presenter #9
2:10 -	2:30	Presenter #10
2:30 -	2:50	Coffee Break
2:50 -	3:10	Presenter #11
3:10 -	3:30	Presenter #12
3:30 -	3:50	Presenter #13
3:50 -	4:30	Closing comments and/or questions

ALASKA CLEAN WATER ACT SECTION 404
PROGRAM EVALUATION WORKSHOPS
SCHEDULES

Bethel (Continued)

October 29, 1993 Facilitated Roundtable Discussions

8:30 - 8:45 Opening an process description

8:45 - 10:00 Facilitated Discussions

10:00 - 10:20 Coffee Break

10:20 - 11:50 Facilitated Discussions

11:50 - 1:15 Lunch

1:15 - 3:00 Facilitated Discussions

3:00 - 3:20 Coffee Break

3:20 - 5:00 Facilitated Discussions

ALASKA CLEAN WATER ACT SECTION 404
PROGRAM EVALUATION WORKSHOPS
SCHEDULES

Fairbanks

Meeting Dates: November 2 & 3, 1993

Meeting Place: Captain Bartlett Hotel
1411 Airport Way
Fairbanks, Alaska 99701
Phone: (907) 452-1888

Meeting Times:

9:00 - 9:30 am	Welcome and process description
9:30 - 9:50	Presenter #1
9:50 - 10:10	Presenter #2
10:10 - 10:30	Coffee break
10:30 - 10:50	Presenter #3
10:50 - 11:10	Presenter #4
11:10 - 11:30	Presenter #5
11:30 - 11:50	Presenter #6
11:50 - 1:10	Lunch
1:10 - 1:30	Presenter #7
1:30 - 1:50	Presenter #8
1:50 - 2:10	Presenter #9
2:10 - 2:30	Presenter #10
2:30 - 2:50	Coffee Break
2:50 - 3:10	Presenter #11
3:10 - 3:30	Presenter #12
3:30 - 3:50	Presenter #13
3:50 - 4:30	Closing comments and/or questions

ALASKA CLEAN WATER ACT SECTION 404
PROGRAM EVALUATION WORKSHOPS
SCHEDULES

Fairbanks (Continued)

November 3, 1993 Facilitated Roundtable Discussions

8:30 - 8:45 Opening an process description

8:45 - 10:00 Facilitated Discussions

10:00 - 10:20 Coffee Break

10:20 - 11:50 Facilitated Discussions

11:50 - 1:15 Lunch

1:15 - 3:00 Facilitated Discussions

3:00 - 3:20 Coffee Break

3:20 - 5:00 Facilitated Discussions

ALASKA CLEAN WATER ACT SECTION 404
PROGRAM EVALUATION WORKSHOPS
SCHEDULES

Anchorage

Meeting Dates: November 4 & 5, 1993

Meeting Place:	November 4	November 5
	Loussac Library	Egan Center
	3600 Denali	555 W. 5th
	Anchorage, AK	Anchorage, AK
	Phone:261-2916	Phone:263-2800

Meeting Times:

9:00 - 9:30 am Welcome and process
description

9:30 - 9:50 Presenter #1
9:50 - 10:10 Presenter #2

10:10 - 10:30 Coffee break

10:30 - 10:50 Presenter #3
10:50 - 11:10 Presenter #4
11:10 - 11:30 Presenter #5
11:30 - 11:50 Presenter #6

11:50 - 1:10 Lunch

1:10 - 1:30 Presenter #7
1:30 - 1:50 Presenter #8
1:50 - 2:10 Presenter #9
2:10 - 2:30 Presenter #10

2:30 - 2:50 Coffee Break

2:50 - 3:10 Presenter #11
3:10 - 3:30 Presenter #12
3:30 - 3:50 Presenter #13

3:50 - 4:30 Closing comments and/or
questions

ALASKA CLEAN WATER ACT SECTION 404
PROGRAM EVALUATION WORKSHOPS
SCHEDULES

Anchorage (Continued)

November 5, 1993 Facilitated Roundtable Discussions

8:30 - 8:45 Opening an process description

8:45 - 10:00 Facilitated Discussions

10:00 - 10:20 Coffee Break

10:20 - 11:50 Facilitated Discussions

11:50 - 1:15 Lunch

1:15 - 3:00 Facilitated Discussions

3:00 - 3:20 Coffee Break

3:20 - 5:00 Facilitated Discussions

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

Attachment C

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
410 WILLOUGHBY AVENUE, SUITE 105
JUNEAU, AK 99801-1795

Phone: (907) 465-5050
Fax: (907) 465-5070

October 18, 1993

Alvin L. Ewing
Asst. Regional Administrator
U.S. EPA, Region 10
22 West 7th Avenue, Room 537
Anchorage, AK 99513
FAX: 271-3424

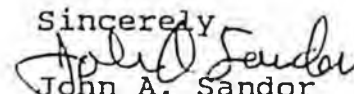
Robert K. Oja
Chief, Regulatory Branch, COE
Alaska District
P.O. Box 898
Anchorage, AK 99506-0898
FAX: 753-5567

Gentlemen:

I appreciated talking with you today about the State of Alaska's strong objections to the October 12, 1993 announcement of the very restrictive public meetings planned for Oct. 25 - Nov. 5, 1993 on the Clinton Administration's intention to withdraw the "Alaska 1% (wetlands) rule" in the administration of Sec. 404 of the Clean Water Act in Alaska. Our primary objections are:

1. The inadequacy of public notice for the meetings.
2. The confinement of meetings to four Alaska communities with no teleconference linkage with other locations in the state.
3. The exclusion of many primary Alaska stakeholders from active participation in the "public meetings". Those excluded: Alaska State Legislature, Alaska Congressional Delegation, Alaska Native Regional and Village Corporations, Agriculture, small and rural communities, hard-rock and placer miners, home-owners and realtors, school districts, small businesses, subsistence users and many other stakeholders.
4. The prohibition of publicly expressed views at the "hearings" from anyone except the twelve designated stakeholders.
5. Consideration of only those written comments received by the Nov. 10, 1993 deadline. This restricts the solicitation of views to a period of twenty working days from the Oct. 12, 1993 announcement; two working days from the Nov. 5 meeting date.

These and other provisions are unacceptable, for they deny the vast majority of Alaskans any real opportunity to participate. State designees will attend the meetings, but we request you and the White House Wetlands Policy Group correct these deficiencies.

Sincerely

John A. Sandor
Commissioner

cc: Stakeholders with copy of Oct. 12 announcement



CO
 file
 OCT 27 1993



U.S. ENVIRONMENTAL PROTECTION AGENCY
 REGION 10

Alaska Operations Office October 22, 1993
 Room 537, Federal Building
 222 W. 7th Avenue, #19
 Anchorage, Alaska 99513-7588

DEPARTMENT OF THE ARMY
 U.S. ARMY ENGINEER DISTRICT,
 Alaska
 P. O. Box 898
 Anchorage, Alaska 99506-0898

John A. Sandor
 Commissioner
 Department of Environmental Conservation
 Office of the Commissioner
 410 Willoughby Ave, Suite 105
 Juneau, AK 99801-1795

RECEIVED
 OCT 22 1993
 ADEC
 COMMISSIONER'S OFFICE

Dear Commissioner Sandor:

Thank you for your letter of concern regarding the upcoming federal Clean Water Act Section 404 program meetings to begin in Juneau on October 25th. We appreciate your concerns and would like to provide the following specific responses.

As we discussed, EPA and the Corps of Engineers, after consulting with various interest groups, as well as the State, developed a process to consider environmentally appropriate means to enhance regulatory flexibility in the Section 404 program in Alaska. We believe that this process provides the most effective opportunity to address the broad issues regarding this program that have been identified in a number of public forums in Alaska over the past several years. The message that we heard from the public is that they have spoken and now they want to see some action. That message was confirmed in the meetings EPA and the Corps held with interest groups here in Alaska in September of this year. We believe this process will allow refinement of our understanding of problems with the program and design of specific problem solutions.

We recognize the strong public interest in this process, and have done our best to provide adequate notice, while proceeding expeditiously in response to the Administration's plan. As you may be aware, we have placed public notices in the newspapers in the locations of the meetings. We have also mailed the notice to over 500 interested parties on the Corps mailing list. All meetings are open for public observation and to the press. Additionally we are encouraging written public comment that will assist us in our stated objective.

However, in response to your concern regarding the shortness of time allowed for written public comment, we will provide for a second round of public comment beginning about mid-December and running through most of January. The focus of the second round

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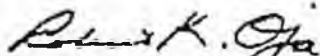
of public comments will be the draft issue papers resulting from the first round of meetings and public comment. In addition, to ensure that interested individuals have access to all discussions that occur, audio or written transcripts of each of the meetings will be prepared and available within two weeks of the last meeting.

We appreciate your thoughts on use of teleconferencing to allow broader public access to the meetings. Although we cannot make necessary arrangements for the first round of meetings, we are interested in talking with you about assistance the State might be able to provide to facilitate teleconferencing for the second round of meetings in January.

Considerable thought was given to selection of stakeholders with the objective of identifying those key groups who represent the major wetland interests in Alaska. Our goal of ensuring effective representation of Alaska interests was complicated by the competing need to keep the Panel small enough to achieve the focused discussion that will be necessary to refine the understanding of problems and to design workable solutions. We believe that we have not only achieved a reasonable balance of interest groups, but also as thorough a coverage of Alaska interests as was feasible. In fact most of the groups that you identified as being excluded, we believe are directly or indirectly represented. Miners, for example, will be represented as a part of development interests. The Alaska Miners Association will have a representative sitting on the Panel at one of the meeting locations. We are relying upon the Alaska Federation of Natives to insure that the broad range of Native interests are represented and we are confident that will be accomplished. The provision for written comments is intended to ensure that anyone who does not feel that they are otherwise represented will have an opportunity to express their views and to submit pertinent information.

Thank you for your interest in this process. We look forward to working with the State of Alaska to improve the Section 404 Program.

Sincerely,



Robert K. Oja
Chief, Regulatory Branch
Army Corps of Engineers
Alaska District



Alvin L. Ewing
Assistant Regional Administrator
Environmental Protection Agency
Alaska Operations Office

cc
Stakeholders

WALTER J. HICKEL
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

Attachment D

P. O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500

October 19, 1993

The President
The White House
Washington, DC 20500

Dear Mr. President:

I strongly support your efforts to involve Alaskans in defining concerns and developing solutions for administration of the 404 permitting process in Alaska. The "Alaska Initiative" recommendation in the White House Wetlands Task Force Report was both appropriate and appreciated. However, the hearing process being proposed by the White House wetlands policy group through the Environmental Protection Agency and the Army Corps of Engineers is in stark contrast to your goal of inclusion.

Limited participation in the hearing process will significantly impair a fair, representative, and public process. Most notably omitted from the process are the most important stakeholders in Alaska, the people. The Alaskan people should be heard, not just a solitary spokesperson for a few specific interests. In the state's view, the format allowing only written comments from the public does not provide an opportunity for true public testimony.

Secondly, the identified stakeholder list has serious omissions. It overlooks Native corporations, subsistence users, rural communities, and mining interests. These and many other groups must be represented in the process.

Thirdly, I disagree with the characterization that the 1 percent rule does not effectively address perceived problems with wetlands permitting and results in serious impacts to critically valuable wetlands in the state. This simply is not true. Such mischaracterization only serves to create dissension between groups that must work together to resolve these issues. I have maintained from the first day of my tenure as Governor that valuable wetlands will be protected. The efforts to develop a state's wetlands program have focussed on ensuring that valuable wetlands would not be subject to unnecessary losses. This position has been presented to federal agencies in numerous correspondence and testimony.

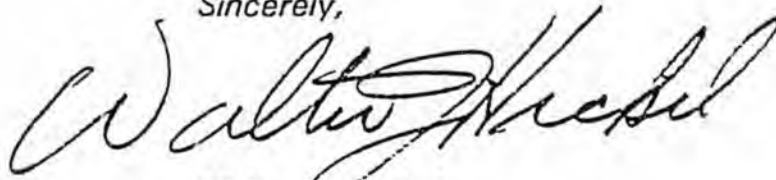
*President Bill Clinton
October 19, 1993
Page 2*

Finally, if the goal is to truly identify and address legitimate concerns with federal regulation of wetlands, then the testimony and debate must include all facets of wetland regulation and potential solutions. Arbitrary constraints on issue discussion, concerns, or possible solutions will bias the resultant issue papers and severely limit the usefulness of this entire consultative process.

Again, I will ensure that the state fully participates in this process. Please give serious consideration to the damage that could result to Alaska by not allowing a truly cross-representative section of interests and viewpoints to participate. This is an issue vital to the future of all Alaskans.

With best regards.

Sincerely,

A handwritten signature in cursive script that reads "Walter J. Hickel". The signature is written in black ink and is positioned above the printed name.

*Walter J. Hickel
Governor*

*cc: Senator Ted Stevens
Senator Frank Murkowski
Representative Don Young
Commissioner John Sandor
Mr. John Katz
Dr. Paul Rusanowski*

Statement of

Tim Cook

**Associate Director of Fisheries and the Environment
Governor's Office Washington D.C.**

before the

EPA/Corps of Engineers Juneau Wetlands Hearing

My name is Tim Cook. I am the Associate Director for Fisheries and the Environment, and I am here today representing Governor Walter J. Hickel and the State of Alaska.

The State of Alaska would like to thank the President and through him the Environmental Protection Agency and the Corp of Engineers for holding this series of meetings as a means of examining the unique wetlands situation that exists in Alaska and the feasibility of, as President Clinton's August 24 Policy Statement put it, "alternative permitting procedure in Alaska."

It is exactly this concept of alternative permitting procedures that the State of Alaska seeks. It is clear that the lower 48 states have used and abused much of their wetlands- California, over 90% los., Ohio 90% lost, Alabama and Texas over 50% lost. The lower 48 states need to have regulations that are appropriate for the dire wetlands situations that they face. However, the wetlands regulatory and permitting process that is appropriate for the lower 48 states is wholly inappropriate for the State of Alaska. Therefore, the State of Alaska is adamant in its belief that an alternative permitting procedure for our State will effectively address the problems and concerns that we face in managing our wetlands.

Alaska is unique among all of the other states. It is the only State with an arctic and subarctic climate, and a geomorphology that includes tundra and permafrost. We have more Coastline than all of the other states combined. There are more glaciers, National Parks, federal lands, forests, cold temperatures, daylight and darkness than any other state. Our State parks are larger than the entire states of Connecticut, Delaware or Rhode Island.

The wetlands situation in Alaska is different in the extreme from the rest of the United States. There is not an exact survey of the wetlands in Alaska, estimates range from 130 to 300 million acres, with 170 million being most often quoted. To put this in perspective, Alaska has more wetlands than all of the other states combined. Furthermore, Alaska has lost only a miniscule portion of its wetlands, less than 1/1000th of our total wetlands.

Wetlands in Alaska occupy 60-70% of the land mass. The remaining area is mostly either mountains, glaciers, or lakes and rivers. There are relatively few suitable uplands available for development. Many times in the lower 48 States development can occur in areas that once were wetland, but have since been filled and converted to upland. These lost wetland areas also can be used for compensatory mitigation. In Alaska, with our relatively little development, we don't have converted wetland areas to use for future development or for compensatory mitigation. Unlike the lower 48 states we are at the development stage, not the "redevelopment" stage.

The threat to wetlands in Alaska is not the same as it is in the lower 48. Agriculture has destroyed more wetlands in the lower 48 states than any other activity, yet in Alaska agriculture is almost non-existent. The potential for industrial growth is not high in Alaska. The Corps of Engineers, whose campaigns to drain swamps all across the United States to reduce malaria infected mosquitos, is not likely to be reintroduced. In short the activities that have historically had the greatest impacts on wetlands are not present in the Alaska equation.

We applaud many of the initiatives that the President's policy embodies. In particular, we support changes that will: facilitate State Assumption of the wetlands program; provide deadlines for permitting decisions; create a single lead agency for wetlands permitting; and will simplify the general permitting process. However, we are disappointed that the one percent exception was withdrawn. Furthermore, the reasons articulated to support the withdrawal of the one percent exception add to our distress.

The reasons articulated for withdrawal of the 1% exception seem to indicate both a bias and a lack of understanding of the Alaska situation. The policy statement suggests that under the 1% exception there would no longer be any regulation of wetlands development.

This is completely incorrect. The one percent exception would have required federal permitting of wetlands projects. Furthermore, it retained the requirement to minimize impacts to wetlands. Moreover, State programs such as the Coastal Zone Management Plan (CZM) and the wetlands development plan- which has not yet been implemented because of withdrawal of the 1% exception, would have further regulated wetlands development.

To suggest, as the policy statement does, that 1.5 million acres of Alaska's wetlands would be destroyed, is absurd. To date, only about 80,000 acres have been lost. Future development is unlikely to proceed at a pace that would destroy 7.5 times what has been developed in the entire history of Alaska (both as a territory and after statehood). However, even taking the worst case scenario, where 1.5 million acres were used, when compared with the vastness of Alaska it is insignificant (less than 1/200th of the land mass). Comparing the loss of 1.5 million acres in Alaska to lower 48 states' wetlands loss, Alaska's situation would be enviable- Alabama 3.9 million acres lost, Florida 9.3 million acres lost, Texas 8.4 million acres lost. The lower 48 states have lost 117 million of the original 221 million acres of wetlands. Alaska has used 80,000 acres of its 170 million wetland acres.

The President's policy goes on to state that "potentially all of Alaska 345,000 acres of extremely valuable coastal wetlands" could be destroyed. This is patently absurd. Alaska has 33,904 miles of shoreline, and there are substantially more than 345,000 acres of coastal wetlands in Alaska. To suggest that all of Alaska's high value coastal wetland could be lost is wrong.

All coastal projects that would potentially impact wetlands must be approved through the Alaska Coastal Zone Management Plan (CZM). This is a comprehensive program that is designed to insure the integrity of Alaska's coastal environment. The CZM provides a high degree of protection to high value coastal wetlands. Additionally, the State has been working to develop a comprehensive wetlands program in anticipation of gaining additional responsibility over wetlands.

Another of the articulated reasons for withdrawing the 1% exception was the concept of compensatory mitigation. Although the President's policy recognizes that "in kind compensation is often not possible" it goes on to state that "opportunities do exist for

restoration or rehabilitation of disturbed areas". With less than 1/1000 of our wetlands lost where is the restoration and rehabilitation of disturbed wetlands going to occur?

The final articulated reason for abandoning the 1% exception actually goes to the heart of the wetlands problem in Alaska. The policy states that "of the approximately 4000 permit applications received by the Corps' Alaska District, only 108 (2.7 percent) were denied." This may be in fact true, however, it does not reflect the number of permit applications that were voluntarily withdrawn.

A voluntary withdrawal is, many times, the result of a landowner being coerced by the cost and red tape of the process. For many Alaskans it is an expensive, frustrating lesson in petty bureaucracy. Typically, a land owner sets up a pre-application meeting with the Corps. At that meeting low level representatives of the federal Corps. of Engineers, EPA, Fish and Wildlife Service, National Marine Fisheries Service, as well as State natural resource agencies discuss the permit with the land owner. To quote the words of some of those who have been through the process, "these people do everything they can to discourage you from applying for a permit. They are mean, nasty, arrogant, and intimidating."

If one goes forward and applies for the permit, these same agencies review the application and usually request clarification, alterations, or modifications. At this point, the Corps sends out a form letter asking if you would like to stop the "Official Clock" while you prepare responses to the various agencies. Faced with a mountain of paper work and wanting to avoid being penalized for not responding within the given time, the landowner stops the Official Clock. Now there is not any accurate means of determining how long it took for a permit to be acted upon. It is in effect, a kangaroo court, and many land owners will voluntarily withdraw a permit.

The voluntary withdrawal can also be a conscious decision by the landowner to avoid the financial ramifications of having the permit denied and the property delineated as a wetland. Either way, the end result is, that most permit applications that are withdrawn, are because of the negative implications of permitting. Therefore, the 2.8% denial rate that is reported is not a true picture of reality.

A review of the land ownership, geomorphology, and permitting procedures in Alaska paints a picture that does not fit well in to the borders of the 404 program.

Land ownership in Alaska is far different than in the lower 48 states. Only 1% of the state is in private ownership. Forty four million acres are owned by Alaska Natives, 51 million acres are under the National Park Service, the Bureau of Land Management controls 65 million acres, U.S. Fish and Wildlife 76 million, the State has dedicated 3.2 million acres to parks. There is a huge amount of area that is, in effect, under constraint from development.

In reviewing Native lands, the Congress, under ANILCA, conveyed land to the Alaska Natives to provide for their economic and social well being. In exchange for these lands, the Alaska natives gave up their aboriginal claim against the United States. Now, the economic value of these lands are being diminished because most of these lands, like most land in Alaska are wetlands. In effect, it is the same as what has happened to many of North America's native people- worthless land is promised to them, only to be withdrawn when gold, or some other valuable resource is discovered. Make no mistake, wetlands are valuable, and there many who are willing to make the Native Alaskan pay the economic price for protecting wetlands.

In a similar vein, the people of Alaska entered into a solemn compact with the federal government when we entered the Union. The federal government provided 104 million acres to the State of Alaska because the Congress recognized that Alaska did not have the infrastructure or economics to be on an equal footing with our sister states.

Alaska has been fortunate in having abundant natural resources, however, our infrastructure is almost non-existent compared to other states. We have communities where there is no safe drinking water in the entire village. Many communities have no running water and no sewer. Hepatitis is epidemic in the bush, and the bush is almost the entire state. Our road and rail system is pitiful when compared to other states. We can't drive from here to there- we fly or take a boat. It is easy for a bureaucrat based in Anchorage or Fairbanks or Juneau, who has at best only marginal contact with bush communities, to lose sight of the reality. Anchorage and Fairbanks and Juneau are modern cities, you can drive, you can flush, you can get a drink of water out of the tap. If it weren't for the mountains

and the temperature and the state legislature, it would be hard to tell them from any city in the lower 48. That is not a true representation of Alaska. Anchorage and Fairbanks and Juneau are the urban centers of the State, but there is substantially more to the State than these three cities.

The State of Alaska is 60-70% wetland. If an area is not a wetland, it is a mountain top, a glacier or ice field, or a lake or river. There just aren't many suitable upland areas for development. Therefore, when a project is to be built, whether it is a road, a school, a runway, a sewer, or a water system it will almost always be on a wetland. This means that for almost every project in Alaska a federal wetlands permit is required, and therefore, federal agencies are conducting local land use planning. Federal land use planning is unacceptable. It has in the past led federal agencies to recommend actions that would compromise public safety, degrade governmental authority, and reduce the social and economic standard.

The City of Juneau paid \$800,000 in off-site compensation to build a taxiway at the airport. Without the taxiway aircraft were forced to "back taxi" on the main runway, which can compromise flight safety. Furthermore, ducks frequently flew across the runway from a wetland on one side of the runway to the wetland that would be filled and eliminated by the taxiway. These ducks flying at low level across the runway created a substantial hazard to aviation. It is not debated that this was a biologically productive wetland, but with the abundance of wetlands in Alaska weighed against the danger to the public that this small wetland created, did the federal agency use wise judgement in applying the 404 program.

There was another incident in Juneau where federal actions impacted local land use. The City of Juneau needed a middle school to serve students of a specific area. After selecting a site, voter approval, and a bond issue, it was determined that the site selected was a wetland. During the permitting process federal agencies suggested that the school be built in a distant suburb located in a different school district, and that a no build alternative be considered. Determination of the need for or best location of a school are not areas of which the Corps, or FWS or EPA have any expertise in. Nor should they be involved in these types of decisions.

Although different organizations and agencies have tried to color the outcome of the Lemon Creek School to fit their goals, the point is that

federal agencies are not simply regulating wetlands. In Alaska they are setting local land use policy. Local land use planing is by its nature, the product and the will of the community, i.e. democracy. When federal agencies begin to substitute their beliefs in place of those of the community, it is a subversion of our entire democratic principle.

Governor Hickel is firmly committed to protecting Alaska's wetlands. They are important to this generation and the generations to come. However, there must be balance between the needs of people and need to protect our environment. The State wants to work with the President through the Corps and EPA to create a partnership and to develop a wetlands regulation program that will benefit both the environment and the people of Alaska. Only through "alternative permitting procedures" as noted in the President's policy, can this be accomplished. We look forward to helping rewrite the permitting procedures.

STATE OF ALASKA

Bill

WALTER J. HICKEL, GOVERNOR

Attachment F

OFFICE OF THE GOVERNOR

**OFFICE OF MANAGEMENT AND BUDGET
DIVISION OF GOVERNMENTAL COORDINATION**

SOUTHCENTRAL REGIONAL OFFICE
3601 "C" STREET, SUITE 370
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PIPELINE COORDINATOR'S OFFICE
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**STATE OF ALASKA COMMENTS
BEFORE THE WETLANDS ROUNDTABLE IN ANCHORAGE
SPONSORED BY
ENVIRONMENTAL PROTECTION AGENCY AND CORPS OF ENGINEERS
NOVEMBER 4, 1993**

My name is Paul Rusanowski. I am the Director of the Division of Governmental Coordination in the office of the Governor. I am here today on behalf of Governor Walter J. Hickel representing the State of Alaska.

The State appreciates the recognition given to Alaska, and our unique wetlands concerns, in the Clinton Administration's proposed improvements to the federal wetlands program released August 24, 1993, which was the impetus to these wetlands roundtable meetings dealing with alternative permitting procedures for Alaska. However the meeting process being used is in stark contrast to the stated goal of inclusion of all stakeholders and points of view. It is clear from those attending the meetings that there was inadequate time to prepare for presentations or make arrangements for representatives to attend in person. Some of this concern has been alleviated by the provision of an open microphone at the meetings; but many stakeholders are still unaware of these meetings even taking place. It is essential that the people of the State have the maximum opportunity for input on wetlands regulation and policy improvements.

The State recommends that the EPA/COE distribute information to all 354 communities in the State, with populations greater than 25 residents, so that communities and citizens may have the opportunity to comment on wetlands concerns and proposing workable solutions. In order to accommodate such an effort the State recommends that the comment period also be extended for 60-90 days. The present scheduled comment deadline is just three working days after the end of the roundtable meetings. This schedule does not provide sufficient time for public input when word is still spreading of these roundtable meetings and the opportunity for public comment.

The timeline for response to the issue papers, scheduled for release on December 17, 1993 is also too short and occurs over a holiday period when many individuals will be

Extensive areas of coastal wetlands, including the largest blocks of vegetated estuarine wetlands, for example, the Yukon-Kuskokwim delta, Copper river delta, west side of Cook Inlet, and Izembek lagoon, have been preserved in these conservation system units. Inholdings in these areas are predominantly Native lands subject to use compatibility restrictions with surrounding refuge lands. It is true that salt marsh coastal wetlands are limited to less than 360,000 acres; but the largest and best blocks of that habitat have already been protected and are at no risk of loss. Approximately 65% of these wetlands (219,000 acres) occur in western and northern Alaska. The majority of the 107,000 acres of estuarine vegetated wetlands in southcentral Alaska occur within existing conservation system units. Only 19,000 acres of this wetland type occurs in Southeast Alaska, with the majority of it lying within existing conservation units or restricted development status through the Tongass Land Management plan.

Wetlands planning has also been a part of local community planning considerations for many years, long before it became a central focus of federal agencies. The Municipality of Anchorage, with almost one half of the State's population, finalized its first comprehensive wetlands plan in 1982. When wetlands losses for the municipality are examined in light of implementation of this planning process, we find that only 9% of the total wetlands losses occurred since 1982, and 91% prior to that date. This small amount of wetlands losses have followed the guidelines of the plan, resulting in development occurring in areas of low wetlands value within the Municipality. Several years ago the Municipality, working with the State, placed most of the Anchorage shoreline within the Potter Marsh game refuge, providing protection to more than 30 miles of estuarine wetlands. We think these actions set a standard unmatched by any other community of comparable size in the country.

Many other communities have also initiated wetlands planning efforts utilizing general permits, but successes have been mixed. Juneau has spent more than \$500,000 and six years to develop a plan that resulted in less than 400 acres being subject of local jurisdiction out of more than 3000 acres covered in the plan. Not many communities can afford to undertake such complicated and protracted efforts.

Protection is also provided to wetlands through the Alaska Coastal Zone Management program. There are presently 34 districts in the State which have approved local coastal management programs. These programs contain enforceable policies that can be more restrictive than either State or federal requirements. All of them contain language providing for avoidance and minimization of wetlands losses, as well as incorporating a public needs test for projects occurring within valuable riparian, wetland or wildlife habitat.

Despite these protections, and assurances we have heard during these roundtable meetings, there is considerable skepticism and distrust of the 404 permitting process. The success of the program cannot be measured merely by citing statistics of permits issued. The situation is far more complex. What actually happens during the permitting process is critical to understanding the perceptions extant in the regulated

provide for waste treatment and sewage lagoon facilities in western and northern Alaska.

- Develop an umbrella conceptual mitigation banking plan to provide this opportunity to communities throughout Alaska that wish to consider mitigation banking as a local tool for wetlands management.

- Build consensus for and implement a uniform classification system for Alaska wetlands that can be used as a basis to move forward on a functions and values analysis. To be successful this function and values system must extend across agency jurisdictions, political boundaries, cultures, and lifestyles.

- Pursue changes to the Clean Water Act that will support assumption of the wetlands permitting program by the State, allow exemptions for various activities and land status, and provide more federal support for State and local participation in management of wetlands.

The Clinton Administration has asked for "consideration of other environmentally appropriate means to assure regulatory flexibility and the feasibility of alternative permitting procedures in Alaska". Such a task is meaningless if the most appropriate means is taken arbitrarily out of consideration. The 1% rule was proposed as a means of responsibly dealing with the unique Alaskan situation. It represented a reasonable solution to address issues and concerns of its citizens with the 404 permitting process. That additional bounds were needed to address implementation of such a policy is not disputed. As numerous stakeholders have testified, some form of exemption of lands and activities is both practical and appropriate to consider in Alaska. Even President Clinton used an exemption for 53 million acres of converted agricultural lands within the proposed federal wetlands program. Yet the same exemption mechanism is not available to the State that has protected the most wetlands, impacted the least wetlands, and has virtually no opportunity to avoid wetlands impacts. Such an arbitrary decision makes a mockery out of a document entitled "Protecting America's Wetlands: a Fair, Flexible, and Effective Approach". Exemptions simply must be put back on the table for consideration, regardless of whether or not they comprise a part of the ultimate solution.

Work has begun on development of general permits and abbreviated permit processing. This work needs to move forward, but must incorporate local values and needs. The focus must be on problem solving with full local participation on an equal footing with other agency participants.

The 404 permitting process must be reevaluated to incorporate the guarantees provided to the citizens of the State through the State Compact with the federal government covering the terms and conditions for Alaska becoming the 49th State. The same approach must be used to ensure that the rights and guarantees promised Alaskan Natives within ANCSA and ANILCA legislation are preserved within the permitting process. The wetlands permitting program must build on this base of existing law, not ignore it.



US Army Corps
of Engineers
Alaska District

Attachment G

News Release



OFFICE OF
MANAGEMENT & BUDGET

DEC 22 1993

GOVERNMENTAL
COORDINATION

CONTACTS

Robert K. Oja Chief, Regulatory Br. Corps of Engineers (907) 753-2712 or (800) 478-2712	Alvin L. Ewing Assist. Peg. Admin. EPA (907) 271-5083
-----------------------------------------------------------------------------------------------------	----------------------------------------------------------------

December 17, 1993

FOR IMMEDIATE RELEASE

Recommendations from a first round of public meetings, written comments and a state-wide teleconference, have been compiled into 11 issue papers that will be used to solicit final comments from Alaska citizens on how they think wetlands should be regulated in Alaska.

The 11 issue papers were made available today by the U. S. Army Corps of Engineers and the U.S. Environmental Protection Agency, the two federal agencies that are trying to make sure the wetlands program is responsive to the special circumstances of Alaska. The issue papers will be the basis for discussion at public roundtables scheduled over the next few weeks at the following locations:

Tuesday, January 4
Centennial Hall
101 Egan Drive
Juneau

Thursday, January 6
Kuskokwin Campus
201 Akiak Drive
Bethel

Tuesday, January 11
Fireside Room
Captain Bartlett Inn
1411 Airport Way
Fairbanks

Thursday, January 13
Egan Convention Center
555 West 5th Avenue
Anchorage

Each of the meetings will consist of two sessions, a daytime (9 a.m. to 4 p.m.) roundtable discussion involving invited representatives of a number of interest groups, and an evening session (6 p.m. to 9 p.m.) for the general public. Both sessions are open to the public.

The comments made at those meetings will be used by the Corps of Engineers and EPA to recommend an action plan for implementing the federal regulatory program for wetlands in Alaska.

(more)

For persons who cannot or choose not to attend the meetings in Anchorage, Juneau, Bethel and Fairbanks, comments on the 11 issue papers may be submitted in writing between now and January 21, 1994. Copies of the issue papers are available upon request from the Corps of Engineers office in Anchorage, from EPA offices in Anchorage and Juneau, from city offices in Bethel and Barrow and from the office of the Alaska Village Council of Presidents.

Topics covered by the 11 issue papers include these questions:

- How can the goal of "no overall net loss" of the nation's wetlands be fairly applied in Alaska? How can the wetlands 404 program be best implemented to reflect the physical environment and wetland characteristics in Alaska?
- How can the wetlands program be best implemented in light of the Native Claims Settlement Act, Alaska National Interest Lands Conservation Act, and the Statehood Act?
- How can the role of state and local governments, and native interests be improved in the protection and regulation of Alaska's wetlands?
- How can the individual permit process be best implemented in a fair, flexible and efficient manner in Alaska? How can alternative permit processing procedures be best implemented?
- How can the mitigation sequence best be applied? How can compensatory mitigation be best implemented?
- How can advance planning and watershed management be best implemented to improve the predictability and effectiveness of the wetlands permitting process and the protection of wetland resources? How can wetlands inventory, classification and categorization be best implemented?

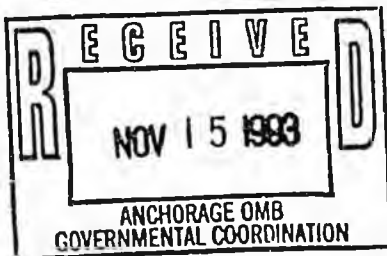
The 11 issue papers were derived from comments received from Alaskans during a first round of public forums, a state-wide teleconference and written comments received by the Corps of Engineers and EPA. The teleconference enabled people in 21 Alaska communities to offer their suggestions on how wetlands should be regulated.



US Army Corps
of Engineers
Alaska District

Public Notice

Special Public Notice 93-17
12 November 1993



SPECIAL PUBLIC NOTICE 93-17

ALASKA INITIATIVE

MEETING NOTICE

AND

REQUEST FOR WRITTEN COMMENTS

NOTICE IS HEREBY GIVEN that the U.S. Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA) will hold a "second round" of meetings on the Alaska Wetland Initiative. A successful and productive "first round" of stakeholder meetings were recently concluded in Juneau, Bethel, Fairbanks, and Anchorage. An integral part of the process is input from the public, both oral statements made at these meetings, and submittal of written comments for consideration by the Corps and EPA. All members of the public are invited to provide written comments that highlight concerns with the wetland program or that offer recommendations for addressing concerns. Any person who wants to present written comments may do so by submitting them to: Alaska Initiative, U.S. Army Corps of Engineers, Regulatory Branch, Post Office Box 898, Anchorage, Alaska 99506-0898; OR to U.S. Environmental Protection Agency, Alaska Operations Office, 222 W. 7th Avenue, # 19, Anchorage, Alaska 99513-7588, by NOVEMBER 24, 1993.

Issue Papers addressing the comments received from the "first round" of meetings will be available upon request from the Corps and EPA after December 17, 1993. Again, the public is invited to provide written comments. The comment period will start December 17, 1993, and end January 21, 1994.

The "second round" of meetings will be held in the following four locations on the identified dates:

Juneau, Alaska

Meeting Date: January 4, 1994

Bethel, Alaska

Meeting Date: January 6, 1994

Fairbanks, Alaska

Meeting Date: January 11, 1994

Anchorage, Alaska

Meeting Date: January 13, 1994

Public oral testimony will be taken during the evening hours. The exact meeting locations and times will be announced at a future date.

NEWS RELEASE**State of Alaska****Office of the Governor**P.O. Box 110001
Juneau, Alaska 99811**WALTER J. HICKEL**

Governor

**John Manly**
Press Secretary**Brian Hart**
Deputy Press Secretary**(907) 465-3500**
Fax (907) 586-8369FOR RELEASE: December 17, 1993
No. 93-265**RESOURCE AGENCIES REVIEWING EPA AND CORPS
OF ENGINEERS WETLANDS RECOMMENDATIONS**

JUNEAU--Governor Walter J. Hickel said today that staff in the state's natural resource agencies are now reviewing recommendations on Alaska's wetlands, released today by the Army Corps of Engineers and the Environmental Protection Agency (EPA) as part of the Clinton administration's federal wetlands program.

"We have seen the recommendations, and they are a good start," said Dr. Paul Rusanowski, Director of the Division of Governmental Coordination. "We are encouraged that the White House is interested in Alaska wetlands problems, but the people of Alaska deserve more."

"We will be reviewing the details of the issue papers to learn what real improvements are proposed for problems faced by Alaskans. We will continue to participate fully in future efforts to improve the wetlands permitting process."

The Corps of Engineers and EPA have scheduled meetings around Alaska in early January as the next step in the Clinton program.

"We understand the issue papers address classification of high and low-value wetlands in Alaska," Rusanowski said. "We hope this will lead to strong recommendations to improve this component of wetlands regulations, as well."

The State of Alaska wants to establish a program to classify wetlands based on value, with the program protecting critical wetlands. The state is currently requesting release of EPA grant funds to establish and test a classification system.

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93-265

Dec. 17, 1993

The state also wants general permits issued for local governments for activities that are critical to developing Alaska's infrastructure, such as rural sanitation, transportation, shipping, harbors, and routine housing developments.

While willing to work with the Clinton administration on specific differences, Governor Hickel believes a more complete solution would be federal legislation that provides for assumption of wetlands management by the state of Alaska, and to allow for relief from compensatory mitigation that often does not make sense for specific Alaska situations.

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For more information, contact Dr. Paul Rusanowski at 465-3562.

DRAFT

MEMORANDUM

STATE OF ALASKA
Office of Management and Budget
Division of Governmental Coordination

TO: Interagency Wetlands Policy Committee DATE: 12/27/93

FROM: Paul C. Rusanowski *PCR* TELEPHONE: 465-3562
Director FAX: 465-3075
Division of Governmental
Coordination

SUBJECT: Corps/EPA Issue Papers

The first meeting of the second round on the federal wetlands regulatory program is scheduled for January 4 in Juneau with subsequent meetings in Bethel, Fairbanks and Anchorage. Your input is needed for the State response to the subject papers by December 29. Please coordinate your comments with me or with Bill Lawrence of my staff at 465-8796.

The following is a starting place to respond to the 11 issue papers. The paragraphs focus on the Alaska Specific Actions. We have not responded to the analysis section of the papers.

The overall theme of the issue papers centers around the existing regulatory framework which is stated to have flexibility and capability to work better. The most notable shortcoming is that the State of Alaska is not named a player in most of the Alaska Specific Actions.

Some common threads run throughout many of the main papers. Specifically, general permits, including regional general permits and circle general permits, should be used more (Issue Papers 2, 3, 4 and 6). The Alternative Permit Process (APPs) is also emphasized (Issue Papers 2 and 6). Compensatory mitigation may not be required and "Minimization and Avoidance" can implement the No Net Loss Policy (Issue Papers 1, 5, 7 and 8). Advance planning is covered several places in the context of GPs/watershed management and specifically in two other papers (Issue papers 3 and 9). As such, it would seem reasonable to focus our response/testimony on these threads.

Issue Number 1. No Net Loss

The State of Alaska continues to believe that some form of exemption from compensatory mitigation is the most practicable and fair solution to the federal government's no net loss of

wetlands policy. The Clinton Administration, however, has withdrawn the 1% exemption. As such, in the absence of the 1% exemption, the State is generally supportive of the federal government's alternative proposal that "minimization" is the favored mitigation tool and that "avoidance" and "compensatory" mitigation will be required only when minimization is not practicable. In a situation where the Administration states that the existing wetlands regulatory framework has adequate flexibility to handle wetlands administration, the State expects to be made a full partner in developing the guidance identifying and implementing the minimization policy. We are concerned that only federal agencies are now specified as developing this guidance i.e. policy should be developed with state and stakeholder participation, not by the federal government for the State. Moreover, if the guidance is truly going to reflect unique regional circumstances, then the stakeholders who live and work in the regions must be brought into the process too.

Issue Number 2. Special Alaska Circumstances-Legal Issues

The State of Alaska is pleased that the existing regulatory framework offers opportunity for more flexibility. We are very encouraged that alternate permit procedures (APPs) will be used in situations where there are minimal impacts and adequate safeguards. The federal government must recognize the role of the State in developing these advanced permit procedures. We are further encouraged that more general permits will soon be proposed and that regionalized general permits will be developed in conjunction with comprehensive wetlands planning. However, our concerns are that complex wetlands management plans are appropriate in some areas, but are not practical or within reach of many smaller, remote and less sophisticated villages or regions of the State where wetlands are abundant. In fact in many of these locations wetlands are the predominant landform. It is precisely these kinds of places that need general permits the most. In fact in some of these locations, GPs may be more burdensome than necessary to protect and safeguard wetlands. We ask that wetlands planning in Alaska focus on protecting wetlands of critical value and their functions, not all wetlands regardless of function and value. (A NATIVE/VILLAGE CORPORATION VIEW IS NEEDED TO BETTER ADDRESS THIS ISSUE)

Issue Number 3. Special Alaska Circumstances-Physical Environment

The State of Alaska is extremely encouraged with the potential for regionalization of the 1987 wetlands delineation manual. This should expedite the development of regionalized general permits. Development of the hydrogeomorphic system will add to this effort. We are pleased that the State of Alaska will get priority for grants to develop comprehensive wetlands plans. As previously stated, we believe planning should focus on protecting critical high value wetlands. We expect to play a role in developing regional general permits. (JULES' #'S NEED TO BE USED HERE)

Issue Number 4. State, Local and Native Roles

Similar to issues 2 and 3 above, the State is highly supportive of regional general permits, but has reservations as to the extent of wetlands management planning that may be required in small, remote villages before the permits would be issued. The practicality and expense

of complex and sophisticated planning efforts is not commensurate with the level of wetlands development or conservation activities that would occur in the near future. The State believes that decisions affecting local communities need to be made at the lowest practical level, preferably at the local community level. We therefore strongly support the "Circle GP's" proposed for Alaska communities, particularly where the communities would administer the GPs, after an Advanced Identification (ADID) of wetlands has occurred. In these cases, for example the highest valued wetlands, say the top 25%, would be excluded from the GP process with proposed activities in these wetlands subject to the individual permit process. We remain concerned with the stated position of the federal government that "state assumption" is a routine process that is easily available and technically feasible. The fact of the matter is just the opposite. Under the current regulations, primacy is virtually impossible to achieve and the federal government's role would not be reduced. Assumption of the 404 permit program should be a reality in Alaska and many other states. The State will continue to seek legislative solutions to remedy this problem. (NATIVE AND LOCAL ROLE WOULD ADD TO THIS ISSUE)

Issue Number 5. Individual Permit Process

The State of Alaska is committed to preserving and protecting our wetland resources and accordingly believes that individual permit reviews are appropriate for activities proposed in the highest value wetlands. Concurrently, we believe there is room for much more GP activity statewide, especially in those areas "...where there is no significant or easily identifiable difference in functional value of the proposed discharge site when compared with other sites within the general vicinity and that compensatory mitigation would not normally be required for fill in areas with abundant low aquatic value areas." We think that one of the most meaningful things the Corps can do is to develop interagency guidance encouraging and supporting the application of general permits. Finally, use of GP's will conserve limited administrative resources for where they are most needed--protecting the highest value wetlands. Simply stated, there should be fewer individual permits, but they should protect the highest value wetlands; there should be more general permits issued for other areas. (THIS ISSUE DOESN'T OFFER A LOT OF ROOM FOR COMMENT. THE CORPS IS SAYING THEY ARE DOING A GOOD JOB ADMINISTERING THE PROGRAM, BUT WANT TO IMPROVE THEIR INTERNAL PROCESS, BUT THIS WILL TAKE MORE RESOURCES ETC.)

Issue Number 6. Alternative Permit Processing Procedures

The State of Alaska encourages the Corps to take advantage of the opportunities offered to use APP's, Letters of Permission, Regional General Permits and joint procedures. The partnering agreement now in place between the Corps and Division of Governmental Coordination is a good example. More use of this type of regulatory flexibility would go a long way to solving problems of Alaskans. The Corps' and EPA's commitment to expedite action on Public Health Service and Village Safe Water projects will significantly contribute to improve the infrastructure and the standard of life in many Alaska villages. The commitment to propose additional general permits statewide and circle general permits to communities will also greatly improve the regulatory process. The State of Alaska should be

a partner in developing any regulatory scheme for Alaskan communities. (WE SHOULD SUPPORT THIS, BUT ASK/DEMAND TO BE A FULL PARTNER)

Issue Number 7. The Mitigation Sequence

The State of Alaska agrees that there is flexibility in the existing requirement for mitigation. As stated earlier, the 1% exemption is the fairest, most practical solution to the mitigation problem. Given the federal Administration's position that no exemption is required and that one will not be granted, we ask the Corps and EPA to issue and implement guidance that minimization of impacts will be the primary form of mitigation in the Alaska permit program. We support inclusion of minimization as the primary mitigation tool in revision of the Executive Order. We ask that minimization be used in those cases where impacts on the wetland and aquatic resources would be significant and compensation be limited to impacts to truly remarkable wetlands where avoidance and minimization fail to adequately address wetland losses. We ask to be included in the development and implementation of the guidance; as presently proposed, the effort will be conducted entirely by the federal government.

Issue Number 8. Compensatory Mitigation

As previously stated, with reservations, the State of Alaska can support minimization as the primary tool of mitigation. There are approximately 174 million acres of wetlands (48% of the State). At a worst possible case approximately 200,000 acres (0.1%) of wetlands have been lost. This coupled with the fact that 93,000,000 acres (53%) of the State's wetlands are in a federal government protected status and only 190 thousand acres (0.1%) are in private, non-Native ownership, compensatory mitigation is not a good solution except in some cases where there is no alternative but to develop truly remarkable wetlands. Also, some towns and villages in Alaska are located in wetlands and are totally surrounded by wetlands. To force these communities to create more wetlands as compensatory mitigation is not practical, and represents poor public policy. The State of Alaska expects to be involved in developing and implementing policy specifying when and where compensatory mitigation will be required.

Issue Number 9. Advance Planning

The State of Alaska supports advance planning so as to avoid case-by-case decisions on wetlands. We have supported the development of numerous coastal management programs and wetland management programs that have resulted in protection of high value wetlands. We are pleased that the federal government is placing a high priority on this component of wetlands management and look to better working relationships in our planning efforts. We are always ready to participate and contribute to advance planning efforts and to incorporate the results into 404 regulatory program. We remain hopeful that the Corps Headquarters will allow the Alaska District to issue a general permit implementing the Juneau Wetlands Management Plan. (HERE THE CORPS, EPA, FWS AND NMFS ARE THE BIGGEST STUMBLING BLOCKS. THE CORPS IS PREVENTING THE JUNEAU PLAN FROM

BEING IMPLEMENTED {by holding up the GP}, AND THE OTHERS HAVE ARGUED AGAINST SEVERAL OTHER ATTEMPTS)

Issue Number 10. Wetlands Inventory, Classification and Categorization

The State of Alaska agrees that more data is needed to fully address wetland functions and values. The state is requesting release of funds, from a grant previously awarded, to work on the classification problem. We strongly believe that there needs to be more emphasis on inventory, classification and categorization with the results being fewer conflicts over wetland functions and values. Further, there must be involvement at all levels of government and not just at the federal level. Local input into wetlands values is critical. We look forward to cooperation in this area.

Issue Number 11. Outreach and education

The State supports efforts to inform the public about the 404 permit program. However, we think the overall program needs to be solution oriented as well as telling Alaskans about the program. We also believe that there is a great disparity between how the program is implemented in various communities. Specifically, a high level outreach program is not necessary in bush Alaska communities that are surrounded by wetlands. Education and outreach are most needed where development pressures are greatest. In summary we strongly urge the federal government to be flexible in program implementation and encourage flexibility throughout the State.

CC:

Commissioner Sandor

Tim Cook

Nelson Angapak

STATE OF ALASKA

OFFICE OF THE GOVERNOR
 DIVISION OF GOVERNMENTAL COORDINATION
 Paul Rusanowski, Director

WALTER J. HICKEL, GOVERNOR

P.O. BOX 110001
 JUNEAU, AK 99811-0001
 PHONE: (907) 465-3562

Jan. 3, 1994

ALASKA WETLANDS INITIATIVE

In preparation for the second series of roundtable meetings on the Alaska Wetlands Initiative, the resource agencies have been analyzing the 11 issue papers released by the Corps of Engineers (COE) and the EPA on December 17, 1993. The Administration is pleased that the federal government is making a good start in developing an action plan for the Alaska Wetlands Initiative. The COE and EPA are to be commended for the effort they have put forth so far, and for incorporating many of the concerns expressed by various stakeholders at the first series of roundtable meetings. The State is looking forward to continued productive dialogue and interaction with the COE and EPA as an action plan is developed for the Alaska Wetlands Initiative.

However, after participating in the first series of roundtable discussions, and preliminary analysis of the issue papers, the State remains convinced that fine tuning, clarifying and providing guidance to the present 404 wetlands program is a good start, but is insufficient to address all of the State's concerns. This is largely due to the unique factors in Alaska which prompted both the exemption policy of the previous administration and the Alaska Wetlands Initiative undertaken here by the Clinton Administration.

The State is encouraged by several of the recommendations coming from the COE and EPA. Particularly noteworthy are:

- *Discussion of flexibility in implementing a "No Net Loss" policy based on regional differences. A strictly interpreted "No Net Loss" policy is simply not a viable option for Alaska.*
- *Recognition of the role of minimization as a primary tool in mitigation sequencing is also welcomed. Compensation should be used for those truly remarkable wetlands where avoidance and minimization fail to adequately address wetlands losses.*
- *The emphasis on alternative permitting procedures, general permits and circle permits is also encouraged. These measures recognize the unique circumstances that exist in the State. Where appropriate, their use should be maximized. However, the paperwork associated with obtaining and administering such programs is beyond the reach of many communities without financial and technical assistance.*
- *Recognition of the need for a regionalized wetlands delineation manual, perhaps for several regions in Alaska, along with support for inventory and classification, are longer term solutions which will do much to reduce wetlands controversy in the State. More emphasis should be placed on this aspect to ensure that necessary tools are available to all parties as part of the Alaska Wetlands Initiative.*

The Alaska Wetlands Initiative must deal with the many truly unique features of the State in establishing a fair, flexible and effective action plan.

- The State has more than 174,000,000 acres of wetlands; with historical cumulative losses of less than 200,000 acres.

- Most wetlands are still in public ownership (federal, 114 million acres; State, 40 million acres); Native wetlands comprising less than 20 million acres, and private non-native wetlands less than 200,000 acres.
- More than 63 million, of the 174 million acres of wetlands in the State, have already been placed in protected status by State and federal land use designations.
- The State is dominated by arctic and subarctic climatic zones which occur nowhere else in the U.S. Permafrost is common throughout most parts of the State and is the dominant lowland feature in Northern and Western Alaska.
- Most communities in the State are small, rural and widely dispersed throughout the State. A few communities account for most of the 550,000 population; with 75% of the people living in 38 communities, and almost 50% living in the Municipality of Anchorage; only 25% of the population lives in the approximately 300 remaining communities.
- More than 60% of the rural communities still depend on a honeybucket system for sewage disposal, and lack community water distribution systems to individual homes.
- Most communities are not connected by roads, but are dependent on water and air transportation modes. Small community size, remoteness, lack of easy access and harsh climates make the costs of providing basic services extremely expensive. In fact, all construction and building efforts are minimized due to the cost factor alone.
- The State is highly dependent on natural resources for both its economic welfare and that of its citizens. Most rural areas are highly dependent on subsistence for both economic and cultural survival. Native lands must be used to support both traditional lifestyles and to generate income to provide basic health and community services to shareholders.

While we have made a good start on recognizing and discussing important issues on wetlands, an essential component that must be fully realized in an action plan is development of an effective partnership between federal and State permitting authorities, as well as the Native community. The State expects to participate as a full partner in developing the action plan for the Alaska Wetlands Initiative and sharing in the responsibility for its success.

The success of this initiative and current recommendations is critically dependent on full participation by both State and Native interests. Programs, such as advanced identification of wetlands, circle general permits, and watershed planning, cannot be successful if they do not incorporate local and regional values, and accommodate community needs. Responsible stewardship involves a balancing of community needs, resource values, and environmental management that is supported by consideration of multiple issues, rather than a single issue, no matter how compelling that issue might be. The balancing and consideration of all relevant issues and points of view in this process will foster cooperation and public support for requisite regulatory programs and overall success of the Alaska Wetlands Initiative.

The second series of roundtable meetings will begin on Tuesday, January 4, in Juneau, and continue on the 6th in Bethel, the 11th in Fairbanks, and conclude on the 13th in Anchorage. An opportunity for the public to comment on the issue papers and Alaska Wetlands Initiative is being provided in the evening, from 6 to 9 p.m., of each roundtable meeting. The public is encouraged to attend and express their views on this important topic.

Statement of

Tim Cook

before the

Corps of Engineers/EPA Wetlands Taskforce
(Juneau - January 4, 1994)

DRAFT
REV 3

My name is Tim Cook. I am the Associate Director for Fisheries and the Environment for the State of Alaska in Washington, D.C., and I am testifying today on behalf of Governor Walter J. Hickel, and the State of Alaska.

The State would like to thank President Clinton for recognizing the unique wetlands situation in Alaska. In his policy statement of August 24, he recognized that the wetland situation in Alaska is "found in no other State." Because of our unique situation, the President directed that the Corps of Engineers and the Environmental Protection Agency to develop "appropriate means to assure regulatory flexibility and [consider] the feasibility of alternative permitting procedures in Alaska."

The State supports most of the suggestions that the Corps of Engineers and the Environmental Protection Agency have developed. We wish to thank both agencies for the diligence they have shown in attempting to address some of the inadequacies of the existing program. However, the State does have some concerns. First and foremost is the need for a close partnership between the State, local governments, Alaska Native entities, and the Corps of Engineers and the EPA. President Clinton and Administrator Browner have articulated the need for a partnership between Federal, State, and local governments. Yet, in none of the suggested solutions is there any meaningful partnership between the Corps or EPA and state or local governments.

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It is the State's position that it is of paramount importance that a full partnership between the State of Alaska, the Corps of Engineers, and the Environmental Protection Agency be instituted with regard to wetlands. We envision a partnership where the Federal agencies and the State and local governments work together, as co-equals, to develop the guidance necessary to implement solutions to Alaska's wetlands situation. Moreover, this partnership would be expanded to share responsibility and oversight of permitting of wetlands in Alaska.

Governor Hickel and Administrator Browner have advocated greater assumption of wetlands programs by the states. Unfortunately, under existing law, it is unlikely that the State of Alaska will assume jurisdiction for the wetlands program because of restrictions on wetlands adjacent to navigable waters and other significant issues. However, with President Clinton, Administrator Browner, and Governor Hickel all advocating a greater role for states and local governments in wetlands management, a partnership between the State of Alaska, the Corps of Engineers, and the EPA seems appropriate.

The formation of a partnership between the State of Alaska and these Federal agencies must not suggest Federal control over local land use. This partnership is intended to retain local control over local lands. In some instances, Federal wetlands permitting will be required for some projects. However, with Bob Oja's observation at the first of these hearings, "that virtually every developable acre in Alaska is a wetland", it is clear that Federal agencies have become intimately involved in local land use.

With Alaska having a limited infrastructure, a resource based economy, and a dire need for water and sanitation in most of our Bush communities, there is a need for the least intrusive permitting procedure possible. By entering into partnership with the Corps and EPA, the State and local governments can help fashion acceptable permitting procedures, that ensure the goal of wetlands protection

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and the needs of the State. The suggestions that the Corps and EPA have previously proposed are a step toward finding feasible solutions to Alaska's unique situation. To briefly overview the State's reaction to some of the proposals:

No Net Loss- with over 170 million acres of wetlands, and less than 1/1000 of Alaska wetlands having been disturbed, and in view of the considerations cited above, an inflexible no net loss policy is unacceptable.

Alternative Permitting Procedures- the existing permitting program is overly complex and burdensome. The State supports APP's, as one means of improvement. However, complex management plans and advance planning may not be appropriate for many parts of the State.

Special Circumstances/Physical Environment- the State supports regionalization of the delineation manual.

Mitigation Sequencing- the State supports the concept of minimization as the primary mitigation tool.

Classification and Inventory- the State supports both classification and inventorying of wetlands with emphasis on community and population centers.

The State of Alaska has an outstanding record of protecting its wetlands and it is committed to continue protecting its wetlands resources. However, the State also recognizes that some use of wetlands must occur. To achieve the goal of protecting our wetlands in a cost effective manner, the State supported the 1% exemption. We still believe that by capping total growth to less than 1%, while simultaneously limiting development on high value wetlands and protecting vast amounts of acreage in conservation units, as has already been done, is a valid approach. Unfortunately, there has been such hyperbole and misinformation that the 1% exception has been

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withdrawn. Nevertheless, the State is encouraged by the suggestions put forth by the Corps and EPA.

The State would like to thank both Agencies for their review of the program and their suggestions on how the program might be better adapted to Alaska. These are positive steps forward and reflect the sincerity of concern that these agencies have toward the Alaska wetlands program. The State looks forward to entering into a partnership with both the Corps and the EPA to develop the specific written guidance necessary for implementation of these ideas.

PUBLIC REVIEW DRAFT - DECEMBER 17, 1993

**ALASKA WETLANDS INITIATIVE
PUBLIC REVIEW DRAFT ISSUE PAPERS
DECEMBER 17, 1993**

**THIS DOCUMENT WAS PREPARED TO FACILITATE DISCUSSION
IT DOES NOT REPRESENT AGENCY CONCLUSIONS**

PUBLIC REVIEW DRAFT - DECEMBER 17, 1993

PREFACE

As a part of the Clinton Administration's August 24, 1993, Wetlands Plan, the U.S. Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA) commit to meet with interest groups in the State of Alaska to identify and address concerns with the Clean Water Act Section 404 program in Alaska. Specifically, the Plan states that the agencies would "initiate meetings with the Federal resource agencies, State and local government agencies, representatives of native villages, industry groups including oil and fishing interests, and environmental groups, to consider other environmentally appropriate means to assure regulatory flexibility and the feasibility of alternative permitting procedures in Alaska."

On October 12, 1993, the agencies in Alaska invited a diverse and comprehensive group of stakeholders to participate in a series of independently facilitated meetings in Juneau, Bethel, Fairbanks, and Anchorage in late October and early November. The two-day meetings offered the opportunity for stakeholders to make uninterrupted presentations as well as to discuss concerns in a roundtable format. The public was invited to attend these meetings, to submit written comments, and to participate in a Statewide videoteleconference held in 20 locations throughout Alaska. Approximately 75 Alaskans took advantage of these public comment opportunities. Furthermore, approximately 1,500 letters were mailed to Alaskans who, over the last five years, had applied for Section 404 permits, to survey their opinion regarding experience with the regulatory program. Over 400 responses have been received to date.

The following series of draft issue papers for public review was developed by EPA and the Corps, in conjunction with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, as a result of the meetings held and public comments received. Each draft issue paper includes a general background discussion of that issue, a summary of the stakeholder and public comments received, and an analysis and, for purposes of discussion, a set of proposed recommendations that seek to address the concerns. This series of draft issue papers will serve as the focus of discussion at the final set of stakeholder meetings in January. The Corps and EPA will seek the input of the stakeholders on how well the draft issue papers characterized their concerns and how well the proposed recommendations for discussion respond to those concerns. The public is again invited to these meetings and is also invited to comment on the draft issue papers through January 20, 1994.

Following the January meetings and public comment period, the agencies will revise the draft issue papers in coordination with the Clinton Administration's Interagency Working Group on Wetlands Policy. A final report and an implementation plan is scheduled to be issued in early March 1994. Please direct any inquiries, including comments, on this Alaska Wetlands Initiative to the Corps' Alaska District office at (907) 753-2712 or the EPA's Alaska Operations office at (907) 271-5083.

ALASKA WETLANDS INITIATIVE
ISSUE PAPER - 1

SUBJECT: No Overall Net Loss of Wetlands Goal

ISSUE: How can the goal of "no overall net loss" of the Nation's wetlands be fairly applied in Alaska?

BACKGROUND:

General

In 1980, the Environmental Protection Agency (EPA) published the Clean Water Act Section 404(b)(1) Guidelines [Guidelines]. The Guidelines are the substantive criteria used by the Corps of Engineers (Corps) in evaluating permit applications for the discharge of dredged or fill material into waters of the United States, including wetlands. The mitigation requirements of the Guidelines outline a process that includes avoiding wetland losses where practicable, minimizing wetland impacts where avoidance is not practicable, and compensating for impacts to the extent appropriate and practicable. The term practicable is defined as "available and capable of being done [by the applicant] after taking into consideration cost, existing technology, and logistics in light of overall project purposes." Such terminology affords discretion and flexibility to the Corps to craft day-to-day decisions for highly diverse environmental, economic, and geographical conditions.

In 1987, the National Wetlands Policy Forum, a diverse group of environmental, business, government, and academic leaders, was convened, "to address major policy concerns about how the nation should protect and manage its valuable wetlands resources." In their 1988 final report, the Forum recommended that "the nation establish a national wetlands protection policy to achieve no overall net loss of the nation's remaining wetlands base, as defined by acreage and function, and to restore and create wetlands, where feasible, to increase the quality and quantity of the nation's wetland resource base." The Forum noted, however, that "the goal does not imply that...the no-net-loss standard should be applied on an individual permit basis" and that "the goal may have to be implemented at different rates in various regions of the country to reflect regional wetlands needs, conditions, and types. For example, continuous arctic or high latitude wetlands underlain by permafrost pose unique scientific challenges to successful restoration and creation."

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In February 1990, EPA and the Department of the Army (Army) signed a Memorandum of Agreement (MOA) on Mitigation, which clarified the Guidelines mitigation requirements and adopted a goal of no overall net loss of wetlands. The MOA recognized that the goal would not be met on every permit action. In addition, the MOA contained qualifying language that stated the goal was not practicable in areas where wetlands are abundant. Furthermore, in January 1992, EPA and Army issued joint guidance further clarifying the Guidelines and the MOA with respect to Alaska which emphasized "that there are areas, including many locations in Alaska, where it may not be practicable to restore or create wetlands; in such cases compensatory mitigation is not required under the Guidelines," and that "[w]here there is a high proportion of land in a watershed or region which is wetlands, it is likely that avoiding impacts to wetlands will not be practicable depending on project size and other logistical considerations."

In November 1992, EPA published the proposed rule "Exception from Wetlands Mitigation Sequence for Alaska" (known as the "Alaska 1%" Exemption) in the Federal Register. The rule proposed to exempt Section 404 permit actions in Alaska from the avoidance and compensatory mitigation provisions of the Guidelines until one percent of Alaska's wetlands acreage was developed. Over 6,500 written public comments were received on the proposal, of which approximately 83% of the comments were opposed to its finalization.

Wetlands issues have engendered a degree of confusion and anxiety within the regulated community in Alaska regarding wetlands regulation. The specific application of the no overall net loss of wetlands goal is among these wetlands issues of concern.

Stakeholder and Public Comments

A number of observations, concerns, and recommendations in regard to how the goal of no net loss is and could be applied in Alaska were raised by the stakeholders and public commentators. The divergent comments included those that stated the goal of no net loss should not be applied to Alaska to those that stated the current regulatory program is so flexible that too many losses are allowed. The comments are summarized as follows:

- Of concern to many was the potential for a strict application of the no net loss goal on a permit by permit basis (i.e., acre-for-acre or value-for-value restoration or creation required for each permit).
- The abundance of wetlands in Alaska prompted some commentators to note there is little justification for the no net loss goal, particularly for proposed discharges associated with basic infrastructure and residential development. There was strong disagreement among commentators whether Alaska National Interest

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Conservation Lands, as well as those lands protected to some degree in Federal and State ownership, should be "credited" toward meeting the no net loss goal.

- The commentors had divergent viewpoints regarding the capacity of compensatory mitigation to achieve the no net loss goal (see Compensatory Mitigation Issue Paper). Some felt restoration of disturbed wetlands after a "temporary" discharge for a project should satisfy any compensatory mitigation requirements to achieve the no net loss goal. Others felt that only in-kind, on-site compensatory mitigation (e.g., restoration of a wetland of the same type and in the same area as that lost) should be used to satisfy compensatory mitigation requirements. Some commentors expressed fear that compensatory mitigation to offset losses in Alaska could be required in the lower 48 States, if suitable sites were not available in Alaska.
- Some commentors emphasized that recent statistics on the level of compensatory mitigation required to offset permitted wetlands losses in Alaska reveal significant flexibility in the existing Section 404 regulatory requirements. Cited were Corps statistics which indicate that between January 1991 and January 1992, only 0.8% of 794 projects were required to accomplish some form of compensatory mitigation.
- Some commentors felt that due to the abundance of wetlands in Alaska (approximately 45% of the State's surface area is wetlands) and the relatively small percentage of land that has been developed, that neither avoidance of wetlands nor compensatory mitigation for wetland impacts are ever practicable. Completing the November 1992 proposed "Alaska 1%" exemption rulemaking was recommended.
- Some commentors believed the current regulatory program performance measurements fail to credit some applicants for avoidance and minimization achieved through pre-project planning. In their view, a no net loss equation which did not recognize those efforts would be disproportionately weighted toward environmental conservation.
- Some commentors maintained that no uniformly accepted method has yet been applied to characterize wetland functions and values, which would be necessary to consistently evaluate "value-for-value" replacement of lost wetlands. Commentors noted that such characterization, even in selected areas of the State, would take significant amounts of time and money.
- Several commentors attributed the loss of property values, and the reluctance of the regulated community to apply for permits, in fear of the no net loss of

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wetlands goal.

- Some commentors felt their uncertainty over the no net loss goal and compensatory mitigation would be relieved by codifying the 1990 Mitigation MOA and 1992 supplemental guidance, which contain qualifying language for their application in Alaska.
- Many commentors felt that all things considered, the existing approach to mitigation in Alaska would be preferable to a strict no net loss of wetlands policy. Others expressed the concern that the existing approach is too flexible, and thus not protective enough of the environment.

ANALYSIS AND PROPOSED RECOMMENDATIONS FOR DISCUSSION

The record of the Section 404 program in Alaska relative to the goal of no overall net loss of wetlands demonstrates the inflexibility of the goal to reflect the circumstances of the State. For example, in Fiscal year 1993, the Alaska District Corps authorized the filling of 1,343 acres of wetlands while only 333 acres of compensatory mitigation were required. This amounted to a net loss of 1,010 acres of wetlands. Experience has demonstrated that Alaskan climate and geography, among other factors, generally preclude attainment of no net loss of wetlands through restoration and creation of wetlands. Therefore, identifying and implementing practicable forms of impact avoidance and minimization that work best in Alaska are the primary means by which wetlands losses are reduced. However, there remains a perception to be addressed that the no net loss of wetlands goal must be met on a permit by permit basis or must be met as a whole for the State.

Several provisions of the Administration's August 24, 1993, Wetlands Plan address concerns relative to the no net loss of wetlands goal. In addition, there are specific actions that the Federal agencies in Alaska recommend to address issues relative to the no net loss of wetlands goal.

Administration Plan

- Develop improved analytical tools for wetlands functional assessment. The Federal agencies will expedite development of a new approach for wetland functional assessment known as the Hydrogeomorphic Classification System (HGM). The HGM methodology is being developed by the agencies and the academic community as an improved analytical tool to make timely and accurate assessments of wetlands functions.

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- Endorse the use of mitigation banking under the Section 404 regulatory program. The Administration endorses the concept of mitigation banking -- the restoration, creation, enhancement, and, in certain circumstances, preservation of wetlands expressly for the purpose of providing compensatory mitigation, in advance of discharges into wetlands authorized under the Section 404 regulatory program.
- Issue mitigation banking guidance. EPA and the Corps, in coordination with U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the Soil Conservation Service have issued guidance to their field staff to clarify the manner in which wetlands mitigation banking is appropriately used within the Section 404 regulatory program.
- Issue mitigation planning guidance. The Corps, in coordination with EPA, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service, will issue guidance to their field staff to clarify the requirements for developing compensatory mitigation conditions in Section 404 permits.

Alaska Specific Actions

- Develop interagency guidance to clarify how physical circumstances in Alaska such as the extent and type of wetlands affect the determination of "practicability" under the Guidelines mitigation requirements. The Corps and EPA, in coordination with the U.S. Fish and Wildlife Service and National Marine Fisheries Service, would develop guidance that clarifies existing mitigation requirements under the Section 404(b)(1) Guidelines as they apply in Alaska. The guidance would explicitly consider how circumstances in Alaska, such as the extent of wetlands and the relative opportunities to restore wetlands, affect the determination of "practicable" under the Guidelines. The guidance would reflect experience in Alaska that demonstrates that minimization of impacts is the primary mitigation tool and that avoidance and compensatory mitigation are required only where practicable, consistent with the clarification of this term for Alaska.
- Recommend that the Executive Order on wetlands articulate the flexibility in implementing the Administration's goal of no overall net-loss of the Nation's wetlands to reflect particular circumstances in Alaska. The Federal agencies in Alaska would recommend to the Administration's Interagency Wetlands Working Group that the Executive Order on wetlands under development contain appropriate language relevant to implementing the National goal of no overall net loss with regard to the regulatory program in Alaska. Similar to the text contained in the National Wetlands Policy Forum, language for the Executive Order recommended by the Federal agencies in Alaska would emphasize that the

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goal of no overall net loss should be implemented in a manner that effectively reflects regional circumstances.

- Develop Interagency Guidance to Clarify how Circumstances in Alaska such as the Abundance of Wetlands can Reduce Opportunities to Avoid Impacts to Wetlands and Affect how Rigorously Alternatives are Evaluated. The August 24, 1993 flexibility guidance should be shared with potential applicants to remove unnecessary fears and apprehension of the regulatory program. The Corps and EPA should clarify the guidance for Alaska by specifying when detailed alternative information is not required for the 404(b)(1) analysis (for example when there is no significant or easily identifiable difference in functional value of the proposed discharge site when compared with other sites within the general vicinity) and that compensatory mitigation would normally not be required for fill in areas with abundant low value aquatic areas.
- Develop accelerated restoration program for oil and gas projects. Accelerated restoration or rehabilitation prior to the deadline built into standard permits is a concept which would be further considered, particularly for the oil and gas industry (see Mitigation Sequence Issue Paper).
- Recommend written partnerships be established between the Corps and all interested stakeholders on Section 404. These documents would capitalize on the positive communications established during this Initiative, by clearly expressing mutually agreeable expectations and commitments associated with the Section 404 regulatory program. They would also describe communication networks to be established to better inform all constituencies of the purposes and procedures of Section 404.

ALASKA WETLANDS INITIATIVE
ISSUE PAPER - 2

SUBJECT: Special Alaska Circumstances -- Legal Issues

ISSUE: How can the Section 404 program be best implemented in light of the Alaska Native Claims Settlement Act (ANCSA), Alaska National Interest Lands Conservation Act (ANILCA), and Statehood Acts?

BACKGROUND:

General

The Alaska Native Claims Settlement Act (ANCSA) (43 USC 1601) was signed into law on December 18, 1971. This statute gave 44 million acres of land to Alaskan Natives as part of a settlement of claims made by Alaskan Natives against the Federal government. In essence this settlement was to be accomplished without establishing any permanent racially defined institutions, rights, privileges or obligations, without creating a reservation system, and without adding to the categories of property and institutions enjoying special tax privileges or to legislation establishing special relationships between the U.S. Government and the State of Alaska. This statute was very specific to ensure that no provision of the statute would replace or diminish any right, privilege, or obligation of Natives as citizens of the U.S. or of Alaska.

With approximately 209 rural Alaska villages, most of which are only accessible by air or water, infrastructure development such as potable water and sanitation systems, roads, housing, schools, medical and transportation facilities are basic or non-existent. Combined with this lack of basic services and facilities, the isolated nature of these communities and the unavailability of acceptable building sites has caused difficulties associated with public health and sanitation, transportation opportunities, and economic development.

Permit records for the past ten years of activities requiring Corps individual permits where the applicant was a Native corporation, village, or individual shows that of 195 individual permit applications evaluated, 184 were issued, 10 were withdrawn, and one was denied without prejudice. None were denied with prejudice. Denial without prejudice means the applicant failed to obtain some other permit or authorization, and therefore could not receive a Section 404 permit. In addition, during this same period of time, over 440 discharges of dredged and/or fill material were authorized in Native

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communities by nationwide and regional general permits.

The Alaska National Interest Lands Conservation Act (ANILCA), passed in 1980, set aside 100 million acres for conservation system units within Alaska. ANILCA provisions on regulation of public lands generally address lands reserved for protection under the Act. When Federal regulation of those lands is addressed, it is in the context of fish and wildlife resources (and not other environmental laws) and to ensure that subsistence rights will be protected.

Section 6 of the Statehood Act (48 USC 21) entitled the State of Alaska to select lands for the purpose of furthering the development and expansion of communities. These lands were to be adjacent to established communities or suitable for prospective community centers and recreation areas. The Statehood Compact (Section 4 of the Statehood Act) deals with submerged lands and their conveyance to and ownership by the State of Alaska.

Due to Alaska's unique climatological and physiographic conditions, approximately 174.6 million acres (45.5%) of the State's 384 million surface area acres are classified as wetlands by the U.S. Fish and Wildlife Service (USFWS). Although no comprehensive wetlands mapping effort has been completed for the state, estimates of wetlands acreage on public and private lands have been made based on a USFWS statistical study of wetland acreage. Approximately 154.9 million acres (88%) of Alaska wetlands are under public management with 114.6 million acres managed by the Federal government in national wildlife refuges, national parks, national forests, and other Federal lands, and 40.3 million acres managed by the State of Alaska.

Wetlands in both public and private ownership are subject to Corps jurisdiction under Section 404. Many wetlands on public lands are subject to various development pressures. In fact, permits are issued on a regular basis for a variety of projects within these areas. Privately owned wetlands total 19.7 million acres including Alaska Native lands parcels. The State of Alaska estimates that 49 million acres (13%) of the total State's surface area is privately owned, including Native corporation lands. Approximately 104 million acres (28%) of Alaska's surface area is owned by the State.

Stakeholder and Public Comments

A number of commentors representing diverse interests noted that because of compacts between the Federal government and the State, and the Federal government and Native landowners, there should be an exemption(s) from compensatory mitigation or all requirements of Section 404. In general, however, commentors felt that the current process, in light of the Alaska specific statutes, is flexible enough to allow development and provide adequate protection of wetlands. The comments are

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summarized as follows:

- Some commentators stated that because ANCSA required certain lands be selected in core village townships and around rural Native village areas (that in many cases were predominantly wetlands), it was not fair or consistent with the compact to require Native Corporations to provide compensatory mitigation to fulfill a "no-net-loss" policy. The basic concern is that since providing rural Alaska with the necessities of public health, sanitation, housing, and transportation is difficult enough, it should not be further complicated with compensatory mitigation requirements, that only add costs to development and may have questionable environmental benefits.
- Exempt ANCSA lands from Federal wetlands management restrictions or provide additional land and compensation to ameliorate the impacts of wetland restrictions resulting from a possible future strict no net loss policy.
- Exempt ANCSA Corporations from all wetland restrictions except for rare and highest value wetlands.
- Require ANCSA Corporations to meet wetlands avoidance and minimization requirements but exempt ANCSA Corporations from any wetland sequencing strategy that includes compensatory mitigation, mitigation banking, or other compensatory consideration.
- Alaska Native landowners should be represented at the local, state, and Federal levels in the development of any statutory or regulatory process affecting wetlands policy on ANCSA lands.
- National wetlands policy is so egregious to ANCSA Corporations that it is necessary to reevaluate the Federal philosophy that ANCSA Corporations must assimilate the entire cost of environmental laws without adjustments to the ANCSA settlement.
- The Section 404 permitting process must be reevaluated to incorporate the guarantees provided to the citizens of the State through the State Compact with the Federal government covering the terms and conditions for Alaska becoming the 49th State.
- Compensatory mitigation constitutes an unfair taking of native lands. Regulations should recognize and protect the property rights of private property owners.
- Regulations should not conflict with the economic goals and the multiple use

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promise of ANCSA.

- Protection of wetlands should not impede small villages and communities from attaining safe water and sewage systems, lengthening air strips, expansion of port facilities, building schools, clinics, and housing.
- There should be a total exemption from the Section 404 process for Statehood Compact lands and/or lands set aside under ANCSA, or one that would exempt the affected parties of the requirement for compensatory mitigation.
- Application of an exemption to ANCSA and/or State lands according to wetland values (low value wetlands exempted).
- An exemption for native villages and/or Capital Improvement Projects in rural Alaska communities.
- Requiring the Federal government to pay for compensatory mitigation costs.
- The Federal government should pay monetary compensation to Native villages and/or corporations for economic benefits not realized due to stringent wetland regulations.
- The Federal wetland policy plan is going to make compensatory mitigation and sequencing, in general, more flexible.
- The current program couldn't be any more flexible.
- If there is no present requirement and there would not be a future requirement for across-the-board compensatory mitigation on low value wetlands, then there isn't a problem.

ANALYSIS AND PROPOSED RECOMMENDATIONS FOR DISCUSSION

The Clean Water Act Section 404 requirements apply to all waters of the U.S., including wetlands, regardless of ownership. Authorization from the Corps is required under Section 404 for any project that involves the discharge of dredged or fill material into waters of the U.S., including wetlands. However, individual permits are not always required for discharges of dredged or fill material. The Corps has the authority to issue general permits (GP) on a nationwide, regional, and State basis for those categories of activities in wetlands and other waters of the U.S. that are similar in nature and that will have only minimal adverse environmental effects, either individually or cumulatively. They also are used to avoid unnecessary duplication of regulatory control exercised by

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another agency, provided that the environmental consequences of the action are individually and cumulatively minimal.

Although land ownership in Alaska does not convey an exemption from provisions of the Clean Water Act, the general permitting process offers opportunities to minimize the extent to which individual permits are required for regulated activities on these lands. The Alaska District Corps has issued 21 GPs for Alaska. Residential construction in virtually all rural villages is authorized by GP and road building is authorized in many. Some towns and villages have GPs for both residential and commercial fills. If an activity is authorized by a GP, work can proceed, without first applying for an individual authorization, as long as it complies with the conditions of the GP. However, some GPs have a preproject reporting condition.

Although no specific provisions of the Administration's August 24, 1993, Wetlands Plan address concerns relative to Alaskan specific statutes, two principles of the Plan are relevant and are noted below. There are specific actions that the Federal agencies in Alaska recommend to address issues relative to Alaskan specific statutes.

Administration Plan

The Administration's August 24, 1993, Wetlands Plan established five principles to guide the specific provisions of the Plan. Two of these principles which are pertinent to this issue are:

Regulatory programs must be efficient, fair, flexible, and predictable, and must be administrated in a manner that avoids unnecessary impacts upon private property and the regulated public, and minimizes those effects that cannot be avoided, while providing effective protection for wetlands. Duplication among regulatory agencies must be avoided and the public must have a clear understanding of regulatory requirements and various agency roles; and

The Federal government should expand partnerships with State, Tribal, and local governments, the private sector and individual citizens and approach wetlands protection and restoration in an ecosystem/watershed context.

Alaska Specific Actions

- Increase use of Alternate Permit Procedures (APP). The Alaska District Corps would increase the use of APPs, which may be applied in those instances where there are minimal impacts and/or adequate environmental safeguards in order to reduce delays and/or avoid duplication of efforts with other agencies with

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programs that regulate activities also regulated by the Corps. (see Alternative Permit Process Issue Paper)

- Propose the development of additional General Permits (GP). The Alaska District Corps would propose GPs for log transfer facilities statewide, residential and community fills, float camps associated with logging activities, residential fills in Klawock, and fills for oil and gas activities on the North Slope. The Alaska District would identify and develop additional GPs with appropriate environmental conditions to streamline authorizations for discharges into waters of the U.S. (see Alternative Permit Process Issue Paper)
- Continue to consider the public interest in Section 404 permit actions. The Corps and EPA would continue to consider the basic public interest for rural Alaska needs for basic services and facilities, subsistence rights, and Capital Improvement Projects in permit decisions and regulate in a manner which is reasonable and appropriate (e.g., propose general permits for health related activities).
- Continue to develop regionalized General Permits based on comprehensive wetlands plans. The Corps and EPA would continue to develop additional regionalized general permits for areas with abundant "low value" wetlands, based on wetlands management plans conducted on a watershed basis.

ALASKA WETLANDS INITIATIVE
ISSUE PAPER - 3

SUBJECT: Special Alaska Circumstances -- Physical Environment

ISSUE: How can the Section 404 program be best implemented to reflect the physical environment and wetland characteristics in Alaska?

BACKGROUND:

General

The Corps of Engineers (Corps) and the Environmental Protection Agency (EPA) jointly define wetlands as "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas". The Corps and EPA currently utilize a three parameter approach based on hydrology, soils, and vegetation to identify and delineate jurisdictional wetlands as described in the Corps 1987 Wetlands Delineation Manual. The wetland criteria for the three parameters are applicable to all areas of the country. At the request of the U.S. Congress, the National Academy of Science's National Research Council has established an 18-member committee to review and evaluate the scientific aspects of wetland identification and characterization which may include regionalization. Two representatives of the committee are from Alaska. The committee's report is expected by September 30, 1994.

Alaska wetlands account for 63% of the Nation's wetlands acreage. Due to Alaska's unique climatological and physiographic conditions, approximately 174.6 million acres (45.5%) of the State's 384 million surface area acres are classified as wetlands by the U.S. Fish and Wildlife Service (USFWS). Most of Alaska's wetlands (98.7%, or 172.5 million acres) are classified as palustrine wetlands. Palustrine wetlands are non-tidal wetlands dominated by open water, aquatic beds, trees, shrubs, persistent emergents, mosses and/or lichens. Alaska palustrine wetlands types include bogs, marshes, swamps, muskegs, moist and wet tundra, and forested wetlands. The majority of Alaska wetlands (114.5 million acres) are shrub type wetlands. Forested wetlands in Alaska account for 13.3 million acres. Over half of Alaska wetlands are underlain by permafrost. In contrast, the lower 48 states' palustrine wetlands comprise 97.7 million acres. The majority of palustrine wetlands in the lower 48 states are forested (51 million

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acres) and only 15 million acres are shrub type wetlands.

The distribution of wetlands in Alaska varies considerably within the State's physiographic regions. For example, the following areas contain these wetland percentages (percent of total land area) as estimated by the USFWS: Arctic Coastal Plain (83%); Yukon-Kuskokwim Delta (78%); Yukon Flats (38%); Southeast Alaska lowlands (35%); Cook Inlet - Susitna Lowland (28%); Alaska Range (7%); and, Southeast Alaska Mountains (1%). Some wetland types are relatively rare. For example, coastal salt water marshes in Alaska comprise only 360,000 acres and are considered important habitat for fish and wildlife species. In addition, permanently flooded grass marshes cover approximately 2% of the Arctic Coastal Plain and are particularly important as feeding areas for migratory waterfowl.

Alaska's wetlands provide many benefits such as food and habitat for wildlife, fish, and shellfish species, natural products for human use and subsistence, shoreline erosion and sediment control, flood protection, and opportunities for recreation and aesthetic appreciation. It is recognized, both in Alaska and nationwide, that not all wetlands perform all these functions, but most wetlands contribute to one or more in varying degrees, resulting in varying degrees of social value, importance, and ecological significance.

According to the USFWS's report on the "Status of Alaska Wetlands" (in press), high-value tundra wetlands in northern and western Alaska are prime breeding grounds for many shorebirds. Waterfowl species which are dependent on Alaska wetlands include more than 70 thousand swans, one million geese, and 12 million ducks. This includes more than half the continental populations of tundra and trumpeter swans and all or most of the continental populations of eight species or subspecies of geese. In recent years, Alaska wetlands have on an average supported 30% of the continental populations of northern pintails, 24% of America widgeons, 19% of scaup, 18% of canvasbacks, and 13% of green-wing teal. This percentage increases in drought years in prairie states and provinces.

Coastal and riparian wetlands are critical to many marine, freshwater and anadromous species including salmon, crab, shrimp, forage species, and mollusks. Wetland habitats support critical early life stages of marine species that later mature and are harvested offshore. Coastal wetland-dependent species are vital to Alaska's sport and commercial fisheries. Alaska seafood harvest is the largest and most valuable of any state. In 1991, over 5 billion pounds of seafood was harvested at a wholesale value of over 3 billion dollars. Total participation, in terms of the number of permit holders and crew, was 50,638 persons in 1989. Wetland types adjacent to rivers maintain and regulate stream flow in channels used by fish. Salmon that move between freshwater and saltwater are dependent upon both coastal and riparian wetlands. The annual

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salmon commercial fisheries in Alaska are valued at \$600 million and employ approximately 22,000 people. Coastal management districts in Alaska contain over 80% of the State's population.

According to the USFWS's 1990 report to Congress, an estimated 200,000 acres of Alaskan wetlands have been lost since the 1780's, with most losses occurring in and around populated areas, transportation corridors, and development areas for oil, gas, mineral, agricultural and timber resource development. Significant localized wetland losses have been noted by the USFWS in some areas (e.g., between 1950 and 1990 Anchorage lost 52.7% of it's wetlands).

Currently the USFWS is inventorying Alaska's wetlands through the National Wetlands Inventory (NWI) program. Approximately 26% of the State has been mapped. The USFWS is mandated to complete the NWI effort for the entire State by the year 2000. These maps provide resource managers and the public with information on the size, location, and general characteristics of Alaska wetlands and are used to produce statistical data on the status and trends of Alaska wetlands.

Stakeholder and Public Comments

A number of concerns, observations, and recommendations were expressed on how the Section 404 program and the Administration's August 24, 1993, Wetlands Plan could best be implemented to reflect Alaska's unique physical environment and wetland characteristics. Comment topics addressed included changes to wetland delineations procedures, extent and nature of Alaska wetlands, lack of buildable uplands, wetland functions and values, and wetland categorization and ranking.

- In general, commentors agreed that protection of high value wetland resources is important, but noted that some wetlands are more important than others. Commentors expressed a need for a single classification and categorization method to be uniformly or regionally applied throughout the state. Commentors noted the lack of a generally accepted, uniform set of criteria defining high-, medium-, and low-value wetlands. Several commentors suggested that attributes or types of high value wetlands should be identified, and that there was a need to include local knowledge in assessments of wetland functions and values, related to permit decisions. A few commentors opposed a ranking categorization and recommended that the Corps should not adopt a high-value/low-value wetlands classification system for Alaska, but continue its present policy, since too little is known about the functions and values of Alaska wetlands.
- Some commentors expressed concern over how the Corps determines or delineates wetlands, the need to regionalize wetland delineation procedures not

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only from a national perspective but within the State, and the need to develop delineation procedures to exclude certain types of wetlands (e.g., forested western hemlock and permafrost wetlands) based on specific regional criteria and regional data within Alaska. One commentor recommended changes to the delineation manual for Alaska's coastal forest regions to limit wetland delineation determinations to only those areas greater than two acres and where obligate and facultative-wet plant species comprise more than 50% of the vegetation. Another commentor recommended that the facultative vegetation category is too broad and the national list of plant species that occur in Region A (Alaska) wetlands needs to be studied with the possibility that some species may be removed. One commentor believed there should be a scientifically based jurisdictional definition of Alaska wetlands which distinguishes them from those in more temperate climates. Another commentor recommended that the definition of jurisdictional wetlands be amended to remove or reduce regulation of isolated wetlands. Some commentors stated that permafrost wetlands should not be automatically classified as wetlands solely because they include "tundra like" vegetation or the tundra mat has a high moisture content of frozen water.

- Some commentors noted that many bush communities (western, northwestern, North Slope, etc.) are predominantly located on or surrounded by wetlands and that any development whether for basic public services (sewer, water, schools, etc.) or business often necessitates wetland use. The abundance of Alaska wetlands in combination with Alaska's short building season, leads some to claim that the Section 404 program places a heavier burden on Alaska than the rest of the country. These comments were often couched in future terms, that is, the current system with some added efficiencies is working well. Fears for restriction of needed development were based on the potential application of a no net loss policy without flexibility for Alaska's conditions and unique physical environment.
- Some commentors stated that there is no valid reason to exempt Alaska's wetlands from the nationwide regulatory scheme. The existing Section 404 regulatory program is sufficiently flexible to accommodate Alaska conditions and that an exemption is not needed. Other commentors stated that due to the nature and extent of Alaska wetlands, lack of buildable uplands, and the high percentage of wetlands in conservation units, special consideration should be given under Section 404 for Alaska in terms of mitigation sequencing, permitting, and no net loss goals.
- Many commentors recommended acceleration of the USFWS's National Wetlands Inventory in Alaska.

ANALYSIS AND PROPOSED RECOMMENDATIONS FOR DISCUSSION

Developing a comprehensive wetland ranking system requires extensive and detailed information on wetland functions, consideration of regional influences and uses, and scarcity or abundance of wetland types, both locally and regionally. While "a priori" (high-, medium-, or low-value) categorization and ranking systems appear attractive, a national a priori categorization and ranking system is unworkable due to technical, fiscal and environmental implications. There is currently no scientific basis for a nationwide ranking of functionally distinct and diverse wetland types; any such scheme would be extremely difficult to develop and would likely require many years to complete.

In contrast to a national a priori categorization system, opportunities exist for regional categorization in local or regionally developed advanced planning studies on a watershed basis. Local advanced planning studies can provide a scientifically sound and workable framework for early consideration of variations in wetland functions within the Section 404 program (see Advance Planning and Watershed Management Issue Paper). Appropriate functional assessment techniques can be applied within a planning or watershed area. Reasonably foreseeable development needs can then be superimposed upon wetland inventories and functional assessments to identify appropriate regulatory responses. Highly functional or ecologically significant ("high value") wetlands can be identified as deserving a very high standard of protection; conversely, wetlands with limited function and ecological significance ("low value") can be identified as appropriate for general permits or other regulatory streamlining methods.

Examples of areas where the Corps has examined local wetland information and has issued GPs to fill low value wetlands include Anchorage, Bethel, Fairbanks, Sitka, Homer, and several residential development GPs for rural regions of Alaska (see Alternative Permit Process Issue Paper). In addition, mapping efforts have been conducted that rank wetlands by functions and values at various Alaska locations (e.g., Homer, Kenai River corridor, Fairbanks, Anchorage, and Juneau).

The argument for exclusion of forested wetlands dominated by western hemlock or permafrost wetlands presume that only one of the three parameters for soils, vegetation, or hydrology is used to provide a jurisdictional wetland determination. To the contrary, the 1987 Wetland Delineation Manual requires that all three parameters must have positive field indicators for an area to be considered a jurisdictional wetland. Regionalization of the wetland delineation manual is considered an important issue in providing regional criteria and indicators consistent with National criteria for wetland determination. The National Academy of Science's (NAS) committee is currently reviewing and evaluating the scientific aspects of wetland identification and characterizations. It would be premature to propose changes prior to completion of the NAS study. As stated in the Administration's August 24, 1993, Wetlands Plan, if the

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Federal agencies jointly conclude that the 1987 manual should be revised to respond to recommendations of the NAS study, any proposed changes will be available for public review and comment, and would be field tested prior to final adoption to determine their impact under regional conditions.

The Administration's August 24, 1993, Wetlands Plan, includes several initiatives that will result in improvements to the wetlands program in Alaska. In addition, there are specific actions that the Federal agencies in Alaska recommend to address issues relative to Alaska's physical environment and wetland characteristics.

Administration's Wetland Plan

- Develop improved analytical tools for wetlands functional assessments. The Federal agencies will expedite development of a new approach for wetland functional assessments known as the Hydrogeomorphic Classification System (HGM). The HGM methodology being developed by the agencies and academic community is an improved analytical tool to make timely and accurate assessments of wetland functions.
- Issue Section 404(b)(1) Flexibility Guidance. On August 24, 1993, EPA and the Corps issued guidance to their field staff to clarify and standardize implementation of the flexibility afforded by the 404(b)(1) Guidelines to make regulatory decisions regarding the analysis of project alternatives based on the relative severity of the environmental impact of proposed discharges. The guidance clarifies that small projects with minor impacts are subject to less rigorous permit review than larger projects with more substantial environmental impacts.
- Encourage Advance Planning Efforts. The Federal agencies will provide technical assistance for advance planning efforts addressing wetlands conservation, and will counsel planning participants on methods to link local or regional planning with Section 404 regulatory decision making. Wetland categorization will be supported within the context of an approved advance plan to provide landowners with early identification and characterization of wetlands on their property, streamlined permit review, and more flexible mitigation sequencing where appropriate. The Administration recommends changes in the Clean Water Act to provide incentives (financial and regulatory) for wetland planning efforts. Congress should provide the Federal agencies the authority to use grant monies to fund both the development and implementation of these plans.
- Regionalize General Permits for Activities in Defined Categories of Waters. Nationwide Permit 26 (NWP 26) authorizes certain discharges into isolated waters

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and waters above the headwaters point on streams. The Corps will undertake, in close coordination with relevant State and Federal agencies, a field review and evaluation of NWP 26 for the purpose of regionalizing and improving its use. Revisions to NWP 26 will focus on ensuring that appropriate levels of wetlands protection are provided through national and regional terms and conditions.

- Support the use of the 1987 Wetland Delineation Manual by the Corps, EPA, Soil Conservation Service, and USFWS pending evaluation of the NAS study. If the Federal agencies jointly conclude that the 1987 manual should be revised to respond to recommendations of NAS, any proposed changes will be the subject of a process that will provide full opportunity for public comment and field testing.
- Recommend that Congress add examples of "isolated water" to the statutory definition of wetlands. From a scientific standpoint, isolated wetlands perform many of the same vital functions performed by other aquatic areas widely accepted as wetlands.
- Increase state, local, and tribal roles in wetlands protection and regulation. A number of the Administration's wetland plan tasks specifically address increased State, Tribal, and local government's role and involvement into the wetland decisionmaking, endorses development of State, regional and local wetland conservation plans, encourages development of Programmatic General Permits (PGP) with adequate safeguards that protect aquatic resources, and encourage State assumption of the Section 404 program including recommendations to Congress to authorize partial assumption of the Section 404 program as an interim step towards full assumption.

Alaska Specific Actions

- Evaluate the need for further Alaska specific regionalization of the 1987 wetlands delineation manual. After completion of the National Academy of Sciences study on wetlands delineation, the Federal agencies would fully evaluate the need for further Alaska specific regionalization of the 1987 wetlands delineation manual. Substantive changes to the 1987 manual would be made only after the citizens of Alaska have had an opportunity to comment on proposed changes and after appropriate field testing.
- Continue to develop regionalized general permits (GP). The Corps and EPA would continue to develop regionalized general permits (GP) based on wetland management plans for areas with abundant low value wetlands where individual and cumulative impacts are considered minor. (see Alternative Permit Process Issue Paper)

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- Develop the Hydrogeomorphic Classification System within Alaska for wetland functional assessments. The Corps and EPA would work to develop the Hydrogeomorphic Classification System within Alaska for wetland functional assessments. The Hydrogeomorphic classification system would not supersede the NWI mapping classification, but would provide a standardized analytical tool to make timely and accurate assessments of wetland function which would assist agencies in assessing the relative severity of environmental impacts. Development of regionalized classifications would assist in identifying wetlands that are highly functional and ecologically significant that deserve a high standard of protection, and conversely, identify wetlands with limited function and ecological significance where minimal environmental harm can be expected and where regulatory streamlining methods such as general permits may be appropriate.
- Provide Alaska priority status in terms of funding for development of Wetland Conservation Plans. EPA would provide Alaska priority status in terms of funding under the Wetlands Grant program and Water Quality 104(b)(3) programs for development of Wetland Conservation Plans. (see State, Local, and Native Roles and Wetlands Inventory, Classification, and Categorization Issue Papers)
- Provide technical assistance on wetland categorization for advanced planning efforts. The Corps and EPA together with the USFWS would, within funding and manpower constraints, provide technical assistance on wetland categorization for advanced planning efforts addressing wetland conservation, and would counsel planning participants on methods to link local and regional planning with the Section 404 regulatory program. Where appropriate partnership agreements with local, regional and State offices would be established.
- Supplementally fund acceleration of the NWI mapping efforts in certain areas. The Corps and EPA together with the USFWS, within funding and manpower constraints, would continue to supplementally fund acceleration of the NWI mapping efforts in areas with high potential for development and/or areas that possess high wetland values, or ecologically significant. This would facilitate needed mapping, characterization, and tracking of wetland loss trends. Prioritize NWI mapping efforts toward the above areas, coupled with expedited development of a classification system for Alaska would greatly facilitate characterization of wetlands functions and the permit evaluation process.

ALASKA WETLANDS INITIATIVE
ISSUE PAPER - 4

SUBJECT: State, Local, and Native Roles

ISSUE: How can the role of State and local governments, and Native interests be improved in the protection and regulation of Alaska's wetlands?

BACKGROUND:

General

The Clean Water Act Section 404 program currently provides several mechanisms that allow participation by State and local governments, and Native interests to protect and manage Alaska's wetlands. These mechanisms include the development of local wetland management plans, special area management plans (SAMP), proposals for regional and programmatic general permits (PGP), advanced identification of areas either generally unsuitable for disposal sites or possible future disposal sites (ADID), and provisions for State/Tribal assumption of the Section 404 program (see Advance Planning and Watershed Management Issue Paper).

Other opportunities for local community involvement in the regulatory program exist in Alaska as well. For example, providing comments on Corps' Public Notices for individual permit applications is one mechanism for public involvement (see Individual Permit Process Issue Paper). Public notices also provide any commentator the opportunity to request a public hearing on a proposed project. State permitting reviews provide the Corps with information as to the local community position on a given action. Each of these activities serves to identify legitimate Federal interests and provides a basis for satisfying those Federal interests in the most appropriate and efficient way. Where Federal involvement or oversight is not mandated by law, local interests govern.

Stakeholder and Public Comments

A number of observations, concerns, and recommendations in regard to how the role of State and local governments, and Native interests can be improved in the protection and regulation of Alaska's wetlands were raised by the stakeholders and public commentators. The divergent comments included those that stated the State and local governments and native groups need a stronger voice in the decision-making process to those that stated there is general distrust of the State and local governments' ability to carefully implement their regulatory authority. The comments are summarized

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as follows:

- Some commentors express concern that statutory or regulatory schemes for effecting wetlands policy on ANCSA private lands should ensure the involvement of Alaska Native land owner representatives in the policy formation, statutory and regulatory development process, planning, funding, inventory, management and representation on advisory entities at the local, State, and Federal levels; or as an alternative, Alaska Native lands should be exempted from the wetland policies, laws and attendant regulations.
- Other commentors suggest changes to the Clean Water Act that will support assumption of the wetlands permitting program by the State, allow exemptions for various activities and land status, and provide more Federal support for State and local participation in management of wetlands.
- Some commentors state that assumption of the Federal permitting authority for wetlands should be allowed only after demonstrating that the program's criteria for assessing the potential impacts of wetland development on fish and wildlife and the program's requirements for mitigating those impacts are the same as, or more stringent than, Federal requirements.
- Of concern to many was that the Section 404 program in Alaska is such that it unduly disadvantages Native communities and rural Alaskans and precludes providing such basic needs as roads, sanitation facilities, and clean drinking water supplies.
- A Native stakeholder requested an Alaska-wide exemption from Section 404 regulation, exemption for Native-owned property, exemption from compensatory mitigation, and other forms of regulatory "relief".
- Some commentors suggested that more resources should be spent assisting local governments by providing input for the process of identifying functions and values of wetlands.
- Some commentors maintained that improvement is needed to the process by which the Corps incorporates local input into the review process. Too often review and comments of a project made by a local body are discounted or ignored by the Corps in its final review and decision making process.

ANALYSIS AND PROPOSED RECOMMENDATIONS FOR DISCUSSION

Existing mechanisms provide opportunities for State and local governments and

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Native groups to participate in the Section 404 regulatory program. Experience has indicated that certain of these mechanisms are more likely than others to be practicable in Alaska at this time. It is appropriate to encourage State and local governments and Native groups (through technical assistance and potential grant funding) to pursue development of comprehensive aquatic resource management/conservation plans and associated regulatory mechanisms so that in the future, the opportunity for programmatic general permits would exist.

Several provisions of the Administration's August 24, 1993, Wetlands Plan address concerns relative to the role of State and local governments and Native interests in the protection and regulation of Alaska's wetlands. In addition, there are specific actions that the Federal agencies in Alaska recommend to address issues relative to State, local and Native roles.

Administration Plan

- Assist States, Tribes, and Local Governments in Taking a Stronger Role in Wetlands Protection. The Administration will provide technical and financial assistance and guidance to States, Tribes, and local governments to assist them in taking more of a leadership roles in wetlands protection, e.g., through State/Tribal assumption of Section 404, development of comprehensive State/Tribal Wetland Conservation Plans, application of State/Tribal Section 401 Certification authority to wetlands, development of Programmatic General Permits under Section 404, and better coordination between State, Tribal, and Local permit programs and the Section 404 program.
- Provide Incentives for States, Tribes, and Regional and Local Governments to Integrate Watershed and Wetlands Planning. The Clean Water Act should authorize the development of State/Tribal watershed protection programs, requiring local and regional involvement and Federal approval of the State/Tribal programs. Wetlands should be incorporated into the overall watershed approach, with minimum requirements for wetlands protection and restoration planning. Approved watershed plans would receive a high priority for technical and financial support for activities such as mitigation banking, advance identification, and categorization under the Section 404 regulatory program. There would also be a high priority given to developing Programmatic General Permits that defer to local regulatory programs implementing approved watershed plans.
- Increase Deference to State, Tribal, Regional, and Local Wetlands Decision Making. The Corps will issue guidance which specifies the circumstances under which State, Tribal, regional, and local programs can effectively regulate Section 404 activities, through issuance of Programmatic General Permits (PGPs). The

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guidance will also clarify the safeguards required to ensure that these programs properly protect wetlands and other waters.

- Endorse State/Tribal Wetland Conservation Plans. Congress should endorse the development of State/Tribal comprehensive wetland plans, with the goal of supporting State and Tribal efforts to protect and manage their wetlands resources. EPA is currently funding the development of 22 State Wetland Conservation Plans; Congress should provide EPA the authority to use its Wetlands Grants Program to fund both their development and implementation (see issue paper 9).
- Encourage State/Tribal Assumption of Section 404. Congress should provide EPA the authority to use its Wetlands Grants Program to fund both the development and implementation of State assumption of the Section 404 program. In addition, Congress should authorize partial assumption of the Section 404 program by States and Tribes as an interim step toward full assumption. By authorizing partial assumption of discrete areas within State or Tribal jurisdictions, the State/Tribe can gain experience with the program on a smaller scale.
- Provide State/Tribes with Access to Wetlands Delineation Training. State and Tribal agencies will be encouraged to participate in the Federal interagency wetlands delineation training and certification programs to strengthen their abilities to conduct wetlands delineations, and to improve consistency in wetlands identification among the State and Federal wetlands programs.

Alaska Specific Actions

- Develop Regional General Permits. The Corps and EPA would focus additional efforts on developing regional general permits based on wetland management plans. The general permits should be developed in conjunction with the State and local governments to ensure their needs are fully recognized throughout the process. By basing the general permits on a previously agreed upon management plan the concern for misusing wetlands would be minimized and Federal interest and concerns would be satisfied by appropriate conditioning of the regional permit (see Alternative Permit Process Issue Paper).
- Develop Circle General Permits for Alaskan communities. General permits (GPs) could be developed for each recognized community in Alaska. All wetlands within study area watersheds of these communities (or "circles") would be evaluated using Advance Identification (ADID) procedures (see Wetlands Inventory, Classification, and Categorization Issue Paper). The ADIDs would

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identify low value wetlands and GPs would be developed to authorize community-endorsed activities solely within these low value wetlands. In developing these GPs, the Corps would ensure that the environmental consequences of anticipated community activities in low value wetlands would be individually and cumulatively minimal and in compliance with the Section 404(b)(1) Guidelines. The communities would administer the Circle GPs based on their individual needs and values. All development within waters of the U.S./wetlands not covered by the Circle GPs would be administered under applicable Corps regulations. (see Alternative Permit Process Issue Paper)

- Conduct Monitoring of Existing and Future Cumulative Wetland Impacts of General Permits. The Corps and EPA would focus additional efforts toward monitoring and determining cumulative impacts of existing GPs. This would provide information for evaluating GPs, aiding watershed planning, and formulating special area management plans (see Advance Planning and Watershed Management Issue Paper).
- Provide Technical Assistance for State Assumption. EPA would provide technical assistance to the State if the State wishes to pursue assumption of the Section 404 program. (see Advance Planning and Watershed Management Issue Paper)
- Recommend written partnerships be established between the Corps and all interested stakeholders on Section 404. These documents would capitalize on the positive communications established during this Initiative, by clearly expressing mutually agreeable expectations and commitments associated with the Section 404 regulatory program. They would also describe communication networks to be established to better inform all constituencies of the purposes and procedures of Section 404.

ALASKA WETLANDS INITIATIVE
ISSUE PAPER - 5

SUBJECT: The Individual Permit Process

ISSUE: How can the Section 404 individual permit process be best implemented in a fair, flexible, and efficient manner in Alaska?

BACKGROUND:

General

Authorization from the Corps of Engineers is required under Section 404 of the Clean Water Act for any project that involves the discharge of dredged or fill material into waters of the United States, including wetlands. This is true regardless of whether the applicant is a private or government entity or whether the purpose of the proposed work is private or commercial. Authorization is also required pursuant to Section 10 of the Rivers and Harbors Act of 1899 for any project that involves the placement of structures in, or work affecting, a navigable waterbody.

Although an individual Section 404 permit is often required, authorization from the Corps for a discharge of dredged or fill material more commonly comes in a number of other forms. Many proposed activities are previously authorized by an existing nationwide or regional general permit. There are also Alternative Permit Processing procedures which may shorten the typical individual permit process (see Alternative Permit Process Issue Paper). The Corps also can verify that certain activities are exempt from Section 404 regulation. The Corps can determine if an activity meets the criteria for these authorizations or exemptions through a pre-application consultation.

If it is determined that an individual permit is necessary, an application form must be submitted with plans for the proposed work. The Corps then conducts a public interest review which considers the proposed work's impact on a minimum of 21 public interest factors. This review also includes requesting comments, by notifying the public and other regulatory or resource agencies of the proposed work through the issuance of a public notice. All comments received are then given full consideration and a determination of the extent of the impacts associated with the project is made. A combined Environmental Assessment/Decision Document, which includes a determination of compliance with the Section 404(b)(1) Guidelines, is then prepared, resulting in a decision to either issue the permit, deny the permit, or modify the proposal.

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through special conditioning, or revisions to the scope of work.

Permit decisions are generally made within 60-90 days from the date an application is complete. However, larger or controversial projects may take 120 days or more to evaluate. In rare cases it may take several years to complete the review. More lengthy permit reviews generally occur in instances when the project site is located in an environmentally sensitive area such as high value wetlands, there is strong opposition from the public or local governments, or it is determined that an Environmental Impact Statement is necessary. During Fiscal Year 1993 the Alaska District completed 71% of its evaluations of individual permit applications (271 issued, 17 denied) in 120 days or less. The average evaluation time was 109 days. However, the average evaluation time for all actions (both individual and general permits) issued or denied was 43 days.

Stakeholder and Public Comments

Commentors expressed concerns primarily toward the individual permit process, but some also noted problems with jurisdictional determinations. Although there was some recognition of recent improvements, there was a general consensus that the individual permit process took too long without concomitant environmental benefit. Not all commentors shared this opinion as some felt the process went too quickly with too little time for natives or rural Alaskans to provide comments.

- Many commentors characterized the permit process as being overly complex, slow, unpredictable and unfair. It was claimed that permits take too long to obtain; timing is compounded in Alaska by the short construction season; decisions are inconsistent; there exists no Federal clearing house or single deciding agency to implement the process; and it is unfair that the Corps does not provide an appeals process short of litigation.
- There was a general distrust for permit accounting statistics related not only to timing but also issuance/denial/withdrawal rates, mitigation/special condition requirements, and compliance/enforcement/ monitoring requirements. There was also a general recognition of differing needs/concerns between "big" development interests and the "mom and pop"/native development interests. Although statistics were often used to demonstrate a particular point of view, there was no attempt made to identify statistics or methodology of statistics collection that might have been or could be of mutual acceptance.
- Ways to improve timing of the individual permit process centered on stricter time limits for making a decision (a 60 day limit was suggested by some); the value of early coordination (preapplication coordination) for larger projects; advanced planning such as SAMPs and resource inventories/mapping (see Advance

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Planning and Watershed Management and Wetlands Inventory, Classification, and Categorization Issue Papers); applicant assistance ("mom and pop"/native applicants); applicant exit interviews/polls; closer coordination of permit time frames with the State's review; and general public education.

- One commentator compared Alaska District processing times with the national average and reported that Alaska time frames were shorter than the national averages.
- Suggestions for overall streamlining of the permit process included maximizing use of alternative permit processing procedures (see Alternative Permit Process Issue Paper).
- The fairness or equity of the permitting process was discussed in many contexts and included the timeliness aspects of a decision as noted above. The discussion touched on all aspects of the permit process and problem perceptions that existed even if no application was made. For example, it was stated that real estate values could be drastically affected by simply identifying a property as being subject to the 404 permit process. There was a general consensus that the Corps and EPA needed to do more to educate the public about the entire permit process and erroneous perceptions that are adversely affecting the public.
- Permit application requirements were considered excessive and beyond the capabilities of many, especially in the "bush" communities. Conversely, it was suggested that the Corps' public notices be improved with better project descriptions and plans. Concern was expressed regarding additional information requests either to complete an application (excessive or difficult information needed to complete the application) or for the decision process (for example, questions directed at having an applicant demonstrate that their proposal was the least environmentally damaging practicable alternative). It was suggested that the number of information requests be limited, and in writing.
- There was also concern regarding comments received and coordinated with permit applicants. It was suggested that comments be screened by the Corps and that only legitimate concerns (only substantive concerns that the Corps agreed with) be passed on and/or the Corps provide its position on the concern when passing it on to the applicant. There was also a belief that the Corps was having, or encouraging, applicants work things out with an objecting party. In an example cited in this regard, it was claimed that a reviewing resource agency requested compensatory mitigation for a proposed action and that the Corps left it up to the applicant to negotiate the issue directly with the resource agency.

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- The decision-making process was considered by some to be too vague, open-ended and unpredictable. In the interest of fairness it was suggested that evaluation requirements such as the practicability of alternatives test of the 404(b)(1) Guidelines should be clarified or deleted. For example, it was suggested that the Corps and EPA publish clearly written policy that an applicant would not have to address practicability or worry about compensatory mitigation requirements in abundant low-value wetland areas in Alaska. Others thought that full consideration was not being given to concerns of importance to their particular constituency. For example, native interests did not feel that wetland value determinations fully considered their values, and tourism interests did not believe that impacts (such as tourism access and aesthetics) were measured from their perspective.
- Concern was expressed about the administration's no-net-loss of wetlands goal and how a strict application of this goal could adversely affect future development in the State (see No Overall Net Loss of Wetlands Goal Issue Paper). There was considerable discussion of issues surrounding mitigation requirements of the program. Some thought the requirements were excessive, or that they were not given credit where it was deserved (for example, avoidance and minimization efforts prior to submittal of an application); others were of the opinion that not enough compensatory mitigation was being required in Alaska (see Mitigation Sequence and Compensatory Mitigation Issue Papers).
- Another concern was that there was not enough flexibility in the process for the unique circumstances that exist in Alaska. That a program structured for the Lower 48 was not workable in Alaska. Others asserted that there was too much flexibility in the program as it is currently administered citing the low denial and compensatory mitigation rates, the high number of regional general permits, and the numerous activities authorized by nationwide permits.
- Methods to improve the evaluation process and resultant findings included: information sharing such as use of centralized data bases, using documents or information prepared by others; recognition of human aspects of wetland value including native and recreational uses; the need to balance wetland/environmental protection with rural economic development needs and local native customs; consideration of rural/native time constraints (hunting/subsistence seasons) when requesting input on permit applications or proposed GP actions; more consideration of the local tax base, economic implications and local zoning determinations; use of consensus opinion; and an appeals process. Most thought an appeals process should be limited to applicant concerns (permit denials, objectionable conditions, jurisdictional determinations, etc.), while others thought that issuance and requested restrictions should also be

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subject to appeal.

- Other suggested improvements in the regulatory program included specific changes in laws and regulation, and improving the Corps' monitoring of permitted activities. Specific regulatory issues identified included: log-transfer facilities, mine tailing reservoirs, practicable alternatives, and whether to classify wetlands as "high" and "low" value. Increased planning, monitoring, and reporting to the public were proposed from several different viewpoints. Some commentors want an accounting of wetland impacts, compliance with permits, or cumulative impacts by the Corps; this might include pre-permit site visits, more training in wetland delineation, and increasing post-construction site visits. It was also suggested that third-party agreements be monitored and considered as mitigation in the 404 permit review.
- It was further suggested by some that the government reimburse property owners in cases of permit denial. One party suggested this apply to any loss of property value because of program implementation or public perceptions of the program. It was stated by some that permit denials, time delays, costly conditions (including compensatory mitigation) should be considered a "takings" and that the Federal government should compensate applicants accordingly. Some also felt that private property owners had the right under the U.S. Constitution, to do what they saw fit on their private property and that the government had no right to interfere.

ANALYSIS AND PROPOSED RECOMMENDATIONS FOR DISCUSSION

Permit application and public notice requirements are established by law and/or regulation. Minimum application requirements are laid out in the Corps' pamphlet EP 1145-2-1, May 1985, Regulatory Program Applicant Information. The pamphlet explains how to fill out a permit application, addresses what information and drawings are required and provides sample drawings. The Alaska District supplements the pamphlet with a check list and guidance to help applicants complete their drawings. Corps public notices must contain sufficient information to give a clear understanding of the nature and magnitude of the activity in order to generate meaningful comments. The public notice must be issued within 15 days of receipt of a complete application. The Corps cannot withhold the public notice for information needs exceeding minimal requirements. The Alaska District strongly encourages pre-application consultation for all larger projects. The District also prepares a preliminary 404 (b)(1) evaluation for Section 404 permit applications prior to going to public notice and gives the applicant an opportunity for a pre-application consultation prior to considering the application complete when it appears the application may not conform to the guidelines. Also, when informing an applicant that their project would soon go to public notice the District routinely notifies an applicant as to what information needs have been identified to complete a review of

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the project.

The District has worked with the State to coordinate the timing of the State and Federal review of projects. The States coastal zone questionnaire is included with all Corps application packages; the Corps and the State share the lead for setting up pre-application coordination meetings with interested State and Federal resource agencies; the State has agreed to accept the Corps application as application for State 401 Water Quality Certification whenever the Corps determines the activity could result in a discharge to Waters of the U.S.; the District includes State public notices with its public notice and handles State legal notices (but not payment for) for the activity; the District mails an advance copy of complete applications to the State 401 and Coastal Zone Management (CZM) agencies prior to going to public notice; the District notifies the CZM offices of all actions advertised the previous week; and the State has agreed to accept the District's determination for minor permit modifications subject to expedited review (the State may reverse this determination and require a full State review whenever they determine this to be appropriate). The District remains open to further suggestions to improve this coordination.

As noted above, many commentors indicated that the Corps individual permit process took too long. As part of the Alaska Wetlands Initiative the Alaska District mailed a survey to all applicants within the last five years and asked the applicants (over 1500) to rate the program. As of this writing over 400 responses have been received and the most common complaint has been that the process takes too long. We consider this complaint to be valid. The District's time frames were especially poor for the period from Fiscal Year (FY) 1988 through FY 1990. However, beginning in FY 1991 there has been continual improvement through the present. For FY 93 the Alaska District evaluated 71% of its standard actions (individual permits) in 120 days or less, versus a national average of 72%. However, as was noted by one commentor, the Alaska District exceeded the national average for permit evaluations in less than 120 days for the 4th quarter of FY 93. This improvement coincides with a substantial increase in the number of employees in the Alaska District Regulatory Branch and our success in retaining them, as well as an internal reorganization that directed more resources towards permit evaluation in order to reduce backlogs, streamline review and reduce time frames.

Although the Alaska District places a high emphasis on permit time frames, it places an even higher priority on making the "right" decision. The Corps regulatory program is highly complex and often involves many competing interests. Further, many of the determinations required on each permit action require subjective judgment. The District gives full consideration to private property rights and all substantive comments received on each action. The program is subject to national policy changes, interpretation challenges and court decisions; there are numerous legal requirements that are or could become an issue on any given action (e.g. National Environmental Policy

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Act, Endangered Species Act, National Historic Preservation Act, etc.). Although some may take exception with determinations made by the Corps, the Alaska District believes that its record demonstrates fair, well-reasoned decisions.

The Alaska District has long recognized the need for flexibility in the permit evaluation process, including the Section 404(b)(1) Guidelines analysis. This has been accomplished by using expedited reviews where warranted (e.g., permit modifications) and by utilizing the inherent flexibility in the Guidelines, which was recently reemphasized to field staff by the Corps and EPA.

The Alaska District complies with the "Takings Executive Order" (EO 12630) and prepares a "Takings Implication Assessment" when a decision so warrants. The District has not been directly involved in any takings litigation.

Several provisions of the Administration's August 24, 1993, Wetlands Plan address concerns relative to the individual permit process. In addition, there are specific actions that the Federal agencies in Alaska recommend to address issues relative to implementation of the individual permit process in Alaska.

Administration Plan

- Establish Deadlines for Permit Action. The Corps is to modify its regulations, through a public rulemaking process, to establish regulatory deadlines for reaching decisions regarding permit applications. The regulations will generally require the Corps to reach permit decisions within 90 days from the date of issuance of the public notice, unless precluded by other laws, such as the National Environmental Policy Act. This effort is scheduled to be completed by August 23, 1994.
- Adopt an Appeals Process for jurisdictional determinations, permit denials, and administrative penalties. The Corps will develop an administrative appeals process under the 404 regulatory program. The process will be implemented after a public rulemaking, and will be designed to allow for administrative appeals of the Corps' determination that it has regulatory jurisdiction over a particular parcel of property, permit denials, and administrative penalties. The process will allow third parties to participate in applicant appeals of permit denials and will require that applicants exercise their right to appeal before initiating judicial action. This effort is scheduled to be completed by August 23, 1994.
- Issue Section 404(b)(1) Flexibility Guidance. On August 24, 1993, EPA and the Corps issued guidance to their field staff to clarify and standardize implementation of the flexibility afforded by the 404(b)(1) Guidelines to make regulatory decisions regarding the analysis of project alternatives based on the

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relative severity of the environmental impact of proposed discharges. The guidance clarifies that small projects with minor impacts are subject to less rigorous permit review than larger projects with more substantial environmental impacts.

Alaska Specific Actions

- Develop Interagency Guidance to Clarify how Circumstances in Alaska such as the Abundance of Wetlands can Reduce Opportunities to Avoid Impacts to Wetlands and Affect how Rigorously Alternatives are Evaluated. The August 24, 1993 flexibility guidance should be shared with potential applicants to remove unnecessary fears and apprehension of the regulatory program. The Corps and EPA should clarify the guidance for Alaska by specifying when detailed alternative information is not required for the 404(b)(1) analysis (for example when there is no significant or easily identifiable difference in functional value of the proposed discharge site when compared with other sites within the general vicinity) and that compensatory mitigation would normally not be required for fill in areas with abundant low value aquatic areas.
- Conduct Exit Polls or Interviews with Permit Applicants. A recent Alaska District questionnaire sent to all permit applicants within the last five years should be continued and used as a basis for identifying concerns with the regulatory program in Alaska. The Alaska Wetlands Initiative Stakeholders and other interested parties should be given the opportunity to suggest improvements to the questionnaire. In addition to the questionnaire, all applicants should be given the opportunity for an oral exit interview.
- Ensure Sufficient Regulatory Resources. The Corps should ensure that the District element implementing the program has sufficient resources, the ability to control the resources, and an organizational structure that fosters efficient decisionmaking. Furthermore, the District must have the ability to retain trained staff and recruit quality candidates, when necessary. Serious consideration should be given to elevating the Branch organizational structure, upgrading project managers as envisioned in the Regulatory Resources Management Initiative, and expanding field offices.

ALASKA WETLANDS INITIATIVE
ISSUE PAPER - 6

SUBJECT: Alternative Permit Processing Procedures

ISSUE: How can alternative permit processing procedures be best implemented in a fair, flexible, and efficient manner in Alaska?

BACKGROUND:

General

Corps District Engineers (DE) are authorized, and encouraged, to use alternative permit processing procedures such as letters of permission (LOP), regional general permits (RGP) and joint procedures. It is intended that these alternative procedures be used in instances where there are minimal impacts and/or adequate environmental safeguards in order to: (1) reduce delay and/or (2) avoid duplication of efforts where other agencies have ongoing permit programs for activities also regulated by the Corps. LOPs are currently available to use for the authorization of certain activities under Section 10. LOPs can also be developed and used to authorize certain activities under Section 404. RGPs are developed through a process similar to that required for the authorization of a proposed activity by an individual permit (see The Individual Permit Process Issue Paper). Both Section 404 LOPs and RGPs are to be used for work which would not have more than minor individual or cumulative impacts on the environment and which should encounter no appreciable opposition. Joint procedures can be developed with other agencies when the fundamental objectives and requirements of the Federal permit process can be maintained.

Alternative permit processing procedures are designed to eliminate regulatory duplication and to expedite the permit process for activities covered by the procedures. The Alaska District previously developed an alternative permit procedure for North Slope oil and gas projects in 1983 and utilized the process through 1989. This process was entitled "Abbreviated Processing Procedure 83-1" and was based primarily on the following factors: (1) avoidance of "high value" aquatic areas to the maximum extent practicable; (2) minimization of impacts through project design and standard special conditions; (3) pre-application coordination between the applicant, EPA, the Corps, and interested Federal and State resource agencies; and (4) no substantive disagreement between reviewing agencies that project impacts would be minimal and that project impacts had been avoided and minimized to the maximum extent practicable.

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The process was implemented after issuance of a generic public notice (with opportunity for public hearing), an environmental assessment, and receipt of general consistency determinations from the State of Alaska (Section 401 Water Quality Certification and Coastal Zone Management consistency). A separate evaluation pursuant to EPA's 404(b)(1) Guidelines was prepared for each action authorized under the procedure. The public process that led to implementation of the procedure was effective in reducing the number of all interested parties requiring notification on a case by case basis. The goal of the process was to issue a standard Corps permit within 30 days once it was determined not to be contrary to the public interest.

Currently, there are no alternative joint permit procedures, abbreviated permit processing procedures, or 404 LOP procedures in place in the State of Alaska because the Alaska District has placed a high priority on the development of RGPs. However, the District recently initiated the development of alternative joint permit procedures for projects involving water and waste water projects in rural Alaskan villages that are conducted and/or funded by the U.S. Public Health Service or by the Village Safe Water Program. A public notice for comment on this proposed procedure was issued on December 3, 1993. Implementation of these new procedures is anticipated in early 1994.

The Corps has the authority to issue general permits (GPs) on a nationwide, regional, and State basis for those categories of activities in wetlands and other waters of the U.S. that are similar in nature and that will have only minimal adverse environmental effects, either individually or cumulatively. They are also used to avoid unnecessary duplication of regulatory control exercised by another agency provided the environmental consequences of the action are individually and cumulatively minimal (see State, Local, and Native Roles Issue Paper). If an activity is authorized by a general permit, work can proceed, without first applying for an individual authorization, as long as it complies with the conditions of the GP. However, some GPs may require that a project description and plans be submitted. There may also be some situations in which an abbreviated evaluation process for certain activities or locations is incorporated as a special condition to the GP.

At present, there are 36 nationwide GPs. In addition, the Alaska District currently has 21 regional GPs in effect in the State of Alaska. Four GPs apply statewide, and authorize mooring buoys, float houses, placer mining, and mariculture activities. The remaining GPs include activities such as docks, bank stabilization, residential fills, and commercial fills, and cover specific regional locations such as Sitka, Anchorage, the Kenai River, Fairbanks, and Deadhorse.

Stakeholder and Public Comments

Commentors identified many issues and concerns related to alternative permit

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processing procedures. Although most concerns were directed at the individual permit process (see Individual Permit Process Issue Paper), there was also considerable discussion of alternative permit processing procedures.

- Overall, commentors were generally in favor of maximizing use of alternative permit processing procedures to reduce permit process time frames. General Permits (GP) and Abbreviated Processing Procedures (APP) received the most attention as alternative processes. With the exception of programmatic general permits (PGP) there was general agreement that the GPs were working well in Alaska and may be the preferred mechanism to achieve most future streamlining. The primary concern presented against GP usage was the lack of a credible cumulative impact analysis prior to GP issuance and insufficient follow-up or monitoring to determine permit compliance and reliability of cumulative impact predictions. Some commentors expressed the view that the Alaska District should go back to doing more Section 10 Letter of Permission (LOP) reviews.
- APP discussions were generally centered on the APP procedure that the Alaska District implemented for North Slope oil and gas activities between November 1983 and November 1989. The Alaska District's proposed efforts with the Public Health Service, and Village Safe Water were noted in the context of an APP process. Understandably, comments on APP procedures were limited, as the District has only one previous procedure implemented in the State of Alaska and this procedure only applied to oil and gas activities. Comments made were all positive; asking that the old procedure be reinitiated; that new procedures be implemented for other types of activities; and that action on the proposed procedure for septic/clean water in native villages be expedited.
- Comments on GPs were more numerous and varied. The majority of comments made on GPs were positive. The most common comments were that existing GPs appeared to work well, and that more GPs are needed. However, some commentors emphasized that GPs should be limited to small groups or types of activities that are similar in nature and will have no substantial environmental effects, either individually or cumulatively; some felt that before renewing or issuing new GPs, the Corps and EPA should conduct a full cumulative impact analysis of all prior GPs and provide full monitoring and public accounting for any future such permits; some objected to programmatic general permits (PGPs) and felt that State and local governments could not be trusted with a GP's administration; some felt that wetland resources and their functions and values should be identified and classified prior to issuing any GP; it was suggested that wetland functions and values be determined by interdisciplinary teams of experts; it was suggested by at least one party that all GPs have threshold limits established for wetland resources and that the GP should be revoked when the

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limit was reached; another person asked that the process for establishing PGPs be specified including a time frame for completing the PGP process; the same party felt that local municipalities should be given real authority to implement the PGP and that the PGP process should consider "plan-level" issues and these issues should not be reopened on a case-by-case basis; one commentor expressed support for the GP concept but was concerned with GP results in the Anchorage bowl area; another commentor thought that the abbreviated review period associated with the HUD Housing GP (GP 89-3) was still too long for most projects which require off site borrow (fill material); at least one party indicated that Alaska had more GPs than any other State and that perhaps there were already too many GPs.

- Although the "Alaska 1%" Exemption will be withdrawn, many stakeholders were of the opinion that some sort of exemption was still appropriate and must be considered as an alternative (see Special Alaska Circumstances - Legal Issues Issue Paper).

ANALYSIS AND PROPOSED RECOMMENDATIONS FOR DISCUSSION

GPs are the most widely used way to expedite the Section 404 permit process in an environmentally acceptable manner. GPs can only be developed for projects that would have minimal environmental impacts both individually and cumulatively. Therefore, there is a limit as to what might be covered by future GP development. Monitoring specific activities authorized by GP is by necessity limited (with regard to individual permits, the Corps goal is to monitor at least 25% of these permits on an annual basis). Monitoring is done on a priority basis; projects with the greatest potential for environmental degradation and those with the most substantive special conditions (such as compensatory mitigation) are given priority. Attention is also given to project location in relationship to other permitted activities. Travel distances and expense in Alaska require "bunching" site visits to the maximum extent practicable. GP activities are considered to have minimal impacts and are generally given lower priority for site inspections. There have been exceptions however; placer mining GP actions have gotten considerable attention. This was prompted by controversy associated with placer mining activities in 1988 when the GP was developed, and was possible because there are often numerous mining activities in relatively close proximity to each other.

Cumulative impact predictions have been made for the GPs implemented in Alaska and summary cumulative impact analysis of GPs have been conducted for GP renewals. A comprehensive cumulative impact analysis for all GP authorizations permitted in the past would be a difficult task. As with nationwide GPs, some past GPs have had no reporting requirements and information available on some is scanty at best. Further, GPs limited to small geographic areas would not necessarily have impacts that

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would be cumulative with another GP located many miles away. The number of GPs available for use in Alaska is not comparable to the number of GPs that may exist in any other state; Alaska is a big State with many GPs tailored to small geographic areas; some existing Alaska GPs cover only a few actions per year; many other states have statewide GPs covering hundreds of actions per year. GP impact predictions have generally been based on the maximum number of activities or maximum wetland acres that were expected to occur or be affected by the GP. Actual number of activities, and when relevant, wetland acres affected by GPs have been well below the predictions. This is also true for the APP process that existed for oil and gas activities on the North Slope. While the APP was in effect it appeared to work well and development and resource agencies alike appeared satisfied with the process.

The Corps recognized the problems associated with the Anchorage GPs early in their implementation and took action to correct these problems. The City of Anchorage had expended considerable effort and money in developing the "Anchorage Wetland Management Plan" (partly or wholly on reliance of the Corps developing the Anchorage GPs). The Alaska District entered into negotiations with the City of Anchorage in 1985 to determine how best to correct deficiencies identified in the GPs. The culmination of these negotiations was a Special Public Notice (SPN 86-1) issued on January 7, 1986, which in effect and purpose established a no-net-loss of wetland value policy for Anchorage wetlands designated preservation or conservation in the Anchorage Wetland Management Plan (over five years prior to the officially expressed Corps/EPA goal of no-net-loss of wetlands).

It was noted in the background discussion above that most concerns for GPs were centered on PGPs. While the Alaska District had a number of GPs in the past that were considered programmatic (such as the Anchorage and Homer GPs), most of these GPs would not be considered programmatic today (only the floathouse and mariculture GPs would be considered programmatic by current standards). The programmatic nature of these older GPs was based on guidance contained in Regulatory Guidance Letter (RGL) 83-7. Under current guidelines a PGP would need to tie into an existing program that offered the same level of environmental protection as the DA administered Section 404 program. The Corps and EPA retain enforcement responsibility for all Section 404 permits be they individual permits or GPs (nationwide, regional, or programmatic) (see State, Local, and Native Roles Issue Paper).

In 1992 the Alaska District published a public notice soliciting interest in additional GPs within the State of Alaska. The District also entered into a "Partnership Agreement" with the Alaska Department of Governmental Coordination to pursue development of GP and APP procedures with a completion goal of December 31, 1994. These commitments will affect other potential recommendations coming from the Alaska Initiative.

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Several provisions of the Administration's August 24, 1993, Wetlands Plan are related to alternative permit processing procedures. In addition, there are specific actions that the Federal agencies in Alaska recommend to address issues relative to implementation of alternative processing procedures in Alaska.

Administration Plan

- Encourage Advance Planning Efforts. The Federal agencies will provide technical assistance for advance planning efforts addressing wetlands conservation, and will counsel planning participants on methods to link local or regional planning with Section 404 regulatory decision making. Wetland categorization will be supported within the context of an approved advance plan to provide landowners with early identification and characterization of wetlands on their property, streamlined permit review, and more flexible mitigation sequencing where appropriate. The Administration recommends changes in the Clean Water Act to provide incentives (financial and regulatory) for wetland planning efforts. Congress should provide the Federal agencies the authority to use grant monies to fund both the development and implementation of these plans.
- Regionalize General Permits for Activities in Defined Categories of Waters. Nationwide Permit 26 (NWP 26) authorizes certain discharges into isolated waters and waters above the headwaters point on streams. The Corps will undertake, in close coordination with relevant State and Federal agencies, a field review and evaluation of NWP 26 for the purpose of regionalizing and improving its use. Revisions to NWP 26 will focus on ensuring that appropriate levels of wetlands protection are provided through national and regional terms and conditions.

Alaska Specific Actions

- Expedite Development of Abbreviated Processing Procedures (APP). The Corps and EPA would expedite action on the Abbreviated Permit Processing Procedure for proposed projects involving Public Health Service and Village Safe Water. They agencies would explore future opportunities for use of APP procedures which include or combine other alternative procedures intended to ease the regulatory burden on the Alaska public, including but not limited to joint applications and joint processing procedures.
- Propose the Development of Additional General Permits. The Alaska District would continue development of general permits for log transfer facilities statewide, residential and community fills for communities in the southeast, residential fills for the Harding Lake area, floatcamps associated with logging activities, residential and commercial fills in the Kodiak area, residential

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subdivision fills in Klawock, and fills for oil and gas activities on the North Slope. The Corps is also evaluating the possibility of expanding the floathouse general permit to include floatcamps, and expanding the placer mining general permit to allow activities on patented lands, to increase the size of mines covered and also to cover suction dredge and other recreational mining activities in non-navigable (not subject to Section 10 of the Rivers and Harbors Act) waters of the U.S. (these activities are already covered in navigable waters if the conditions of the placer mining GP are met).

- Conduct Cumulative Impacts Evaluations for General Permits. The Alaska District should take the following actions: 1) for proposed GPs the District should make its cumulative impact analysis available for public review prior to GP implementation; 2) for renewals, extensions, or expansions of existing GPs the District should include a summary cumulative impact analysis of the GP with the public notice for comments. The summary analysis should describe the extent of monitoring done for specific GP authorizations, compare GP impacts to those predicted prior to the GPs implementation, and provide an updated cumulative analysis of expected future impacts.
- Develop Circle General Permits for Alaskan communities. General permits (GPs) could be developed for each recognized community in Alaska. All wetlands within study area watersheds of these communities (or "circles") would be evaluated using Advance Identification (ADID) procedures (see Wetlands Inventory, Classification, and Categorization Issue Paper). The ADIDs would identify low value wetlands and GPs would be developed to authorize community-endorsed activities solely within these low value wetlands. In developing these GPs, the Corps would ensure that the environmental consequences of anticipated community activities in low value wetlands would be individually and cumulatively minimal and in compliance with the Section 404(b)(1) Guidelines. The communities would administer the Circle GPs based on their individual needs and values. All development within waters of the U.S./wetlands areas not covered by the Circle GPs would be administered under applicable Corps regulations.
- Conduct Exit Polls or Interviews with Permit Applicants. A recent Alaska District questionnaire sent to all permit applicants within the last five years should be continued and used as a basis for identifying concerns with the regulatory program in Alaska. The Alaska Wetlands Initiative Stakeholders and other interested parties should be given the opportunity to suggest improvements to the questionnaire. In addition to the questionnaire, all applicants should be given the opportunity for an oral exit interview.

ALASKA WETLANDS INITIATIVE
ISSUE PAPER - 7

SUBJECT: The Mitigation Sequence

ISSUE: How can the mitigation sequence best be applied in Alaska?

BACKGROUND

General

The Clean Water Act Section 404 (b)(1) Guidelines [Guidelines] are the substantive environmental criteria used in evaluating discharges of dredged or fill material into waters of the United States, including wetlands. The Guidelines specify mitigation requirements that include: 1) avoidance of adverse environmental impacts; 2) minimization of unavoidable impacts; and 3) compensatory mitigation for unavoidable adverse impacts (see Compensatory Mitigation Issue Paper). "Mitigation" refers to this wide range of actions to reduce the impacts of developing in wetlands. The "mitigation sequence" refers to the stepwise consideration of these types of mitigation.

The mitigation sequence is designed to establish a consistent approach to be used in ensuring that all practicable measures have been taken to reduce potential adverse impacts associated with proposed projects in wetlands and other aquatic systems. The first step in the sequence requires the evaluation of potential alternative sites to locate the proposed project so that aquatic impacts are avoided to the maximum extent practicable. As the next step in the sequence, remaining impacts are minimized, by making changes in project design or construction methods that reduce overall project impacts. Lastly, after all practicable and reasonable steps have been taken to avoid and minimize potential adverse effects, compensation for remaining unavoidable impacts is sought by such measures as wetlands creation or restoration, if these measures are practicable, in order to replace lost aquatic functions and values.

In 1990, the Department of Army (Army) and the Environmental Protection Agency (EPA) entered into a Memorandum of Agreement (MOA) to clarify requirements regarding the mitigation sequence contained in the Guidelines. Specifically, the MOA recognized that avoidance, through the identification of a less damaging alternative to the proposed project, and compensatory mitigation, are not required in circumstances where it is determined that potential alternatives are not practicable and that opportunities to offset project impacts are not practicable.

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Practicable is defined in the Guidelines as "available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes."

In 1992, Army and EPA issued joint guidance further clarifying the Guidelines and the MOA with respect to Alaska that emphasized "that there are areas, including many locations in Alaska, where it may not be practicable to restore or create wetlands; in such cases compensatory mitigation is not required under the Guidelines," and that "[w]here there is a high proportion of land in a watershed or region which is wetlands, it is likely that avoiding impacts to wetlands will not be practicable depending on project size and other logistical considerations."

There are many areas in the State where it is virtually impossible to avoid wetlands. Therefore, in much of Alaska, particularly in regions with abundant wetlands such as the State's North Slope, minimization efforts constitute the primary form of mitigation. Examples of minimization efforts include reducing the scope of fill, stabilizing slopes against erosion, timing discharges to avoid spawning/migration seasons, and shifting fill locations to wetlands of lower value. Both the Guidelines and the MOA limit minimization requirements to those that are "appropriate and practicable." The preamble to the Guidelines notes, with respect to these terms, that actions which would be "unreasonably costly or would be infeasible or which would accomplish only inconsequential reductions in impact need not be taken" (emphasis added). The Alaska District Corps required compensatory mitigation on less than one percent of the permits it issued in 1991 (the most recent year for which data have been compiled).

Stakeholder and Public Comments

A number of observations, concerns, and recommendations with regard to how the mitigation sequence could be applied in Alaska were raised by the stakeholders and public commentators. The divergent comments include those that stated Alaska should be exempt from requirements of the mitigation sequence to those that stated the need for stricter implementation of the mitigation sequence to comply with the National goal of no net loss (see No Overall Net Loss of Wetlands Goal Issue Paper). The comments are summarized as follows:

- A concern shared by many commentators was that the mitigation sequence is too rigid for use in Alaska, due to physical, climatological, and social circumstances that are unique to the State (see Alaska's Physical Environment and Alaska Social-Political Environment Issue Papers). For example, due to Alaska's abundance of wetlands, there was an assertion that avoidance is not practicable
- Rural Alaskans were concerned that stringent requirements for avoidance would

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prevent villages from providing basic human service and infrastructure which are still absent.

- Some commentors expressed concern that avoidance and minimization efforts taken prior to applying for a permit may not be recognized. There were also misgivings that planning decisions about avoidance and minimization are most often based on economics, not aquatic resources.
- There were several suggestions for modification of the 404 mitigation requirements for Alaska. Some commentors believed that modifications weren't currently necessary, but may become so with the implementation of the President's No Net Loss goal (see No Overall Net Loss of Wetlands Goal Issue Paper).
- Some commentor; suggested that acknowledging Alaska's unique character should include formally codifying the Mitigation MOA.
- Many commentors recommended modifying or waiving the mitigation sequence for all, or portions, of the State (e.g., all or some of the Native- or State-owned lands, cities and communities, lower value wetlands) and/or certain activities (e.g., public, water-dependent, or small projects, especially in rural Alaska).
- Some commentors expressed concern that many of the suggested exemptions would result in impacts to high value aquatic resources, and that unmitigated losses in these areas would have cumulatively substantial effects. These commentors considered wide-scale exemptions unacceptable, and recommend that analysis continue on a case-by-case basis. They also noted the difficulty of accurately defining "low-value" wetlands for exemption, especially on broad geographic bases (see Advance Planning and Watershed Management Issue Paper).

ANALYSIS AND PROPOSED RECOMMENDATIONS FOR DISCUSSION

Based upon their explicit consideration of appropriateness and practicability, the Section 404(b)(1) Guidelines and the Corps' permitting regulations incorporate substantial flexibility to allow for the consideration of Alaska's unique circumstances. The 1990 Corps-EPA Memorandum of Agreement on Mitigation and the 1993 Corps-EPA Guidance on Mitigation Banking and the Flexibility of the Guidelines further emphasize this adaptability. Given the inherent flexibility provided by the Guidelines and the Corps permit regulations, the Corps and EPA do not believe that explicit exemptions from the mitigation sequence are necessary to accommodate Alaska's unique circumstances. However, the agencies recognize that additional clarification reflecting circumstances in

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Alaska would be helpful.

Several provisions of the Administration's August 24, 1993, Wetlands Plan address concerns relative to the mitigation sequence. In addition, there are specific actions that the Federal agencies in Alaska recommended to address issues relative to the mitigation sequence.

Administration Plan

- Issue Mitigation Planning Guidance. The Corps, in coordination with EPA and other Federal Agencies, will issue guidance to their field staff to clarify the requirements for developing compensatory mitigation conditions in Section 404 permits. This guidance is intended to increase the success of mitigation projects in offsetting impacts to wetlands and other waters resulting from permitted activities. This guidance will assist permit applicants by providing greater consistency and certainty with regard to how Section 404 mitigation requirements are applied.
- Develop Improved Analytical Tools. The agencies will expedite current efforts being coordinated by the Corps Waterways Experiment Station to develop an improved wetland functional assessment tool, the Hydrogeomorphic Classification System, to assist in conducting analysis and determining appropriate and effective mitigation measures.

Alaska Specific Actions

- Develop interagency guidance to clarify how physical circumstances in Alaska such as the extent and type of wetlands affect the determination of "practicability" under the Guidelines mitigation requirements. The Corps and EPA, in coordination with the U.S. Fish and Wildlife Service and National Marine Fisheries Service, would develop guidance that clarifies existing mitigation requirements under the Section 404(b)(1) Guidelines as they apply in Alaska. The guidance would explicitly consider how circumstances in Alaska, such as the extent of wetlands and the relative opportunities to restore wetlands, affect the determination of "practicable" under the Guidelines. The guidance would reflect experience in Alaska that demonstrates that minimization of impacts is the primary mitigation tool and that avoidance and compensatory mitigation are required only where practicable, consistent with the clarification of this term for Alaska.
- Recommend that the Executive Order on wetlands articulate the flexibility in implementing the Administration's goal of no overall net loss of the Nation's

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wetlands to reflect particular circumstances in Alaska. The Federal agencies in Alaska would recommend to the Administration's Interagency Wetlands Working Group that the Executive Order on wetlands under development contain appropriate language relevant to implementing the National goal of no overall net loss with regard to the regulatory program in Alaska. Similar to the text contained in the National Wetlands Policy Forum, language for the Executive Order recommended by the Federal agencies in Alaska would emphasize that the goal of no overall net loss should be implemented in a manner that effectively reflects regional circumstances.

- Issue a Special Public Notice (or Local Supplement to the Mitigation MOA) on application of the mitigation sequence in Alaska. Much of the concern regarding the mitigation sequence may stem from a misunderstanding of its requirements. The Federal agencies would address this concern by placing additional emphasis on public education opportunities (see Outreach and Education Issue Paper). A Special Public Notice (or Local Supplement) would 1) explain the mitigation sequence; 2) clarify how the sequence works in Alaska; and, 3) reaffirm the existing policy on flexibility.

- Acknowledge pre-application avoidance and minimization efforts. While the Corps does not require applicants to consider or incorporate measures for avoidance and minimization prior to submitting applications, applicants who demonstrate they have done so (through discussion in application packages and at pre-application meetings) certainly benefit. Involving resource agencies in that part of project planning would help ensure that they are aware of the steps that have been taken. The Federal agencies would promote inter-agency consultation on avoidance and minimization at the pre-application stage is needed by encouraging applicants to participate in pre-application meetings, particularly for large or potentially controversial projects. The District would also advise applicants to document the avoidance and minimization steps their projects reflect, even if no such consultation/meeting takes place.

ALASKA WETLANDS INITIATIVE
ISSUE PAPER - 8

SUBJECT: Compensatory Mitigation

ISSUE: How can compensatory mitigation be best implemented in Alaska?

BACKGROUND

General

The Section 404 program requires appropriate and practicable compensatory mitigation for adverse impacts which remain after avoidance and minimization have been implemented (see Mitigation Sequence Issue Paper). Although compensatory mitigation is commonly thought of as the creation of new wetlands from uplands, that is only one recognized method of offsetting unavoidable adverse impacts. In fact, since successfully creating productive wetlands from uplands is often technically very difficult, or impossible, to achieve, it is the rarest form of compensation used in Alaska. Other, more common (and more successful) forms of traditional compensatory mitigation are enhancement (e.g., construction of nesting islands) and restoration (e.g., rejuvenation of impacted wetlands, reestablishment of stream meanders). Finally, in certain circumstances, preservation of existing wetlands is also accepted as compensatory mitigation.

In certain situations, out-of-kind (i.e., different habitat type) or off-site (i.e., different location) forms of compensatory mitigation may be appropriate. Examples of these situations include when an area is deficient in a different kind of habitat than the project would impact or when on-site mitigation opportunities are either absent or unwise for safety reasons or chances for success. In order to be most effective, off-site mitigation should usually occur near the site of impacts (e.g., within the same watershed).

Under certain circumstances (e.g., when a previously unrecognized critical area is threatened by permitted or non-jurisdictional activity), the Alaska District sometimes accepts/ requires non-traditional forms of compensatory mitigation. One example of such mitigation is the preservation of existing wetlands through mechanisms that ensure long-term protection, such as placing the wetlands under permanent easement or transferring title. Another less common, but sometimes acceptable form of mitigation is the designation of funds to wetlands restoration/creation projects being sponsored by private conservation groups such as the Nature Conservancy or Ducks Unlimited.

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As with all mitigation, the Section 404(b)(1) Guidelines and the Corps permitting regulations call for compensatory mitigation only when it is appropriate and practicable. This requirement provides needed flexibility for considering circumstances unique to Alaska (e.g., the fact that a local or regional abundance of wetlands, especially when combined with a low level of existing development, may render compensatory mitigation either inappropriate or impracticable, or both) (see Alaska's Physical Environment Issue Paper). The Corps permitting regulations also promote consideration of the relative value of wetlands that would be impacted and the degree of those impacts. The regulations note that compensatory mitigation is required for "significant resource losses which are specifically identifiable, reasonably likely to occur, and of importance to the human or aquatic environment" [33 CFR 320.4(r)(2)]. The same regulation states that all required mitigation should be "directly related to the impacts of the proposal and appropriate to the scope and degree of those impacts." These requirements are one reason why compensatory mitigation is seldom required for lower value wetlands in Alaska. Together with the practicability considerations required under the Guidelines, the EPA and Corps regulations provide significant flexibility in determining what is necessary mitigation on a case-by-case basis.

Stakeholder and Public Comments

A number of observations, concerns, and recommendations in regard to what type of compensatory mitigation is appropriate and practicable in Alaska were raised by the stakeholders and public commentators. The divergent comments included those that asserted that compensatory mitigation should never be required in Alaska to those that believe there is not currently enough compensation provided for loss of high value areas. The comments are summarized as follows:

- Several commentators were apprehensive that compensatory mitigation could create undue economic burdens and discourage needed economic development.
- Some commentators felt that, due to Alaska's unique circumstances, compensatory mitigation should never be required (see Special Alaska Circumstances - Physical Environment Issue Paper for detailed discussion).
- Other commentators believed that the regulatory program in Alaska is not providing enough protection or compensatory mitigation for high value areas (e.g., critical habitat, spawning/rearing areas, coastal salt marshes and nearshore waters, migratory bird nesting/feeding habitat, and areas important for flood control).
- Another concern was that impacts on tourism and recreational values do not receive enough consideration in mitigation decisions.

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- Some commentators emphasized that recent statistics on the level of compensatory mitigation required in Alaska was far less than the lower 48 states. Cited was the fact that between October 1992 and June 1993, only 19 percent of the wetland acres that were permitted in Alaska were mitigated. During this eight month period, the Corps District permitted 866 acres to be filled in Alaska while requiring only 167 acres to be mitigated, resulting in an overall net loss of 700 acres.
- Some commentators suggested exempting all or parts of the State, and/or certain types of activities, from the compensatory mitigation step of the mitigation sequence.
- Some commentators suggested that as an alternative to compensatory mitigation, accelerated rehabilitation of gravel fill sites in the North Slope be used.
- Another area of debate centered on the definition of compensatory mitigation. Specifically, there was a question whether or not the following activities constitute compensation: 1) the reclamation/restoration of temporary project sites such as oil and gas pads and placer mines; 2) the preservation of existing wetlands, as in refuges and conservation easements; and, 3) monetary donations to funds for mitigation, research or public education. Some commentators asserted that these actions do not constitute compensation, because they do not result in an environmental gain. Another concern was that reclamation of permitted sites is not compensation since many permits require such action upon project abandonment anyway. An opposing view was that reclamation/restoration is indeed appropriate compensation, since the end result is no long-term net loss of aquatic resources.
- Other recommendations supported the implementation of "mitigation banking," a term which refers to the establishment of an area as a site for consolidated mitigation efforts performed in advance of permitting. "Withdrawals" or "debits" from the mitigation bank would then be made for projects which required compensation. Discussions related to mitigation banking include assertions that it would be a valuable tool for cities needing economic development, but that it may not be appropriate in areas (e.g., the North Slope), where other forms of mitigation (e.g., restoration) are available. There was also a recommendation that the concept should be implemented Statewide. Suggestions for inclusion in the mitigation banking concept include enhancement, restoration and preservation. There was concern that implementation of a banking system, however, would result in an increase in compensatory mitigation requirements. There is also strenuous opposition to the possibility that projects might require out-of-State mitigation.

ANALYSIS AND PROPOSED RECOMMENDATIONS FOR DISCUSSION

The Corps and EPA believe that the Section 404(b)(1) Guidelines and the Corps permitting regulations provide the necessary flexibility to accommodate the circumstances in Alaska (see Mitigation Sequence Issue Paper). Therefore, broad geographic or project-type exemptions from compensatory mitigation do not seem necessary. With respect to considering wetlands cited as already "preserved" in refuges, parks, and other similar areas as "banks" against future mitigation needs, the Corps and EPA believe that this is not actually the case. In many cases these wetlands are not specifically protected from, and in fact do undergo, development (e.g., mining, oil and gas production).

Several provisions of the Administration's August 24, 1993, Wetlands Plan address concerns relevant to compensatory mitigation. In addition, there are specific actions that the Federal agencies in Alaska propose to address issues regarding compensatory mitigation.

Administration Plan

- Endorse the use of mitigation banking under the Section 404 regulatory program. The Administration endorses the concept of mitigation banking--the restoration, creation, enhancement, and, in certain circumstances, preservation of wetlands expressly for the purpose of providing compensatory mitigation in advance of discharges into wetlands authorized under the Section 404 regulatory program.
- Issue mitigation banking guidance. EPA and the Corps, in coordination with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service and the Soil Conservation Service, have issued guidance to their field staff to clarify the manner in which wetlands mitigation banking is appropriately used within the Section 404 program.
- Issue mitigation planning guidance. The Corps, in coordination with EPA, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service, will issue guidance to their field staff to clarify the requirements for developing compensatory mitigation conditions in Section 404 permits.

Alaska Specific Actions

- Develop interagency guidance to clarify how physical circumstances in Alaska such as the extent and type of wetlands affect the determination of "practicability" under the Guidelines mitigation requirements. The Corps and EPA, in coordination with the U.S. Fish and Wildlife Service and National Marine Fisheries Service, would develop guidance that clarifies existing mitigation

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requirements under the Section 404(b)(1) Guidelines as they apply in Alaska. The guidance would explicitly consider how circumstances in Alaska, such as the extent of wetlands and the relative opportunities to restore wetlands, affect the determination of "practicable" under the Guidelines. The guidance would reflect experience in Alaska that demonstrates that minimization of impacts is the primary mitigation tool and that avoidance and compensatory mitigation are required only where practicable, consistent with the clarification of this term for Alaska.

- Recommend that the Executive Order on wetlands articulate the flexibility in implementing the Administration's goal of no overall net loss of the Nation's wetlands to reflect particular circumstances in Alaska. The Federal agencies in Alaska would recommend to the Administration's Interagency Wetlands Working Group that the Executive Order on wetlands under development contain appropriate language relevant to implementing the National goal of no overall net loss with regard to the regulatory program in Alaska. Similar to the text contained in the National Wetlands Policy Forum, language for the Executive Order recommended by the Federal agencies in Alaska would emphasize that the goal of no overall net loss should be implemented in a manner that effectively reflects regional circumstances.
- Incorporate mitigation into advance planning efforts. With respect to mitigation, the Corps and EPA would encourage local/regional wetlands planning efforts to identify wetlands functions and values which would require mitigation, and to catalog potential restoration sites. (see Advance Planning and Watershed Management Issue Paper)
- Develop mine site reclamation guidelines. The Corps and EPA would work with placer mining industry interests (including landowners, placer mining groups, environmental interests, etc.) to clarify, then formalize, the requirements for reclamation as a form of mitigation. With regard to alternative, or creative, forms of compensatory mitigation, the Corps and EPA believe that there are projects for which site restoration (after avoidance and minimization) is sufficient to satisfy mitigation requirements, particularly in circumstances where other forms of mitigation are determined to be impracticable under the Guidelines.
- Develop accelerated restoration program for oil and gas projects. Accelerated restoration or rehabilitation prior to the deadline built into standard permits is a concept which would be further considered, particularly for the oil and gas industry.
- Develop and implement bonding procedures for restoration/reclamation projects.

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Since follow-through is essential in ensuring adequate reclamation/restoration, a bonding system may be necessary to protect against default on restoration efforts. Consideration of permittee compliance records would also likely be prudent.

- Establish mitigation banking pilot project. The Corps and EPA together with USFWS and NMFS would work with industry/resource representatives and other interested parties to identify a mitigation banking pilot project. Two of the Administration's proposals address mitigation banking. We believe the concept could prove to be a useful part of the 404 program in Alaska. Study of the pilot project would indicate the feasibility of using the concept in Alaska and would facilitate the creation of guidelines for its use on a wider basis, where such use proves feasible.
- Assess the effectiveness of mitigation efforts in Alaska. The Corps and EPA together with USFWS and NMFS would work with interested parties, and to consult the scientific expertise available to our agencies, to develop a program to assess the effectiveness of various mitigation techniques in Alaska, and to refine those techniques as necessary. All concerned parties have a need to know how effectively mitigation provides the functions and values expected from it. This knowledge would guide permitting decisions away from unnecessarily requiring or accepting typically unsuccessful forms of mitigation, and toward forms which have proven to be more successful. We anticipate a final product of these efforts being general compensatory mitigation guidelines for the State.

ALASKA WETLANDS INITIATIVE
ISSUE PAPER - 9

SUBJECT: Advance Planning and Watershed Management

ISSUE: How can advance planning and watershed management be best implemented to improve the predictability and effectiveness of the Section 404 permitting process and the protection of wetland resources?

BACKGROUND

General

Comprehensive watershed planning provides an opportunity for local communities to enhance and streamline the Section 404 regulatory process. Although the process can be labor-intensive and costly, the benefits can be significant:

- 1) When decisions are made on a permit-by-permit basis, piece-meal wetland losses and degradation frequently occur. In contrast, comprehensive planning can improve resource protection by identifying wetlands protection and restoration needs within the watershed.
- 2) Comprehensive planning offers an opportunity for strong participation from private citizens and local governments to balance wetlands protection with development needs in a comprehensive and predictable manner.
- 3) A comprehensive plan which is consistent with the Section 404(b)(1) Guidelines can facilitate and streamline the permit process. When used as a framework for evaluating further permit decisions, and approved plan can increase predictability and reduce conflicts regarding activities affecting wetlands.
- 4) A comprehensive plan can address a large number of land and water-based activities which impact wetlands.
- 5) Finally, comprehensive planning allows wetlands to be managed within a broader, watershed context. This watershed-based approach recognizes the interconnections between water resources and the land, air, and water environment surrounding the resources. The watershed approach can integrate both regulatory and voluntary activities in order to address impacts on the ecosystem as a whole. The areas

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covered in a particular watershed depend on the goals of the wetland planning effort, and may include specific drainage basins (e.g., Kenai River) or ecoregions (e.g., Southeast Alaska).

Advance planning generally involves at least the identification, mapping, and preliminary assessment of relative wetland functions within the planning area. For example, the Advance Identification process, conducted jointly by EPA and the Corps of Engineers, after consultation with the State and local governments, classifies areas as generally suitable or unsuitable for future discharges of dredged or fill material. Although this determination does not constitute a final permitting decision, the Advance Identification process involves an evaluation of the likelihood that the use of an area for discharges of dredged or fill material would be consistent with the Section 404(b)(1) Guidelines.

Another example of a comprehensive wetland planning tool is the Special Area Management Plan (SAMP). A SAMP was originally defined by the Coastal Zone Management Act as a "comprehensive plan providing for natural resource protection and reasonable coastal dependent economic growth ... in specific geographic areas within the coastal zone." The development of a SAMP within a watershed or planning area should reduce case-by-case permit review problems, increase predictability for developmental interests, and assure environmental interests that individual and cumulative impacts are analyzed in the context of broad ecosystem needs. Since comprehensive planning can be costly and labor intensive, efforts should concentrate on sensitive areas under strong developmental pressure. The plan should have sponsoring local agency to reflect local needs and interests; full public involvement should be encouraged throughout the planning and development process. Finally, all parties should be willing to conclude the SAMP with a regulatory product. These regulatory products may include appropriate local and State approvals and/or restrictions and a Corps general permit (GP) or Abbreviated Processing Procedure (APP) (see Alternative Permit Processing Procedures Issue Paper).

Another opportunity for participation in comprehensive planning is the development of State/Tribal Wetland Conservation Plans. This is a new tool for states/tribes to develop strategies to achieve wetland management goals. State/Tribal Wetland Conservation Plans may integrate both regulatory and cooperative approaches to protecting wetlands. The plans may address diverse land and water-based activities impacting wetlands which are not addressed by any single Federal, State, or local agency program. States are well-positioned between Federal and local government to take the lead in integrating and expanding wetland protection and management programs.

In Alaska, comprehensive wetland management plans have been completed for Anchorage and Juneau. These plans rely on detailed maps showing the location and

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classification of each wetland area. In both communities, categories were assigned to wetland units based on ecological functions and values. These categories then formed the basis of a wetland management plan. In Juneau, the list of impaired habitats and restoration projects was generated for potential mitigation. Both efforts were spearheaded by local communities, with substantial financial and technical assistance from State and Federal agencies.

The Anchorage Wetland Management Plan provided the foundation for two Corps C's allowing certain activities to occur in "developable" wetlands. The Juneau Wetland Management Plan was proposed as a framework for a Corps general permit allowing discharges into certain wetland categories, although the final GP has not yet been issued.

In addition, a watershed plan is currently being developed for the Kenai River basin, supported by both State and Federal funding. In the first phase, EPA provided \$30,000 to the State to identify aquatic resources within the Kenai River watershed. This portion of the project includes a survey of existing information on the ecological significance and relation of the various components of the Kenai River ecosystem. A second phase includes the distribution of watershed information to landowners and interested parties, and the development of a locally-based stewardship group.

Stakeholder and Public Comments

A number of observations, concerns, and recommendations were raised in regard to how advance planning and watershed protection could be applied in Alaska. The comments included those that stated more advance planning was needed to protect wetland resources to those that stated how planning can provide for more regulatory certainty.

- In general, the commentors believed that wetland planning can be used as a tool to 1) balance wetland protection with development needs, 2) stream-line the permit process, 3) identify concerns ahead of time, and 4) identify areas most appropriate for development. To this end, commentors would like to direct additional resources toward wetland planning efforts.
- Some commentors agreed that wetlands differ in value, and expressed a preference for steering development into lower value wetlands. Regulation of low value wetlands should be stream-lined, relaxed, or even removed for areas where wetland plans are available.
- Other commentors supported the use of wetland planning to protect higher value wetlands. They recognized the need to protect critical habitat, "even in bush

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Alaska." Development projects proposed in high value wetlands deserve more rigorous consideration in the permit process.

- Commentors emphasized that wetland plans should incorporate local input to the maximum level possible, and include consideration of long-range community plans.
- Commentors recognized that cost is a major factor in all phases of wetland planning, and suggested that efforts should be concentrated in areas with high resource values and subject to development pressure.
- Some commentors felt that preliminary identification provides developers with a rough yardstick to assess at the outset the likelihood that permits will be granted for certain activities.

ANALYSIS AND PROPOSED RECOMMENDATIONS FOR DISCUSSION

Comprehensive wetland planning can be an effective tool to balance wetlands protection with needed development projects in Alaska. Comprehensive wetland planning should be based on wetland functions and values, and should reflect strong local participation. An advance plan tied to the Section 404 regulatory process provides benefits such as increased predictability in the outcome of permit applications, a streamlined process, and more comprehensive identification and protection of wetland resources.

Several provisions of the Administration's August 24, 1993, Wetlands Plan address concerns relative to comprehensive planning. In addition, there are specific actions that the Federal agencies in Alaska recommend to address issues relative to comprehensive planning.

Administration Plan

- Encourage Advance Planning Efforts. The Federal agencies will provide technical assistance for advance planning efforts addressing wetlands conservation, and will counsel planning participants on methods to link local or regional planning with Section 404 regulatory decision making. Wetland categorization will be supported within the context of an approved advance plan to provide landowners with early identification and characterization of wetlands on their property, streamlined permit review, and more flexible mitigation sequencing where appropriate. The Administration recommends changes in the Clean Water Act to provide incentives (financial and regulatory) for wetland planning efforts. Congress should provide the Federal agencies the authority to use grant monies to fund both the

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development and implementation of these plans.

- Provide Incentives for States/Locals to Integrate Watershed and Wetlands Planning. The Administration plan recommended that the Clean Water Act be amended to authorize the development of State watershed protection programs, which should include local and regional involvement and Federal approval of the State programs. Wetlands should be incorporated into the overall watershed approach, with minimum standards for wetlands protection and restoration planning. Approved watershed plans would receive a high priority for technical and financial support.
- Endorse State/Tribal Wetlands Conservation Plans. The Administration plan recommended that Congress endorse the development of State/Tribal comprehensive wetland plans, with the goal of supporting State and Tribal efforts to protect and manage their wetlands resources.
- Provide for Greater Integration of Advance Planning Into the Section 404 Regulatory Program. The Administration will support efforts to better integrate advance planning into the Section 404 regulatory program, including appropriate local or watershed-based categorization frameworks and regionalized improvements to implementation of the existing Nationwide Permit 26 in headwaters and isolated waters.
- Revise the Executive Order on Wetlands. The existing Executive Order on wetlands will be revised to direct the Federal agencies to take a watershed/ecosystem approach to wetlands protection and restoration.

Alaska Specific Actions

- Provide greater emphasis on the use of advanced planning mechanisms. The Federal agencies, led by EPA and the Corps, would encourage greater use of comprehensive advance planning, particularly with state, regional, native, and local involvement. These planning efforts would be tied into the Section 404 regulatory program.
- Continue efforts to provide technical assistance for wetland planning. The Federal agencies would assist State and local entities in wetland planning and would continue to support general and watershed-based efforts to develop wetland planning, outreach, and mitigation strategies.
- Develop a watershed-based demonstration project. The Federal agencies, led by EPA and the Corps, would provide technical assistance and coordinate with

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Federal, state, local, and private entities to initiate a demonstration watershed project. Once identified, EPA and the Corps would establish an interagency team to help develop a comprehensive wetlands management plan within that watershed.

**ALASKA WETLANDS INITIATIVE
ISSUE PAPER - 10**

SUBJECT: Wetlands Inventory, Classification, and Categorization

ISSUE: How can wetlands inventory, classification, and categorization be best implemented to improve the predictability and effectiveness of the Section 404 permitting process and to protect wetland resources?

BACKGROUND

General

Wetlands inventories, classifications, and categorizations are typically the basis for planning mechanisms and associated regulatory actions in the Section 404 program. In general, comprehensive wetlands planning involves a three-step process of information collection and generation before completion of a plan: 1) an inventory to identify wetland types within a watershed; 2) a classification to define ecological, biological, and social functions of those wetlands; and 3) a categorization to assign values or to rank those wetlands. In addition, wetlands plans may provide guidelines for activities and alterations which would be acceptable within a particular wetlands category.

The U.S. Fish and Wildlife Service is mapping the country's wetlands in their National Wetlands Inventory (NWI) effort. Alaska's wetlands are being inventoried as a part of this National project. As of October 1993, approximately 26 percent of Alaska's wetlands have been initially identified. The NWI process yields small scale maps that may be used as a basis for regional planning and an initial assessment of wetland resources in proposed project areas. However, these maps do not substitute for Section 404 jurisdictional determinations. The total cost of preparing NWI maps for the Alaska is estimated to be \$27 million.

Large scale wetlands maps that define jurisdictional boundaries cost roughly ten times that to produce NWI maps. In the State of Alaska, only Anchorage, Homer, and Juneau have been able to afford the production of these maps. For instance, the cost of the Juneau Wetland Management Plan exceeded \$300,000, and was largely borne by the city.

Although there are a number of classification systems that may be applied to wetlands, the Section 404(b)(1) Guidelines outline one process known as Advance

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Identification (ADID). Areas classified under ADID may be considered as either possible future disposal sites, or areas generally unsuitable for disposal site specification. Advance identification of these areas involves an evaluation of the likelihood that use of the area in question is consistent with the Section 404(b)(1) Guidelines. The ADID process provides information to facilitate individual or general permit processing. The nature of the classification is strictly advisory, and does not constitute a permitting decision. Since ADID is usually based on watershed planning, it is extremely compatible and more effective when implemented with comprehensive planning efforts (see Advance Planning and Watershed Management Issue Paper).

The ADID process is jointly conducted by EPA and the Corps of Engineers, after consultation with the State and appropriate public notice of the identified areas. Advanced Identification provides the involved local community with information on values of wetland areas that may be affected by their activities, as well as a preliminary indication of factors likely to be considered during review of a Section 404 permit application. The ADID adds predictability to permitting process and improves accounting for impacts of losses from multiple projects within a geographic area.

In Alaska, Advance Identification has been completed for Homer and Juneau. In addition, a wetland evaluation system is being developed to facilitate planning of the Yukon-Pacific Gas Line. These projects were completed with extensive technical and financial support from several Federal agencies.

Categorization of wetland values (e.g., as "high," "medium," or "low") on an a priori basis is generally an impracticable task, given the large geographic variation of wetlands, differing functions of wetlands in particular areas, and the differing values associated with wetlands in particular locations. However, categorization that reflects the individual considerations of wetlands in a particular location is generally practicable and is often an important step in developing final wetlands or other comprehensive plans.

In some cases, baseline information about certain types of wetlands is a useful starting point for evaluating the specific values of that type of wetland in a particular location. EPA has funded some of this baseline information collection. In 1992, EPA awarded \$70,000 in grant monies to the State of Alaska to compile information regarding the functions and values of black spruce bogs and treeless bogs in Alaska. The overall project objective is to provide a technical basis for evaluating and mitigating impacts to a predominant wetland habitat type of the state.

In 1992, EPA issued a grant for \$62,670 to the State of Alaska in order to review several methods of wetland classification and evaluate their applicability and feasibility in the state. In 1992, EPA provided an additional \$256,000 to the State to explore the

development of a wetland classification scheme.

Stakeholder and Public Comments

A number of observations, concerns, and recommendations in regard to how wetlands inventory, classification, and categorization could be applied in Alaska were raised by the stakeholders and public commentators. The divergent comments included those that stated how wetlands inventory, classification, and categorization is too costly to those that cited the increased predictability of regulatory decisions when this information was known. The comments are summarized as follows:

- Alaskans commenting on the Section 404 program suggested that the Corps should focus planning efforts on larger communities, important drainages, and/or high value wetlands.
- While recognizing cost limitations, several commentators felt that the existing NWI maps did not provide adequate detail for planning purposes. However, the cost of producing large scale wetlands maps that define jurisdictional boundaries is roughly ten times the cost to produce NWI maps.
- Some commentators expressed frustration with the lack of understanding of arctic ecosystems (presumably by regulators). Unfortunately, wetlands data are extremely limited, and expensive to obtain. Classification methods evaluate a wide range of complex wetland functions, from fish and wildlife habitat to hydrology.
- Some commentators mentioned that data collected from one region of the State are probably not applicable to another region. For instance, functions such as flood control may be more important within developed areas. The value of a given wetland type may also depend on its regional abundance or scarcity.
- Some commentators seemed discouraged that a single classification and categorization method was not uniformly applied throughout the state.
- Commentors noted the lack of criteria defining high and low value wetlands and suggested that attributes or types of high value wetlands should be identified.
- Other commentators suggested that human values, such as subsistence, recreation, and scenic viewing, should be included in the consideration of wetland values.
- While commentators agreed that wetlands differ in function, they recognized that conflicts may arise over how to weigh those functions in a ranking system. For

instance, a wetland type may represent recreational values to one group, and commercial opportunities to another group.

- Some commentors also raised concerns over the impact of wetland categorization on property values and the "takings" implications.

ANALYSIS AND PROPOSED RECOMMENDATIONS FOR DISCUSSION

Experience has shown that "all wetlands are not created equal," and supports local and regional efforts to inventory, classify, and categorize wetlands. Although NWI maps do not provide jurisdictional information, they can be valuable in the early stages of planning efforts. Likewise, the development of methods for classifying wetlands and assessing their functions and values is important, especially in the planning context. However, developing a comprehensive wetland ranking system requires extensive and detailed information on wetland functions, consideration of regional influences and uses, and scarcity or abundance of wetland types, both locally and regionally. While "a priori" (high-, medium-, or low-value) categorization and ranking systems appear attractive, a national a priori categorization and ranking system is unworkable due to technical, fiscal and environmental implications. There is currently no scientific basis for a nationwide ranking of functionally distinct and diverse wetland types; any such scheme would be extremely difficult to develop and would likely require many years to complete.

In contrast to a national a priori categorization system, opportunities do exist for regional categorization in local or regionally developed advanced planning studies conducted on a watershed basis. Local advanced planning studies can provide a scientifically sound and workable framework for early consideration of variations in wetland functions within the Section 404 program. Appropriate functional assessment techniques can be applied within a planning or watershed area. Reasonably foreseeable development needs can then be superimposed upon wetland inventories and functional assessments to identify appropriate regulatory responses. Highly functional or ecologically significant ("high value") wetlands can be identified as deserving a very high standard of protection; conversely, wetlands with limited function and ecological significance ("low value") can be identified as appropriate for general permits or other regulatory streamlining methods. These categorization approaches should be local or regional in nature, and reflect the full range of impacts and functions that affect wetlands within the watershed or planning area.

Several provisions of the Administration's August 24, 1993, Wetlands Plan address concerns relative to wetlands inventory, classification, and categorization. In addition, there are specific actions that the Federal agencies in Alaska recommend which relate to these steps in the planning process.

Administration Plan

- Develop improved analytical tools for wetlands functional assessment. The Federal agencies will expedite development of an approach for wetlands functional assessment known as the Hydrogeomorphic Classification System (HGM). The HGM methodology is being developed by the agencies and the academic community as an analytical tool to make timely and accurate assessments of wetland functions.
- Encourage Advance Planning Efforts. The Federal agencies will provide technical assistance for advance planning efforts addressing wetlands conservation, and will counsel planning participants on methods to link local or regional planning with Section 404 regulatory decision making. Wetland categorization will be supported within the context of an approved advance plan to provide landowners with early identification and characterization of wetlands on their property, streamlined permit review, and more flexible mitigation sequencing where appropriate. The Administration recommends changes in the Clean Water Act to provide incentives (financial and regulatory) for wetland planning efforts. Congress should provide the Federal agencies the authority to use grant monies to fund both the development and implementation of these plans.
- Regionalize General Permits for Activities in Defined Categories of Waters. Nationwide Permit 26 (NWP 26) authorizes certain discharges into isolated waters and waters above the headwaters point on streams. The Corps will undertake, in close coordination with relevant State and Federal agencies, a field review and evaluation of NWP 26 for the purpose of regionalizing and improving its use. Revisions to NWP 26 will focus on ensuring that appropriate levels of wetlands protection are provided through national and regional terms and conditions.

Alaska Specific Actions

- Support efforts to identify and collect wetlands data in focus areas (watersheds) where development is likely to occur. Federal agencies should continue to support regionalized efforts to collect wetlands data. Information should include NWI maps, other wetlands mapping, local knowledge, Alaska Coastal Management Plans, resource agency data, etc. All wetland functions need to be addressed, including fish and wildlife habitat, subsistence use, ground water recharge and discharge, flood control, sediment trapping, nutrient retention, and recreational use.
- Investigate the feasibility of centralizing wetlands information. Federal agencies would investigate the feasibility of centralizing wetlands information, including

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that relevant to location, type, functions, and values. This information should be easily accessible to the public to facilitate wetland planning efforts.

- Accelerate the National Wetlands Inventory mapping project. The current rate of map production (2% of Alaska per year) does not meet the demand for baseline wetland information. The Federal agencies would pursue additional funding sources to complete this work by the year 2004. Expand detailed mapping efforts that serve as the basis for wetland management plans or general permits.
- Continue to support the State's effort to select and apply a wetland classification method. EPA and the Corps would continue to support the selection of a wetlands classification method. The classification method should be modified to reflect site-specific characteristics within each identified watershed. The results of classification effort should be integrated into the Cowardin classification system used in the NWI maps.
- Continue to support activities related to comprehensive wetlands planning. The Federal agencies would continue to supply technical assistance that supports the development of comprehensive wetlands planning (e.g., local inventories and classifications, mitigation banking opportunities, associated regulatory products).

ALASKA WETLANDS INITIATIVE
ISSUE PAPER - 11

SUBJECT: Outreach and Education

ISSUE: How can education and outreach efforts be improved to best inform the public of the value of wetlands and the provisions of Section 404?

BACKGROUND:

General

An important aspect of the Section 404 regulatory program is the need to inform and educate the public about regulated activities, public resource values of waters regulated, and how to efficiently interact with the regulatory program.

The Alaska District Corps, EPA, and Federal resource agencies in Alaska have ongoing programs to educate and inform the public about the variety, values, and importance of Alaskan wetlands, the legislative and regulatory basis of Section 404 and related laws, and on the most effective means for interacting with the Corps regulatory process. Low population density, relative lack of transportation infrastructure, severe climate, large size, remote location, seasonal occupation, and small community size of many towns and villages, use of aboriginal languages, distance and expense of transportation are all unique Alaskan conditions which contribute to the difficulties of outreach efforts.

The Alaska District Corps has an ongoing outreach and education program, consisting of public speaking, school presentations, printed literature, news releases, media spots, media interviews, partnerships with other agencies for dissemination of program information, publication of newspaper and public notices, and monthly activity reports. EPA, U.S. Fish and Wildlife Service (USFWS), and National Marine Fisheries Service (NMFS) are all active participants in public forums and in disseminating program information through the media. For example, in a recent 12-month period, the Alaska District Corps gave over 60 presentations on the regulatory program throughout the State. The Corps is also developing a wetlands package to be used for presentations to school children. In addition, the Corps established field offices in Juneau and Fairbanks in 1991 to provide greater public access to information and to improve public understanding of the program. The Corps is also working cooperatively with the Alaska Department of Natural Resources and the Alaska Association of Soil and Water

Conservation Districts to provide detailed program information and jurisdictional determinations to small private property owners.

The USFWS has a number of education and outreach programs nationally, and in Alaska. The Federal duck stamp program provides funds for wetlands habitat acquisition and management. The National Wetlands Inventory has an outreach component on the national level, and they produce a series of technical reports on wetlands. The USFWS's Region 7 office in Alaska has an environmental education program in schools throughout the state, and also participates in the Scientists in the Schools program. The USFWS is currently working cooperatively with the District to produce a series of public service announcements regarding the functions and values of Alaska wetlands, as well as a wetlands booklet for prospective Corps permit applicants with information on wetlands functions and values, instructions for applying for permits, and a game insert for children. The USFWS in Alaska is also currently developing a detailed guide to Alaska wetlands. The USFWS also has an ongoing national and regional campaign of many years standing to disseminate information, brochures, posters, and slide programs on the fisheries and wildlife values of wetlands. The USFWS offices in Alaska also make frequent presentations to the public and special interest groups on their agency's program.

EPA has an active outreach effort which fosters public and private partnerships, provides technical assistance, and educates the public. EPA has established a toll-free Wetlands Protection Hotline, (800) 832-7828, to address public questions and requests for information. EPA also participates each May in American Wetlands Month, along with USFWS, other Federal, state, and local governments, and private organizations to increase public awareness of the values and productivity of wetlands. EPA sponsors a variety of forums encouraging informed discussion on wetlands issues including State programs, wetlands and watershed management, categorization, mitigation, altered wetlands, and education. EPA also distributes a number of publications on a variety of wetland subjects. EPA's Alaska Operations Office has had an ongoing, active effort for many years of educating and informing the public regarding their role in the Section 404 program, and of wetlands protection, functions and values.

The Alaska office of NMFS also has an active program to better inform the public of their responsibilities in the program. They frequently respond to requests to make presentations in public forums and to school groups, on commercially important marine fisheries and other marine resources, and how these are affected by wetlands.

Stakeholder and Public Comments

A number of issues and proposed solutions were raised by stakeholders and public commentators concerning the need for public outreach and education. These issues

included the following:

- Some commentors suggested an increase in education and outreach programs, to include an additional funding source, and additional assistance for the public in understanding the regulatory program. One commentor suggested several ways to generate additional funding for these efforts, including allowing permittees to gain credit through monetary support to the regulatory program, development of research grant funds from scientific foundations, and imposing user-fees for filling wetlands.
- Some commentors suggested that the Corps currently has adequate funding for outreach and education. Moreover, some commentors suggested that due to the high level of misinformation and unproductive debate about the program in Alaska, the Corps is forced to expend valuable resources to correct the misinformation to the extent that these efforts divert resources from more traditional public education efforts. Therefore, it was suggested that these "sunk costs" could be more appropriately dedicated to education/outreach, rather than allocation of additional funds and resources.
- Some commentors spoke about a lack of understanding of the program by the public. One stated that Alaska's regulated public has a fundamental misunderstanding of the Section 404 program, is unaware of the tremendous flexibility it presently provides permit applicants, both large and small, and is uninformed as to the astounding infrequency that the program actually impacts operations in Alaska. The same commentor stated that EPA and the Corps should initiate an aggressive education program tailored to Alaska's regulated community, explaining how the program works and why it does not stifle growth, and is not an impediment to the State's economic growth and development. Another commentor stated that many "problems" with the regulatory program are misconceptions that should be addressed through proactive public outreach and education about the regulatory process and its successes, and that myths about the program need to be dispelled.
- One commentor stated that there should be greater outreach to the bush communities and local governments to educate them about, among other things, existing general permits which authorize many projects, and in general to increase their understanding and comfort with the program and the permitting process.
- Some commentors suggested there should be greater involvement of the Congressional offices in sharing information on the Section 404 program.
- Some commentors stated that they were often unaware of notices published by the

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Corps describing proposed projects and special events, such as the Alaska Wetlands Initiative meetings, and suggested that some effort be made to expand the current system of printed public notices, newspaper notices, and news releases. In particular, these commentors suggested greater use of newspapers to disseminate program information. The commentors also suggested that public notice comment periods be lengthened to accommodate special Alaskan social patterns, such as periods of subsistence fishing and hunting, when many people are at remote camps unable to respond to public notices.

- One commentor suggested that there be increased outreach efforts to inform local entities, particularly bush communities and village leaders, about existing general permits as well as other program requirements.
- Some commentors suggested that there be some prioritization of public notices advertising proposed projects based on public interest values and types of activities, to facilitate volunteer organizations awareness of these projects, and these groups' opportunity for comment.
- One commentor suggested that the tourism industry can be an effective partner in educating the public on the importance of Alaska's wetlands, to include the concepts of conservation and preservation, and the movement of visitors to view and enjoy wetlands.
- Some commentors stated that the government does not use the Native and local knowledge base adequately in its evaluation of resource values, and that this data base needs to be given more emphasis.
- One commentor suggested a clearinghouse as a source of information on all the agencies' requirements in the permitting process, possibly to be expanded to include a single point of contact for all permit reviews.
- Another commentor suggested including an informational mailing as an insert with other mailings, such as annual tax assessments to private property owners.

ANALYSIS AND PROPOSED RECOMMENDATIONS FOR DISCUSSION

One provision of the Administration's August 24, 1993, Wetlands Plan addresses concerns relative to outreach and education. In addition, there are specific actions that the Federal agencies in Alaska recommend which relate to outreach and education.

Administration Plan

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- Provide Better and Coordinated Information and Technical Assistance on Wetlands Issues. The Federal agencies will coordinate efforts to provide States, Tribes, regional and local governments, and the public with timely, consistent information concerning wetlands programs. The agencies will also develop a strategic plan for delivering information on regulatory programs, and encourage the development of innovative education and outreach materials and initiatives to assist the public in understanding wetlands issues.

Alaska Specific Actions

- Develop a Comprehensive Strategy for Outreach and Education Efforts. The agencies would develop an interagency comprehensive strategy for public education/outreach efforts in Alaska. Additional efforts would be made by the Corps, EPA, NMFS, and USFWS to expand their public outreach and education efforts to bush Alaska, small communities, specific target audiences, and the general public.
- Issue a Series of Special Public Notices. A series of special public notices issued jointly by the Corps and EPA would be initiated to inform the public in a more focused manner on selected 404 topics, e.g., Alaska wetlands functions and values; distribution, type and relative abundance and scarcity of wetlands; regulatory program performance; dispelling popular "myths" about the program; important elements of the permit review process; compensatory mitigation; availability of the issue papers prepared for the Alaska Initiative; the Section 404 mitigation sequencing process and how it is applied in Alaska; and other topics.
- Conduct Informal Teaching Workshops. The Corps and EPA would examine the feasibility of conducting a series of informal teaching workshops tailored to specific community needs, including some for villages, Native communities, and remote locations.
- Train Staff for Interaction with "bush" Communities. The Corps and EPA would provide special training for all their employees who deal with bush community issues to better understand and interact with these important communities.
- Sponsor Regulatory Coordination Positions. The Corps would fund positions to be staffed by Federal and/or State resource agencies, and housed at the Corps District office, to facilitate preapplication coordination, proposed project reviews, and other regulatory functions.
- Increase Emphasis on Preapplication Meetings. In order to expedite proposed project reviews, and to facilitate needed project modifications prior to formal

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permit application submittal, applicants should be made aware of the availability, and strongly encouraged to participate in a preapplication coordination meeting with all pertinent regulatory and resource agencies.

- Initiate Mobile Regulatory Information Office. The Corps should initiate use of a mobile, seasonal regulatory office to provide easy access to program information by regulated communities accessible by road ("Wetlands on Wheels").
- Recommend written partnerships be established between the Corps and all interested stakeholders on Section 404. These documents would capitalize on the positive communications established during this Initiative, by clearly expressing mutually agreeable expectations and commitments associated with the Section 404 regulatory program. They would also describe communication networks to be established to better inform all constituencies of the purposes and procedures of Section 404 and to facilitate communication of concerns and priorities to the Corps by all stakeholders including Native communities.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

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January 27, 1994

The Honorable Mike Miller
The Senate of Alaska
State Capitol
Juneau, Alaska 99801-1182

The Honorable Bill Williams
House of Representatives
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Miller and Mr. Williams:

This letter is in response to a January 12, 1994 letter requesting a 45 day extension of the public comment period for the Alaska Wetlands Initiative Issue Papers. I am also responding to your January 24, 1994 letter which requests EPA and Corps involvement in the February 2, 1994 hearings.

We understand the issues covered in the papers are extremely important to all Alaskans. We believe the public process which resulted in the 11 issue papers has provided ample opportunity for written and oral testimony by all Alaskans. However, in response to your request, the public comment period was extended by 14 days. The extended comment period will close Friday, February 4, 1994.

As I have discussed with your staff, I will be available by telephone to participate in the February 2, 1994 hearings. I understand that you have copies of the December 17, 1993 public review draft issue papers. I am enclosing a copy of the facilitator prepared summary reports from the two rounds of meetings. If you need anything else in preparation for the hearing, please call me at (907) 271-5083.

Sincerely,

A handwritten signature in black ink, appearing to read "Alvin L. Ewing".

Alvin L. Ewing,
Assistant Regional Administrator
for Alaska

Enclosure

U.S. Army Corps of Engineers and
U.S. Environmental Protection Agency

Summary Report
Facilitated Alaska Wetlands Roundtable Discussions
Juneau, Bethel, Fairbanks, Anchorage
October 25 to November 5, 1993

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November 15, 1993

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INTRODUCTION

This report presents summaries of four facilitated Alaska wetlands roundtable discussions which took place in Juneau, Bethel, Fairbanks, and Anchorage, Alaska, between October 25 and November 5, 1993. These discussions were part of an effort by the U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA) to obtain input from Alaska interest groups regarding the Clean Water Act Section 404 wetlands permit program, and to consider environmentally appropriate means to provide regulatory flexibility for wetlands permitting in Alaska.

Each of the facilitated roundtable discussions took place following a day of presentations by invited stakeholders representing interest groups with a stake in the management of Alaska wetlands. The representatives identified problems and possible solutions concerning the Alaska wetlands permit system. The purpose of the roundtable discussions was to obtain additional information and clarification regarding stakeholder concerns. In addition, the roundtable discussions were to provide a better understanding of the divergent points of view on wetlands issues; identify wetlands regulatory problems, consensus areas regarding those problems, and suggested solutions; and note parts of the Alaska wetlands program that are working well.

The following summaries attempt to communicate the major themes, concerns, and possible solutions identified and addressed during each roundtable discussion. The summaries are based on notes taken by the discussion facilitators, were completed without benefit of the written transcripts, and do not represent the official record of the meetings. As overviews, these summaries do not reflect the amount of time spent on the various topics, nor do they note all of the points raised.

The summaries for the facilitated Alaska wetlands roundtable discussions are presented separately for each city. At the end of each summary is a copy of the stakeholder sign-up list for the particular roundtable discussion and a copy of the rough agenda used to guide discussion.

FACILITATED ALASKA WETLANDS ROUNDTABLE DISCUSSION

Juneau Summary Report
October 26, 1993

This facilitated Alaska wetlands roundtable discussion took place in Juneau, Alaska on October 26, 1993 at the Gastineau Salmon Hatchery Visitor Center. The roundtable discussion was sponsored by the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency. The discussion took place following a day of presentations by invited stakeholders representing interest groups with a stake in the management of Alaska wetlands.

The stakeholder interest group participants included: Mr. Eldon Dennis (Commercial Fishing), Ms. Mary Nordell (Development Interests), Ms. Sharon Hawkins (Environmental), Ms. Tamra Faris (Federal Resource Agencies), Mr. Rick Harris (Forestry), Ms. Jan Caufield (Municipal Government), Mr. Bob Loescher (Native), Mr. Peter T. Hanley (Oil and Gas), Mr. Warren Wiley (Sport Fishing), Mr. Tim Cook (State of Alaska) and Ms. Karen Cowart (Tourism).

The meeting was facilitated by Mr. Dave Hanson of Arktos Associates with assistance provided by Ms. Niki Stewart. Mr. Al Ewing of the U.S. Environmental Protection Agency and Mr. Bob Oja of the U.S. Army Corps of Engineers were present as observers and to provide technical information or program clarification as needed. Mr. John Gooden, representing the White House Interagency Working Group on Wetlands, Washington, D.C., was also present as an observer.

The purpose of the roundtable discussion was to obtain input from the primary wetlands stakeholders in Alaska to identify and address legitimate concerns regarding Federal regulation of wetlands in Alaska. In addition, the roundtable discussion was to provide a better understanding of the divergent points of view on wetlands issues; identify wetlands regulatory problems, consensus areas regarding those problems, and suggested solutions; and note parts of the wetlands program that are working well.

Discussion Summary

Areas of Agreement

The discussion was initiated by considering possible areas of stakeholder agreement. This effort was aided by a list of possible areas of agreement prepared by the facilitator which reflected common ideas noted in stakeholder presentations the previous day (see agenda outline). Consensus was reached on several areas of agreement which are stated below. Certain observations about the agreement statements made during the discussion are noted in

parentheses following each agreement statement. The stakeholder consensus is reflected only in the agreement statement:

- Wetlands resources are important. (The importance of wetlands resources was not disputed.)
- Need for an appeals process. (Concerns were voiced regarding which decisions were subject to appeal and how the process would work.)
- Need for a non-burdensome exit interview process. (Though the need for an exit interview/audit/program evaluation process was recognized, concerns were raised regarding the process creating an unacceptable administrative burden and diverting Corps personnel from the permit review process.)
- Need for permit processing time limits except for certain specified circumstances. (Concern was expressed regarding time limits causing either automatic denials or approvals.)
- Importance of wetland planning.
- Existence of high value wetlands. (Participants agreed that some wetlands had higher values than other wetlands.)
- Existence of low value wetlands.
- Need for flexibility in mitigation requirements. (Concern was expressed that flexibility not compromise critical habitat, e.g. fisheries protection.)
- Wetlands regulations serve a purpose.
- Need for a commitment of Federal funding and people to the Alaska wetlands management program. (The additional needs accompanying implementation of the President's program was one identified justification for additional fiscal/staff support.)
- Alaska's wetlands inventory needs improvement.
- Wetlands management in Alaska should be coordinated with other applicable laws.

Positive Aspects of Existing Program

After a brief discussion, stakeholders identified the following positive aspects of the current wetlands permitting program. These are not consensus points but rather points different stakeholders felt should be noted as good program aspects.

- Log transfer site facility issue. The joint Memorandum of Understanding (MOU) for permitting log transfer sites is a good program.
- Local Field Offices. Local Corps of Engineers field offices are a good idea and have provided help with wetlands delineation, permitting needs, etc. and have helped keep staff out in the field.
- The Section 404 wetlands law is a good law.
- The idea of public input and a public notice process as part of the Section 404 wetlands program is very important.
- The Abbreviated Permit Process (APP) used in the 80's was a good program.
- No wholesale changes needed in program.

General Issue Discussion

This discussion was aided by a list of issues prepared by the facilitator which were noted in stakeholder presentations on the previous day (see agenda outline). The discussion did not reach consensus but addressed the following issues:

Criteria for high value wetlands - Coastal estuarine, inter-tidal areas, and coastal salt marshes were identified as high value areas.

Need for improved wetlands inventory system - The need for a better resource inventory for wetlands including the need to provide for use of local data and the inventory's importance to watershed management were discussed. Agencies were encouraged to complete better inventories of wetlands. The expense of such an undertaking was acknowledged.

Need to improve the permitting process - Participants discussed the need for improvements in the permitting process in very general terms.

Other issues identified and briefly discussed included the need for cumulative impact analysis, consideration of access concerns, mitigation and mitigation banking, and General Permits.

Compensatory Mitigation

The discussion on compensatory mitigation reflected a variety of viewpoints. Some participants voiced concerns about compensatory mitigation being impractical to implement in parts of Alaska where no need would exist due to an abundance of wetlands and few places to create new wetlands. It was questioned whether compensatory mitigation was ever needed in Alaska. Some suggested that avoidance and minimization efforts, and accelerated restoration (on North Slope), should count as compensatory mitigation. It was also suggested that compensatory mitigation was not needed for even high value wetlands in some areas of the North Slope. Pre-planning was also suggested as an alternative to compensatory mitigation.

Other participants emphasized the need for compensatory mitigation if high value wetlands (critical habitat, salmon spawning and rearing habitat, etc.) were impacted. It was stated that compensatory mitigation for destroyed salmon habitat or other critical habitat was essential. It was also noted that destruction of marine shoreline resource environments should be subject to compensation. Other comments focused on the deterrent value of compensatory mitigation requirements; the acceptability of off-site mitigation; and the need for pre-planning to consider environmental impacts if it was going to be used for compensatory mitigation credit. Another stakeholder suggested that if a project impacted salmon habitat to the extent compensatory mitigation is required, the project should not happen.

The Corps of Engineers representative indicated that only 0.8% of the Alaska projects have been required to provide compensatory mitigation and that a great deal of concern may not be necessary. The discussion that followed noted that the concern was less over what the Corps of Engineers was doing now but rather the compensatory mitigation it may have to require in the future in view of the President's "no net loss goal". It was emphasized that finding feasible ways to add flexibility to Alaska wetlands management and deal with the "no net loss" concept was a purpose of the session.

Improve Permit Process

Participants indicated problems with permit timeframes and deadlines. Though it was admitted that these problems occurred on an occasional basis rather than an everyday basis, it was felt that the process could be improved with more clearly defined timeframes and deadlines. Timeframe concerns were not necessarily related to the Corps but with the pyramid of commenting resource agencies and the extra stipulations piled onto a project. It was noted that the other agencies should be accountable for their comments and the applicant should know "who wants what".

Another identified problem was applicant misuse of the "water dependent" category. Comments indicated tighter scrutiny is needed to determine if a project is really "water dependent". Follow up is also needed to see if the "water dependent" site is used for the designated purpose.

Certain participants indicated permit decisions are "pending" too long after adverse comments are received. A specific resolution process, possibly using a neutral third party, is needed to bring closure on permits. Certain evaluation terms such as "Aquatic Resource of National Concern" should have a clear definition so they are not inappropriately used in assessing a proposed permit.

Other participants felt the permit process was too lenient. It was emphasized that it should be very difficult to get a permit for a project in critical wetlands. The advantages of using a land use plan or watershed plan to guide permit considerations was also emphasized. Some participants voiced the need to consider cost, logistics, and existing infrastructure, as well as wetlands value in urban area permit decisions. It was noted that a plan could address such considerations.

Access to Wetlands Resource

Concern was expressed regarding access to or across high value wetlands. It was noted that it may be necessary to impact wetlands in order to showcase wetlands for tourism or educational purposes. The Corps of Engineers representative stated that the present system provides for wetlands access for visitor facilities through the use of impact minimization measures such as the use of pilings rather than fill. Such development can be allowed under the present system since it would be considered "water dependent" or "resource dependent". The Corps representative also confirmed that applications for road access across high value wetlands whether for access to a mine or visitor center would be subject to the same review and sequencing factors if the road footprints were the same.

General Permits

Several comments supported General Permits (GPs) as a good tool but recognized that a proposed GP should be carefully scrutinized to assure that it meets permit program requirements. Concerns were voiced regarding whether the Corps will finally approve GPs for urban areas (i.e., Juneau), whether the Corps will be willing to transfer real authority to local governments under GPs, and whether Washington, D.C., will interfere with GP approval at the last moment.

Some participants voiced a distrust of local government's ability to carefully use GPs, and a fear that local governments would abuse

GP authority. The need for close Corps oversight was emphasized. The need to consider cumulative effects of GPs was identified and a moratorium on GPs was suggested until the cumulative effects of existing GPs (especially on salmon habitat) were examined. It was noted that GPs should be based on wetland inventories and watershed plans, and that hard research was needed to develop such tools.

Other comments focused on the appropriateness of GPs for routine industrial activities such as oil development on the North Slope. Commentors indicated that a significant data base exists for North Slope wetlands and that a GP provides for resource protection at Deadhorse.

Possible Solutions

The discussion focused on possible solutions to problems identified in stakeholder presentations. The discussion did not attempt to form a consensus on the solutions but rather noted suggested solution possibilities and in some cases examined their potential. Solutions discussed included:

- Accelerated restoration could be used as an alternative to compensatory mitigation or to gain credit toward compensatory mitigation. This concept involves restoring or rehabilitating previously used industrial sites faster than is required by existing permits and gaining credit for early completion of the restoration project.

- Reclamation could serve as compensatory mitigation since the disturbed wetlands site is returned to wildlife habitat and/or its near original wetlands form.

- The wetlands on loan/no long term net loss concept should be used in assessing compensatory mitigation needs. This concept recognizes that certain types of development temporarily use wetlands with minimal impact and restore the site back to wetlands after use. Using this concept, such wetlands would not be charged against a "no net loss" policy requiring compensatory mitigation since in the long term no loss occurs. Identifying accelerated restoration and reclamation as adequate compensatory mitigation are consistent with this concept. The Corps representative noted that a problem with this approach is the developer leaving the site without completing the specified site reclamation. It was suggested that this concern be addressed through adequate pre-project bonding or a bonding pool.

- The creation of winter habitat for fish (deep over-wintering holes in streams) could be recognized as compensatory mitigation.

- Pre-project planning could be considered as fulfilling the avoidance and minimization sequencing requirements. This possible

solution assumes reasonable attempts are made during pre-project planning to avoid wetlands (or valuable wetlands) and to minimize impacts. A concern was raised that pre-project planning often primarily considers economic rather than environmental factors and thus was not a de facto good mitigation measure. Consequently, it was noted that pre-project planning would need to specifically address wetlands concerns and meet the purpose of avoidance and minimization requirements to replace such requirements.

- Different criteria for compensatory mitigation are needed for communities in bush Alaska except when critical wetlands habitat is impacted. The discussion noted that in much of bush Alaska (western, northwestern, North Slope, etc.) many communities are predominately located on and/or surrounded by wetlands. Any additional development whether for public facilities (sewer, water, schools, etc.) or businesses often necessitate wetlands use. In view of the abundance of wetlands in these areas, a "no net loss" compensatory mitigation policy has little justification and places unacceptable burdens on the communities. This impact is magnified since the communities are still developing basic services. It was noted, however, that even in bush Alaska, critical wetlands habitat should be protected and that compensatory mitigation may be appropriate if such habitat is impacted. The concern was voiced that even in a bush community, development could damage a salmon stream and impact the purpose/livelihood for the existing settlement.

Some points were made during the conclusion of the discussion. A participant requested that the recommendation that critical wetland habitats must be protected even in bush Alaska be included in this report. Another participant asked that the recommendation that no more General Permits be granted until we know the cumulative impacts of the existing permits be noted. Reflecting clarifying comments from the Corps representative and stakeholders, a concluding point was made that much of the wetlands management concern was focused on what might happen in the future under a "no net loss" policy rather than on existing Corps practices.

The Juneau Wetlands Roundtable Discussion was concluded at approximately 5:00 P.M. on October 26, 1993.

U.S. Army Corps of Engineers
AND
U.S. Environmental Protection Agency

Wetlands Roundtable Sessions

10/26/93

Juneau, AK

Possible areas of agreement

- Preservation of Wetlands Resources is important
- Need for an appeals process
- Need for exit interview
- Need for permit processing time limits
- Importance of wetlands planning
- Existence of high value wetlands
- Existence of low value wetlands
- Need for flexibility in mitigation requirements
- use of general permits as a tool.

U.S. Army Corps of Engineers
and
U.S. Environmental Protection Agency

Wetlands Roundtable Sessions
10/26/93 Juneau, AK

IDENTIFIED ISSUES

- Criteria for High Value / Low Value wetlands
 - A Examples of each
 - B criteria considerations
- Higher value wetlands should have stronger mitigation requirements?
- Extent of permitting problems
 - approval / denial / withdrawal
- Improving Permit process
 - processing time frames
 - streamlining process
 - lack of funds / staff
 - Public notice delay
- Mitigation (what constitutes) ^{regions}
- Criteria / definition for mitigation banking
- General permits
 - requirements / definition
 - timeline
 - types of wetlands
 - transfer of authority

- Improving wetlands inventory and classification
 - regional criteria: western hemlock
 - use of detailed regional data
- Incremental Development / Cumulative impact
 - (watershed-wide / regional)
- Wetlands Access
 - maintenance and future provision
- Functions and relative values of wetlands
- Alternative Wetlands management
 - ie State / Native Corporation

U.S. Army Corps of Engineers
and
U.S. Environmental Protection Agency

Wetlands Roundtable Sessions
10/26/93 Juneau, AK

Possible Solutions

Mitigation

- accelerated restoration for North Slope mitigation
- required reclamation for mining mitigation
- long term preservation over short term mitigation
- recognition of pre-project planning as "avoidance and minimization" sequencing.
- Different criteria for "bush" Alaska
ie. western and north western regions

General Permits

- expand general permits program on regional basis for routine industrial operation
ie Oil and Gas on North Slope
- guidelines for wetlands planning
- develop criteria for acceptable general permit

Permit Process

- Re-initiate APP process
(abbreviated permit process)

FACILITATED ALASKA WETLANDS ROUNDTABLE DISCUSSION

Bethel Summary Report
October 28 & 29, 1993

This facilitated Alaska wetlands roundtable discussion took place in Bethel, Alaska on October 28 and 29, 1993 at the Pacific Guest Hotel. The roundtable discussion was sponsored by the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency. The discussion took place following a day of presentations by invited stakeholders representing interest groups with a stake in the management of Alaska wetlands.

The stakeholder interest group participants included: Mr. Harold Sparks (Commercial Fishing), Ms. Becky Gay (Development Interests), Ms. Karen Samuelson (Environmental), Mr. David McGillivray (Federal Resource Agencies), Mr. William J. Hunter (Municipal Government), Mr. Nelson Angapak (Native), Mr. Mike Joyce (Oil and Gas), Dr. Paul Rusanowski (State of Alaska), and Ms. Karen Cowart (Tourism). During a portion of the discussion, Mr. Phillip Guy participated as the Native stakeholder representative.

The meeting was facilitated by Mr. Dave Hanson of Arktos Associates with assistance provided by Ms. Niki Stewart. Mr. Al Ewing of the U.S. Environmental Protection Agency and Mr. Bob Oja of the U.S. Army Corps of Engineers were present as observers and to provide technical information or program clarification as needed. Mr. John Gooden, representing the White House Interagency Working Group on Wetlands, Washington, D.C., was also present as an observer.

The purpose of the roundtable discussion was to obtain input from the primary wetlands stakeholders in Alaska to identify and address legitimate concerns regarding Federal regulation of wetlands in Alaska. In addition, the roundtable discussion was to provide a better understanding of the divergent points of view on wetlands issues; identify wetlands regulatory problems, consensus areas regarding those problems, and suggested solutions; and note parts of the wetlands program that are working well.

Discussion Summary, October 28, 1993

The wetlands roundtable discussion began around 3:00 P.M. on October 28, 1993. After stakeholders identified priority issues for consideration, the discussion centered on possible exemptions from compensatory mitigation requirements based upon land ownership status and wetlands value.

Ownership Status Exemption (Native and State Lands)

The discussion considered the possibility of basing an exemption to Section 404 compensatory mitigation requirements on types of land ownership such as Native or State owned lands. The basis for such an exemption would be that these lands were established and identified by compacts between the landowner and the Federal government.

Some participants indicated that the Alaska Native Claims Settlement Act (ANCSA) represented a compact whereby the Federal government gave certain lands to Alaska Natives for purposes of economic development. Certain lands were required to be selected in core village townships and around rural Native village areas which in many cases were predominantly wetlands. According to this line of reasoning, it thus was not fair or consistent with the compact to now require Native Corporations to provide compensatory mitigation for economic development on their land. Such a requirement could represent a substantial economic burden which could discourage economic development of Native lands.

Some of the ANCSA land exemption options discussed included: applying the exemption either to part of the Native lands such as core townships which corporations were required to select or to all ANCSA lands due to the compact; applying an exemption to ANCSA lands according to wetland values (low value lands exempted); and requiring the Federal government to pay required compensatory mitigation costs. A concern was raised regarding whether this was a desirable exemption if it endangered important wetlands used for local subsistence or habitat purposes and that the function and value of the wetlands should be considered.

During this discussion, a question was raised regarding whether the existing wetlands permitting process was causing significant problems for ANCSA land development. The Native stakeholder indicated that the existing system was not a problem but that a future system which required compensatory mitigation to fulfill a "no net loss" policy would be a problem. The need for flexibility on ANCSA lands was emphasized. It was also suggested that the local development needs of villages surrounded by wetlands should be taken into consideration under any new policy. Provision of better information to the villages about the permit process and new policies was also encouraged.

Though it was not discussed at length, the comment was made that the same exemption considerations applied to ANCSA lands should be applied to the State of Alaska lands which were also established by a compact, the Alaska Statehood Act.

Exemption for Low Value Wetlands

The possibility of an exemption for low value wetlands was also discussed. There appeared to be a consensus that abundant low value wetlands should be exempted from compensatory mitigation requirements. The discussion leading to this conclusion considered the abundant wetlands situation in western Alaska and assumed a process that used resource planning and local information to back a low value designation.

Much of the discussion focused on the problem of defining low value wetlands. The different inventory and classification systems were noted as well as the limited knowledge of "how the arctic operates" and the need to consider off-site system wide impacts of wetlands development. A comment was made that wetlands value may be in the eye of the beholder and that some people feel there is no such thing as a low value wetland.

The discussion also noted that the U.S. Fish and Wildlife Service already makes a high value/low value wetlands determination when recommending site or project specific mitigation measures. It was also stated that the Corps makes such determinations on a site basis and does not require compensatory mitigation for low value areas. Consequently, it was suggested that the Corps practices regarding low value wetlands should become codified or set in regulation to reduce apprehension about the future. Participants stressed the need to consider local conditions and information.

Another suggestion regarding management of low value wetlands focused on establishing a system like the Alaska Coastal Management process which looked at impacts in a comprehensive manner. It was further suggested that some form of threshold of loss for wetlands in particular areas or regions be established and used as a compensatory mitigation guide.

Discussion Summary, October 29, 1993

Permit Mechanisms for Minor Projects

It was felt that greater use of minor project permit mechanisms such as General Permits (GPs) and Abbreviated Permit Processes (APP) mechanisms could improve the Corps workload and allow low impact or routine projects to go forward more efficiently. It was noted that GPs directed towards a certain activity such as routine oil and gas activities on the North Slope could require "best management practices" and meet the permit purpose with less effort. Similarly, an APP could be used for minor projects such as adding fill to a drill pad using best management practices to avoid critical habitat and impact the smallest possible footprint.

The discussion continued with the Corps of Engineers representative explaining the current types of permits and how each permit is used. It was emphasized that 21 GPs are now authorized for a variety of purposes such as community residential and commercial development, industrial zones, placer mining, etc. The GPs are usually area or activity specific but some are issued on a statewide basis. APPs are used for conditions where the proposed activity could result in more impact but enables use of a streamlined process for meeting pre-set conditions.

The discussion indicated a general impression that GPs work and should be used on a broader basis. The participants agreed that the use of GPs in rural Alaska was adequate to cover residential and commercial development but not industrial development on a community basis. A consensus was also reached that a regional type of general permit was a good idea for residential and commercial development in rural Alaska. It was indicated that a Housing and Urban Development (HUD) GP already covered commercial and residential development in several bush communities and represented a good precedent. The importance of community involvement in the pre-notification phase for local GPs and for the Corps to carefully monitor GP use was emphasized. It was also suggested that an APP would be appropriate for waste water facilities and sewage lagoons in rural communities.

Mitigation

The discussion focused on alternative ways to practically approach mitigation in Alaska. Concerns were raised regarding rigid sequencing requirements (avoidance, minimization, and mitigation) and the need to encourage process flexibility rather than require that all steps be fulfilled. It was suggested that accelerated restoration of no longer used gravel pads on the North Slope be accepted in place of compensatory mitigation. It was also suggested that pre-planning of projects during which valuable wetlands were avoided and impacts minimized be credited for the avoidance and minimization sequencing requirements. Some participants cautioned that agency involvement and possibly criteria would be necessary in such pre-planning to assure adequate consideration of wetlands. The opinion was voiced that pre-planning should get credit if it addressed environmental and agency concerns.

This discussion continued with the clarification that "no net loss" was not now a requirement, that the current process has flexibility, and compensatory mitigation is not always needed. It was also clarified by Federal agency representatives that migratory nesting habitat was considered high value wetlands.

The discussion then addressed compensatory mitigation credit for wetlands already protected by existing refuges and credit for

mining reclamation. Some participants felt that since Alaska already had so many wetland acres in refuges that such acreage should be credit towards future wetlands disturbance. Other participants commented that this approach did not recognize that several types of development such as mining, oil and gas production and grazing take place in Alaska refuges and that "no net loss" protection cannot be assumed. Discussion of the use of mining reclamation for mitigation credit focused on how to assure that reclamation took place after credit was given. Bonding possibilities were suggested as well as consideration of a developer's past track record as part of the determination. It was reported that the Corps of Engineers has the authority to require bonding.

The consideration of mitigation concerns concluded with comments on the need for some form of a clearinghouse coordination entity to facilitate final decisions, to act as the final authority, and to avoid final hour objections and surprises. It was suggested that such a clearinghouse may require a broad base taking into account coastal management program concerns. One participant cautioned that this may make it more difficult to work out mitigation.

Other Exemptions

It was suggested that Capital Improvement Projects (CIPs) in bush Alaska be covered by a General Permit and exempt from compensatory mitigation requirements. The discussion acknowledged that such projects may impact wetlands but that a balance was needed regarding provision of public services and wetlands protection. The need for sewer and water projects as well as other public health related projects to go forward unimpeded was emphasized. The Corps representative indicated that an Abbreviated Permit Process for sewer and water projects was nearly in place to cover bush Alaska.

A general exemption for bush Alaska from compensatory mitigation requirements was suggested. The discussion considered alternatives to such a broad exemption such as: an activity related exemption for CIPs, education and public health facilities, "water dependent" activities and transportation facilities; an exemption threshold established regarding size of projects; and applying an exemption to bush areas except for cities with existing environmental problems such as Unalaska. The appropriateness of such qualified alternatives was indicated as participants noted that critical wetlands habitat could be impacted and that the cumulative impacts of several projects in a specific area may be a concern. The need for balance in dealing with wetlands protection and the necessity of developing wetlands in many areas of bush Alaska was emphasized.

A clarification was also made that Federal policy does not mandate compensatory mitigation outside Alaska for Alaska projects.

Human Elements

Participants communicated the need to balance wetlands protection with human needs in bush Alaska and especially in western Alaska. A perceived need to elevate the human element in dealing with permits for rural Alaska was identified. The Corps representative clarified that the Corps already places significant consideration on the human element.

The discussion continued by emphasizing the unique situation in western Alaska including the abundance of wetlands, a local economy moving from a subsistence to a subsistence/money economy, the local cultural and language differences, high unemployment and a cultural respect for wildlife and the environment. The need to develop the area, gain employment and acquire basic services while protecting wetlands was stressed. Some participants also referred to the Alaska Constitution language regarding use of resources for benefit of the people and the inappropriateness of placing Lower Forty-Eight concepts on Alaska.

Wetlands access was also considered. The importance of transportation and other forms of access to coastal wetland areas to meet public education and tourism needs was noted. Involvement in pre-planning and coastal management program efforts was suggested as a good approach to addressing access to critical wetland areas. The Alaska Tourism Association's plan, "Destinations Alaska", was referenced as a starting point for such efforts.

Improving Permit Process

Comments regarding permit process improvements focused on processing timeframes and streamlining the process. The need for a defined processing timeline was identified. The discussion focused on a need for limiting the period for agency comments and permit recommendations. Some participants indicated that individual agencies could stop the clock with their concerns or use extended processing time as a lever to win concessions or agreements to stipulations.

Concern was also voiced regarding the duplication of effort required to discuss the same points separately with different agencies. It was suggested that some process be developed for collectively discussing a permit with different agency representatives at one time. This could lead to a collectively accepted solution to agency concerns and reduce processing time.

Another concern regarded providing an adequate opportunity for public and local government participation in the process. The limitations on local participation in part relate to a lack of local staff and resources. The use of the coastal management program as an additional means for local input was suggested by one participant. It was emphasized that process streamlining should not sacrifice public input but that such input should come during, not after, the process.

Subsistence

Participants from the Bethel area discussed the inter-relationship between subsistence and local wetlands. It was emphasized that people of the region are very dependent on the wetlands for food and did not consider any wetlands low value wetlands. In addition, concern was voiced that less critical wetlands served as backup habitat during dry years and also needed protection. Concern was also expressed about the possibility of habitat contamination. Local participants, however, envisioned development use of wetlands near communities as a necessary part of the relationship. It was suggested that western villages be exempt from compensatory mitigation requirements for village development. A stakeholder provided a further recommendation that wetlands regulations recognize the existence of areas where it is not practical to restore or create wetlands.

Comments also emphasized the need to give more weight to local knowledge and input as a part of the regulatory process including consideration of traditional and customary use of an area. The interdependence of the local ecology and economy was stressed.

Wetlands Classification and Mapping

The wetlands classification and mapping discussion began with a description of the existing wetlands delineation and classification processes by a Corps of Engineers representative. The U.S. Fish and Wildlife Service representative described the National Wetlands Inventory (NWI) system and its goal of completing the inventory for Alaska by the year 2000.

Participants discussed the need for better wetlands inventory and classification tools, the need for agreement between agencies on classifications and the identification process used to identify the 375,000 acres of coastal marshlands. It was noted that the NWI is a useful tool but that more detailed information is needed. Some participants voiced concern that the NWI was not very useful for permitting purposes and that a more useful approach was needed. Others commented on its usefulness as a reference for permitting.

The importance of agreeing on a system to classify low value wetlands was stated. The appropriateness of delineating and classifying wetlands related to smaller development areas was also stressed.

Other Areas of Concern

The roundtable session concluded with a discussion of recent State of Alaska efforts and mitigation banking. Noted State of Alaska efforts included: a common understanding for wetlands classification, an umbrella mitigation banking system to cover situations where compensatory mitigation is appropriate and necessary, and working with Federal agencies on the development of more General Permits and Abbreviated Permit Processes including one for sewage lagoons and water systems.

Additional comments focused on mitigation banking. It was noted that there was a need for mitigation banking to aid communities such as Anchorage and Juneau when compensatory mitigation is required for unavoidable loss of valuable wetlands. A comment was made that mitigation banking is not needed on the North Slope where other alternatives such as accelerated restoration should be able to satisfy compensatory mitigation requirements.

A comment which represented an apparent consensus indicated a preference for development to take place in low value rather than high value wetlands.

The Bethel Wetlands Roundtable Discussion was concluded at approximately 5:00 P.M. on January 29, 1993.

WETLANDS ROUNDTABLE SESSIONS

SIGN-IN SHEET

PACIFIC GUEST HOTEL

BETHEL, ALASKA

10/29/93

PAGE 1 OF 1

BOX 1298

Stakeholders

	NAME	ADDRESS	REPRESENTING	PHONE NUMBER
0/28	Mike Joyce	ARCO A. JAMES PO BOX 100368 Anchorage AK 99510	AOGA	205 6534
1/28	Karen Conant	HUA 3261 E. St St. 403 Anchorage AK 99503	Jowism	561-5753
0/28	David McGilivray	1011 E. Tudor Rd. Anchorage Ak 99503	FWS	786-3605
0/28	Karen Samuelson	PO BOX 414 Bethel, AK 99559	AMCC	543-3521
0/28	Nelson N. Angapak	601 W. 5th Ave, Ste 200 Anchorage, AK 99501	AKN/CAPAC	279-5516
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0/28	BECKY GAY	P21 W. FIREWEED SUITE 250 Anchorage AK 99503	- DEVELOPMENT - RDC, INC	276-0700
0/28	Dave Hanson	1100 A ST # 309 Anchorage AK 99501	Facilities Dept	276-8427
0/28	Niki Stewart	2440 E. TUDOR # 252 Anchorage AK 99503	Asst. Facilitator	563-4666
0/28	Harold Spanck	Box 267 Bethel AK 99591	Fisheries	543-3788
	- Don Kohler		CORPS	
0/28	- Bob Oja		CORPS	
0/28	- Al Ewing		EPA	
	William J. Hunter	City Manager	City of Bethel	543-2087

U.S. Army Corps of Engineers
and

U.S. Environmental Protection Agency

Wetlands Roundtable Sessions

Bethel, AK

AGENDA 10/29/83

8:30-8:40 am Introduction

8:40-9:30 am Permit mechanisms for minor
impact projects

- APP, GP

- activity related

- resource related

- area/region

9:30-10:15 am Mitigation

- sequencing

- compensation

- reclamation

- increasing sequencing
flexibility

- determination of offsite secondary impact

Compensatory mitigation

Conservation of sub-strata

10:15 - 10:35 am

Coffee Break

10:35 - 11:15 am

Other Exemptions to
Compensatory mitigation

- CIEP
- activity related
- regional
- city/town related
- land use related

11:15 - 12:00 noon

Consideration of human element
and intended use in relationship
to wetland value

- Human element / use deserves
elevated consideration
- Access decisions

12 noon - 1:15 pm = LUNCH =

1:15 pm - 2:15 pm Improving Permit Process

- processing time frames
- streamlining process
- lack of funds / staff
- public notice delay
- permit process streamlining for
routine regional activities
- need to include local communities /
government in permitting process
 - a) incl. improved communication

- 2:15-3:00pm Subsistence related issues
- All lands have value
 - Local/gov't cooperation to address negative natural processes and enhance wetlands related Salmon habitat.
 - Wildlife management processes which result in contamination of natural food resources in wetlands.

3:00 - 3:15 pm Coffee Break

3:15 - 4:00pm Classification, mapping, inventory

4:00-5:00pm Other issues and considerations

FACILITATED ALASKA WETLANDS ROUNDTABLE DISCUSSION

Fairbanks Summary Report
November 3, 1993

This facilitated Alaska wetlands roundtable discussion took place in Fairbanks, Alaska on November 3, 1993 at the Captain Bartlett Hotel. The roundtable discussion was sponsored by the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency. The discussion took place following a day of presentations by invited stakeholders representing interest groups with a stake in the management of Alaska wetlands.

The stakeholder interest group participants included: Mr. Joe Widman (Commercial Fishing), Mr. Karl Hanneman (Development Interests), Mr. Larry Landry (Environmental), Ms. Jeanne Hanson (Federal Resource Agencies), Mr. Pat Smith (Municipal Government), Mr. Nathan Bergerbest (Native), Mr. Mike Joyce (Oil and Gas), Mr. Dick Bishop (Sport Fishing), Dr. Paul Rusanowski (State of Alaska), Ms. Nancy Lethcoe (Tourism), and Mr. Ed Watts (U.S. Department of Energy).

The meeting was facilitated by Mr. Dave Hanson of Arktos Associates with assistance provided by Ms. Niki Stewart. Mr. Al Elwing of the U.S. Environmental Protection Agency and Mr. Bob Oja of the U.S. Army Corps of Engineers were present as observers and to provide technical information or program clarification as requested. Ms. Cheryl Smith, representing the White House Interagency Working Group on Wetlands, Washington, D.C., was also present as an observer.

The purpose of the roundtable discussion was to obtain input from the primary wetlands stakeholders in Alaska to identify and address legitimate concerns regarding Federal regulation of wetlands in Alaska. In addition, the roundtable discussion was to provide a better understanding of the divergent points of view on wetlands issues; identify wetlands regulatory problems, consensus areas regarding those problems and suggested solutions; and note parts of the wetlands program that are working well.

Discussion Summary

Wetland Values

The session began with a conversation regarding different wetland values and the identification of wetlands requiring greater protection. The suggested wetland types requiring greater protection based on biological importance included: 375,000 acres of salt marsh inter-tidal areas; riparian wetlands related to

steams, lakes, and rivers; inter-estuarine areas; sub-tidal to inter-tidal wetlands receiving freshwater input from streams and rivers; migratory waterfowl nesting habitat; brown bear habitat; and special aquatic sites. During the discussion, it was suggested that the criteria used for already protected wetlands should be used for any additional wetlands designations.

The discussion continued with a focus on human values for wetlands which may justify greater protection. The human value areas identified included: wetlands supporting subsistence activities; fish rearing and reproduction areas supporting commercial and sport fishing needs; wetlands important to recreational and tourism activities such as bird watching and wildlife viewing, sport hunting, rafting activities, and general scenic viewing; area specific wetlands important to aesthetic values or the local economy such as Kenai River wetlands and Bristol Bay area wetlands; and areas contributing to flood control and aquifer recharge.

The need to recognize location and existing use considerations was stressed as well as recognizing existing protections on wetlands. It was noted that since so much of Alaska wetlands were already in conservation units, they had significant protection and that this should be considered in determining further areas requiring protection. Other comments clarified that wetlands in conservation units are not necessarily protected from development since certain types of development can still take place, and that significant private inholdings as well as other State and private land do not have adequate protection.

The approach to prioritizing wetlands was discussed with emphasis placed on the need to rank more important wetlands. It was suggested that Corps efforts be prioritized on wetlands needing greater protection and that further ranking among high value areas was necessary. However, concerns were voiced that a single set of values (e.g., habitat values) should not be used to make wetlands decisions since equal value habitats may have different development demands. It was stressed that blanket classifications are not adequate and that site specific analysis is required. It was also stated that high value wetlands may be located in large low value areas and that all wetlands have values. Comments indicated that a key consideration was the relative value of a wetland and the impact of human activities. Stakeholders emphasized the need for evaluation and management flexibility due to different levels of use competition and that circumstances exist where high value wetlands must be used for development.

Compensatory Mitigation

Compensatory mitigation considerations initially focused on the meaning of the President's "no net loss" policy and the confusion surrounding the term. Questions were asked regarding whether "no

net loss" referred to the need to replace developed wetlands on an acre-for-acre, value-for-value, or function-for-function basis or some combination of the these approaches. It was stated that Alaska could not satisfy a "no net loss" policy since the State lacks degraded wetlands to rehabilitate, lacks areas for wetlands of equal value, and that many communities must develop wetlands to provide services. It was noted that "no net loss" applies to the entire national wetlands base and that the President's policy already recognizes that a different approach is required in Alaska. One suggested approach would be to codify policy language regarding flexibility for Alaska.

The discussion progressed to the consideration of alternative measures to meet compensatory mitigation requirements when such requirements are appropriately imposed. Accelerated restoration of no longer used drill pads or oil and gas development sites was suggested. Such action could restore a gravel pad to useful wildlife habitat fifteen, twenty or thirty years sooner than might be required by an existing permit. Accelerated restoration may also apply to a drill pad which does not have rehabilitation requirements. A concern was voiced that though accelerated restoration may be a good thing, is it really a gain and does it really provide compensatory mitigation since it might happen anyway. Other comments indicated that the agencies apparently like the concept, that it does result in meaningful wildlife habitat, and it is better than a gravel pad.

Reclamation for mining projects was also mentioned as a viable form of compensatory mitigation or as general mitigation when compensatory mitigation is not required. It was noted that most mining projects have a required reclamation plan. A question was raised concerning the appropriateness of linking reclamation to satisfaction of compensatory mitigation requirements, since nothing was gained. Another comment indicated that when wetlands valuable for tourism are lost, general reclamation in other areas might be appropriate. It was suggested that more flexibility is needed in looking at off-site mitigation.

Other comments indicated that there should not be a blanket compensatory mitigation requirement but that it should be limited to where it is appropriate and practical. Voiced reactions noted that there was not enough compensatory mitigation now, that a blanket exemption from compensatory mitigation was not acceptable, and that compensatory mitigation needs to be retained as an option. Further comment was made that compensatory mitigation is the exception rather than the rule, and that as a last step in sequencing, it is rarely used to provide on-site or off-site compensation. The possibility of monetary settlements being used was noted.

The Corps of Engineers representative explained that current practice takes into account tradeoffs and evaluates a project based

on costs and resources both to those benefiting from the development and the total social or public cost of the development. Other comments indicated the need to have compensatory mitigation when high value wetlands are impacted or major projects take place on moderate quality wetlands, the need to balance considerations of wetlands and development or equity in rural areas, and that the sole consideration should not be wetlands compensation.

Mitigation Banking

Following a short discussion of the definition of mitigation banking, stakeholders considered on-going mitigation banking efforts and options. It was reported that the City and Borough of Juneau is setting up a mitigation banking plan to address compensatory mitigation needs within the Borough. This plan may provide credit for enhancement or restoration of degraded wetlands within the Borough to offset other wetlands development. The use of wetlands conservation easements preserving Native Corporation and other private owner wetlands was identified as a possible source of mitigation bank credits. It was also suggested that private wetlands important to tourism could be purchased and saved from future impacts as a bank credit. A stakeholder indicated the State of Alaska is also beginning to formulate a statewide mitigation banking alternative since it is felt that some high value wetlands will be lost and some form of compensation will be needed.

Several concerns were raised about the mitigation banking concept. A question was asked regarding whether the existence of a mitigation bank would stimulate additional compensatory mitigation requirements since such mitigation may become appropriate and practical. Concern was also expressed that additional acre for acre mitigation requirements would result if a bank was in place. The equity question regarding the worth of lost wetlands was raised as an issue if money is used for bank credits. Another stakeholder questioned the need for a mitigation bank.

Compensatory Mitigation Exemptions

The possibilities of exemptions for bush Alaska, Capital Improvement Projects (CIPs) and Native Corporation lands were briefly discussed. Comments primarily addressed exempting CIPs in bush communities so unnecessary burdens would not be added to community efforts to establish basic services. Concerns were raised regarding the possible impact of CIPs on critical high value wetlands and that case by case analysis was still required. An alternative was suggested that CIPs on the existing road system in bush communities be exempted from compensatory mitigation but that the exemption would not apply to CIPs on new roads. The Corps of Engineers representative reported that no permits have been denied

for CIPs in the bush and that none of the permits have required compensatory mitigation. The Corps was reported to be in the final stages of implementing an Abbreviated Permit Process for sewage lagoon and water facilities in bush Alaska.

Human Element

Tourism and recreational use of wetlands was noted as a value which needed greater consideration in permit decisions. The tourism stakeholder indicated that the economic cost to the tourism industry in loss of existing business and future economic opportunity needed to be recognized. Projects need to be modified to preserve viewscape qualities and areas of undisturbed property. The Corps of Engineers representative stated that tourism and recreation values were two of twenty-two considerations assessed during the permit process. A comment was made that though it was in the regulation, tourism and recreation values deserve more consideration.

The need to balance wetlands protection with economic development in rural areas was also discussed. A comment was made that compensatory mitigation was not justified in bush Alaska. It was suggested that a 1% exemption be implemented for Native Corporation (ANCSA) lands or that the corporations be given direct management authority for wetlands permits. Reactions to this suggestion indicated that the 1% exemption for ANCSA lands would not work since it would also exempt critical high value wetlands. It was also suggested that a more acceptable alternative to Native Corporation assumption of wetland permitting authority would be a General Permit (GP) for corporation lands. A noted Native Corporation concern with this option was that though GPs were a step in the right direction, they usually did not apply to high value wetlands. Other shortcomings identified included the observation that a large percentage of corporation shareholders may not be area residents and may not care for the land and related subsistence values, and that corporation economic priorities might dominate wetlands management.

A conceptual consensus was reached that there should be accommodation in the permit program for economic development in rural Alaska. The unanswered question was how such accommodation should be provided. Some suggestions included the government compensating Native Corporations for any value loss due to wetlands permits, applying a 1% exemption principle to ANCSA lands except for high value wetlands, or codify the words "appropriate and practical" for wetlands protection in the bush. A final comment was made that though ANCSA lands were conveyed as a settlement, it did not mean that Federal regulations no longer apply.

Wetlands Impact on Property Values

A concern was voiced by a stakeholder that the wetlands permit program was causing wetlands property values to fall in the Fairbanks area. This decrease in property values was attributed to the public knowledge that a permit would be required before any development could take place on the wetlands. It was indicated that the existence of a permit requirement could amount to a taking without compensation. EPA and the Corps of Engineers were called upon to recognize this property loss and seek a way to make the property owners whole such as through the use of compensatory public funds.

The ensuing discussion focused on whether this was a problem of reality or perception. Some stakeholders indicated that the Corps permit requirements rarely prevented use of a wetland or resulted in onerous requirements and that the value drops must be related to misconceptions about the program. Some ideas suggested to help clear up misperceptions about the program included public education efforts regarding program requirements, an information program for Fairbanks real estate agents, involvement of the Congressional offices in education efforts, and use of newspapers. Another comment took exception to the value drop not being considered a "real problem" and suggested that some Corps permit restrictions are part of the problem. The discussion concluded with suggestions that the misconceptions be addressed and that compensation concerns could not be resolved at this roundtable.

Regional Impacts on Users

Roundtable participants briefly considered regional impacts of wetlands management on different wetlands users. The Kenai River was used as an example of user concerns regarding permit related protection. It was suggested that interest groups remain involved in permitting and regulating activities on the river. It was noted that the State was working on two impact studies regarding cumulative impacts of river development and management practices. The need to identify key user impacts by region was stressed. Concerns were also voiced regarding the ability of volunteer groups to keep up with public comment demands and whether there was a way for the Corps to prioritize important notices.

Use of Planning in Permitting Activities

The role of planning in permit activities was briefly considered. The need to consider long range community plans including identified present and future needs as part of the permit decision process was encouraged. Plan designations should be reflected in permit stipulations. Consideration of the comprehensive project plan and ultimate project design when permitting a phase or part of

a project was identified as an important step in the permit process. It was suggested that preauthorization of an entire development project, even if only part of the project was being considered for an immediate permit, would smooth the way for future project permits.

General Permits

The General Permit (GP) program was felt to be working well by some participants and additional GPs were encouraged. The GP for the Fairbanks industrial district was specifically mentioned. Another stakeholder indicated that GPs which impact tourism and recreation are not working well and referenced the GPs for mariculture sites and floating homes. These statewide GPs were labelled as a back door approach to development since they are not part of the local planning process and do not have to match up with uplands management plans. Three mechanisms were identified for impacting such GPs including comment before the GP is issued, the review of the GP after three to five years, and in the case of mariculture sites, the State coastal management plan and program. It was indicated that more public education and involvement of the effected parties at the front end of the GP process would improve the results.

Other comments indicated that statewide permits are too broad for a state as big as Alaska. The area covered was felt to be too large to be monitored by the public. A smaller regional or specific activity area focus for GPs was believed to be more appropriate. Another participant noted that GPs are used for regional/water basin related placer mining activity. Concern was also voiced that the cumulative impacts of the GPs and the overall GP program needed to be assessed. The key improvement discussed was the need to involve impacted interest groups up front since so much planning is completed before the permit is issued. Better notification for impacted parties was suggested so that they are aware a GP is being considered rather than learning about it after it is issued.

The Abbreviated Permit Process (APP) was also considered. It was emphasized that a full public comment process takes place at the front end as an APP is created, but that public comment is limited after an APP is in place since the review period is abbreviated. As the discussion concluded, the Corps was complimented on their efforts to acquire and consider public comments.

Increased Funding for Corps/EPA

Some participants supported additional funding for the permit education program. Other comments supported an increased emphasis on public education but questioned whether increased funding was

necessary. It was suggested that a reprioritization and allocation of agency efforts and existing funds might be the answer. Reference was made to the Clinton Program call for a strategic plan for education programs and the possibility of budget evaluations combined with possibly more money.

Additional comments indicated that several public education efforts including work with schools is ongoing. The value of the Corps field offices in educating and helping the public was noted as another thing the Corps is doing right.

Other noted funding needs included completing resource inventory and classification work, wetlands planning, preapplication activities and monitoring and enforcement.

Classification and Delineation

As a follow up to earlier comments, the emphasis for the wetlands classification effort was briefly discussed. Initially, it was suggested that classification efforts focus on high value wetlands areas. However, it was indicated that the classification process now focuses on community activity and development areas where permits may be needed in the near future. Community activity areas were felt to be a good priority for classification action.

Improving Permit Process

Comments regarding the permit process indicated a desire for a defined time period for a Corps of Engineers permit response and a more thorough, final information request step for additional permit application information after the initial Corps review. Corps and agency representatives indicated that a timeline did exist but that a common problem involved acquiring adequate information from the applicant to make a decision. Stakeholders suggested that additional "hands on" assistance be provided for permit applicants as well as example model project applications. Comments noted some of this type of information is already available. Additional funding was suggested to help establish an application assistance position.

Comments were also made regarding winter permit processing when only limited site data may be available but decisions are made anyway due in part to processing time considerations.

Appeals Process

Stakeholders supported the appeals process but disagreed over who should be able to appeal a permit decision. It was stated that the President's proposed appeal program would allow only permit

applicants to appeal and would limit appeals to permit denials. Some stakeholders supported this limited process since it did not allow the public to appeal approvals which could hold up every project. Other stakeholders felt the public or interested parties should also be able to appeal decisions, both approvals and denials. Other comments pointed out that appeals take time and money and as a result an open appeals process would not be abused. Others suggested possible misuse of a more open process could be discouraged by appeal guidelines, responsibility for court costs if you lose, and limiting the appeal rights to applicants and other parties involved in the comment process.

Following a public comment period and stakeholder closing comments, the Fairbanks Wetlands Roundtable Discussion was concluded at 5:00 P.M.

U.S. Army Corps of Engineers
and
U.S. Environmental Protection Agency

Wetlands Roundtable Session

Fairbanks, AK

11/3/93

AGENDA

8:30-8:45am Opening

8:45-9:30am Consideration of different wetland values

- wetlands requiring greater protection (biological/habitat values, coastal/riparian, human need value)

- rank values of wetlands rather than change classification system

9:30-10:00am Compensatory Mitigation

- "No net loss" unworkable in AK

- difficult to accomplish

- accelerated restoration

- reclamation as mitigation

- compensatory mitigation fund

(to research wetlands and educate citizens)

10:00-10:15am Break

10:15-11:15 AM Human element in wetland discussion

- balancing wetlands protection and rural economic development
- greater consideration for tourism/recreational use/need of wetlands
- Wetlands impact on property values
- regional impacts on different users
ie. commercial fishing

11:15-11:45 AM Use of planning in permit activities

- long range community plans
- watershed plans
- comprehensive industrial development plans

11:45-1:15 pm Lunch

1:15-2:00 pm Use of General Permits (G.P.'s) and Abbreviated Processing Procedures (A.P.P.'s)

- routine activities
- speculative development
- federal agency role
- cumulative impact database
- public involvement

2:00 - 2:30pm Improving Permit Process

- Streamlining permit process
- appeals mechanism for the applicant

2:30 - 3:15pm Increasing funding for Corps/EPA

- Corps/EPA public education/information function

- * where are wetlands

- * what is value

- * what is regulatory process

- * application assistance

- * education programs

- Delineation/classification

3:15 - 3:30pm Break

3:30 - 4:30pm Other considerations

- State role in wetlands permit decisions

- Permit process problems as linked to Clean Water Act.

- other

4:30 - 5:00pm Public comment and final comments

FACILITATED ALASKA WETLANDS ROUNDTABLE DISCUSSION

Anchorage Summary Report
November 5, 1993

This facilitated Alaska wetlands roundtable discussion took place in Anchorage, Alaska on November 5, 1993 at the Loussac Library. The roundtable discussion was sponsored by the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency. The discussion took place following a day of presentations by invited stakeholders representing interest groups with a stake in the management of Alaska wetlands.

The stakeholder interest group participants included: Mr. Henry Mitchell (Commercial Fishing), Mayor John Handeland (Development Interests), Mr. Tony Turrini (Environmental), Mr. Dave McGillivray (Federal Resource Agencies), Mr. Don Gentry (Forestry), Ms. Paula Easley (Municipal Government), Mr. Peter Hanley (Oil and Gas), Mr. Jeff Parker (Sport Fishing), Dr. Paul Rusanowski (State of Alaska), Ms. Karen Cowart (Tourism), and Mr. Ed Watts (U.S. Department of Energy).

The meeting was facilitated by Mr. Dave Hanson of Arktos Associates with assistance provided by Ms. Niki Stewart. Mr. Al Ewing of the U.S. Environmental Protection Agency and Mr. Bob Oja of the U.S. Army Corps of Engineers were present as observers and to provide technical information or program clarification as requested. Ms. Cheryl Smith, representing the White House Interagency Working Group on Wetlands, Washington, D.C., was also present as an observer.

The purpose of the roundtable discussion was to obtain input from the primary wetlands stakeholders in Alaska to identify and address legitimate concerns regarding Federal regulation of wetlands in Alaska. In addition, the roundtable discussion was to provide a better understanding of the divergent points of view on wetlands issues; identify wetlands regulatory problems, consensus areas regarding those problems, and suggested solutions; and note parts of the wetlands program that are working well.

Discussion Summary

Common Ground

The roundtable discussion began with participants identifying consensus points to serve as common ground for issue discussions.

Consensus points included:

- Acceptance of Section 404 of the Clean Water Act as applying to all U.S. waters in Alaska;
- Agreement that no one is advocating exempting Section 404 requirements from Alaska entirely;
- Acknowledgement that all wetlands have some value and that some have higher values and some lower values;
- Some loss of low value wetlands is acceptable;
- Additional resources need to be directed toward studying, identifying, and classifying all wetlands; and
- That the existing program has adequate flexibility.

High Value Wetlands

Stakeholders identified some examples of high value wetlands including migratory fowl nesting grounds and feeding areas (i.e., eel grass and goose tongue marshes), bank-related anadromous fish river habitat (i.e., stable banks and transition zones), and important flood control areas. The discussion then focused on the attributes of high value wetlands. Suggested attributes included biological productivity, greater mix of functions, subsistence and cultural importance, presence of rare wildlife or plants, and location considerations such as importance for flood control. A comment was made that low value wetlands become high value when high value wetlands are lost and that value can be a function of scarcity. It was also noted that the bush Alaska perception of wetland values is different since development is viewed as a tradeoff.

Stakeholders also considered how high value wetlands should be addressed. A comment was made that wetlands already protected in existing refuges need to be considered in addressing other wetlands protection and that current approved developments in refuges serve as positive development examples. Several concerns were voiced that higher value wetlands should be protected more stringently than low value wetlands and that a higher level of consciousness regarding permit decision actions and consequences is needed for high value areas. An apparent consensus was reached that higher value wetlands deserve more rigorous consideration in the permit process. Follow up comments were made that the 404 review process already works that way, and that it should be easier to elevate high value wetlands decisions.

Wetlands Inventory/Classification

The inventory/classification discussion noted the need to first classify wetlands where development is to occur and that current efforts generally have this focus. It was emphasized that rural and local considerations need recognition and that inventory/classification efforts in local areas should be a collaborative effort between the different government levels using all available information.

Concerns were raised regarding the general nature of the National Wetlands Inventory (NWI) and its usefulness for permit processing. Government representatives identified the NWI as a starting point for permit decisions. Stakeholder response stressed the need to consider additional information and local information in the permit process. The Corps representative indicated that the Corps needs a better ability to tap into local information systems. Additional discussion focused on the role of wetlands indicators such as hemlock forests in southeast Alaska.

Rural/Regional Issues

The first portion of the rural/regional issue discussion considered the appropriate role of local governments in the permit system. A comment suggested that permit management should be shifted to local communities or that the Corps should give deference to local communities in permit decisions. It was also suggested that the State assume 404 permit authority. It was noted that local communities needed to develop wetlands for facilities. A response was voiced against giving free rein to local entities and that permit decisions should be tied to criteria. Possible legal problems related to the commerce clause were also indicated if local deference was granted. The need for resource agency consultation in local permit decisions was also stated.

The use of the existing General Permit (GP) process was suggested as a way to address local involvement in the permit system. It was noted that approximately 135 villages are already covered by a GP for some forms of development and an outreach effort could inform more local entities about the GP alternative. Another stakeholder spoke against additional local control, referred to poor control in some existing GPs for cities, and submitted a two page description of problems with actions taken under the Anchorage GP. Other participants responded that Anchorage needed to fill wetlands to develop and that deference to local control and values was important. Another stakeholder indicated a desire to have more input into the permit process rather than switch the process to the State.

The importance of considering the different values and perspective of rural Alaska, and the need to apply greater sensitivity to rural

issues was stressed. The Corps of Engineers representative indicated that part of the roundtable task was to identify opportunities for increased flexibility with appropriate environmental protection. He further indicated that great deference is already given to local entities in the permit process and that only one out of 600 proposals has been denied. A question was asked about whether the Corps should just let the locals do it since everything was approved anyway.

The possibility of Native Corporations obtaining GPs for their lands was noted. The Corps representative indicated that 164 Native Corporation permit applications had been approved while only one was denied, 10 withdrawn, and 20 applications closed during the past decade. Several other activities were indicated as being authorized on private land by nationwide and regional GPs. Individual stakeholders voiced both their opposition to local government control due to the power of politics to interfere with wetlands protection and, alternatively, their support for such control since local governments will provide the maximum level of protection. The use of the Abbreviated Permit Process was also suggested for rural Alaska projects.

A question was put on the table regarding how rural communities in Alaska are different from the rest of the United States. The question was linked to the possible need to justify treating Alaska differently under the President's wetlands policy. Stakeholder responses indicated that the third world conditions in rural Alaska including a lack of basic services and infrastructure was one consideration. The language and cultural differences whereby traditional villages still exist with elders councils and a spoken indigenous language were identified as other considerations. The economic uniqueness of rural Alaska with its subsistence/cash economy was also noted. Additional comments indicated the need to put emphasis on reviewing large projects in rural Alaska and allow villages to take care of their own needs. It was stated that local control can happen with good results if it is accompanied by good oversight.

Compensatory Mitigation

During the compensatory mitigation discussion, several participants indicated that the existing program use of compensatory mitigation was not viewed as a problem. The real concern related to the requirement of compensatory mitigation on a much greater scale in the future under the President's program. Different participants expressed the expectation that compensatory mitigation would be required more often in the future. Comments indicated that in some circumstances future use of compensatory mitigation may be motivated by the desire to compensate for loss of high value wetlands but that in other cases it would mainly reflect a tougher permit program.

The discussion focused on what compensatory mitigation policy makes sense for the State of Alaska. A stakeholder suggested that the use of avoidance and minimization procedures on the North Slope should remove the need for compensatory mitigation to a large extent. In view of the abundant high value wetlands on the Slope, the use of very limited high value areas would not degrade the overall wetlands quality. Thus it was suggested that there should be a way out of compensatory mitigation requirements.

Concern was raised that compensatory mitigation should not apply to low value wetlands in Alaska. The Corps of Engineers representative clarified that it has not been required for projects on low value wetlands in the state. It was noted, however, that it is difficult to discuss low value wetlands since some "low value" wetlands are considered to be high value by rural subsistence users. It was indicated that this situation is made more complex by the fact that most development takes place in wetlands ranked between low value and high value.

The issue of practicality was also stressed. It was noted that compensatory mitigation is a difficult tool to use, it is not practically possible to implement in some cases, and it is difficult to find a good compensatory mitigation choice. Suggested alternatives for these situations included acquisition of private wetland inholdings or conservation easements across private wetlands, wetlands compensation credits for completion of off-site mitigation on degraded wetlands, use of "best management practices" to enhance wetlands, and establishment of compensation through mitigation banking. Strong feelings were voiced that Alaskan developers should not be required to complete compensatory mitigation outside of Alaska.

Accelerated restoration of oil and gas development sites was also identified as a compensatory mitigation alternative. It was suggested that such accelerated restoration of North Slope sites would be appropriate on a case-by-case basis. The legitimacy of accelerated restoration as compensatory mitigation was questioned since the development area, in most cases, was already required to be rehabilitated at some point in the future. A stakeholder suggested that the accelerated rehabilitation time frame only meet part of the compensatory mitigation requirement. A problem of adequate follow through by the developer to assure the restoration took place was also stated. In response to questions, the Corps of Engineers representative indicated that the Corps had authority to use accelerated restoration and to require bonds, if necessary, to assure restoration. The possibility of using flooded gravel mine sites as fish habitat to meet compensatory mitigation requirements was also raised.

Wetlands/Watershed Planning

The use of wetlands and watershed planning was encouraged. Some stakeholders felt that such up front planning could streamline the permit process by identifying concerns ahead of time and identify the most appropriate areas for development. Participants indicated that such planning should build on the base of existing plans and planning processes, be a cooperative process, and involve the various levels of government. Planning efforts should be coordinated with related programs such as the coastal management program or the Advanced Identification Process (AIP) and complement rather than substitute for the 404 permit process. It was suggested that watershed plans serve as a basis for additional GPs and help coordinate any required compensatory mitigation.

Concern was voiced about the advantages gained by State and local governments through such planning. One advantage noted was the wetlands inventory and classification information gained through the effort. However, a key to the plan success was identified as the commitment of the local, State and Federal governments to use the plan in making permit decisions and for communities to have a say in the plan. Planning efforts were characterized as increasing development and preservation flexibility and as a way to responsibly address secondary impacts. It was stated that such plans along with comprehensive planning could lead to better decisions.

Prime locations for watershed plans were suggested to be villages covered by GPs, larger communities, and important drainage systems. Specific areas mentioned included Anchorage, the Kenai Peninsula drainages, Susitna Valley streams and the Bristol Bay drainage.

Since Alaska is still relatively undeveloped, participants noted that a watershed plan could get more "bang for the buck" in Alaska. Some participants noted that a grant program for watershed planning was needed. It was also noted the coastal management plan has money and some authority to do watershed planning. Some participants expressed caution towards the use of watershed planning.

Improving Permit Process

A variety of suggestions were offered for improving the permit process including a shorter, better defined permit processing timeline, the need for an elevation process, an exit interview process, coordination of State and Federal review processes, and an improved preapplication program. Though participants seemed open to better defined timelines, there was disagreement over whether a permit should be automatically approved or denied at the processing time deadline if no decision had been made. The elevation process suggestion referred to elevating a permit for decision to the

commenting agencies after the public comment period. The stakeholders seemed to agree that exit interviews for evaluation purposes were a good idea. Integration and coordination of State and Federal processes for wetlands management was suggested with particular emphasis on coordinated timelines or at least the flexibility to adjust timelines. The importance and benefits of the preapplication process were indicated and it was suggested that use of the process be encouraged through efforts such as monthly preapplication forums involving effected agency personnel and potential applicants.

The desirability of an appeal process for permit decisions was discussed. Though the appropriateness of the appeal process was recognized, significant disagreement existed regarding what could be appealed and who could appeal. Some stakeholders felt only permit denials should be appealed with the impacted party having the right to appeal. Other stakeholders indicated that both approvals and denials should be subject to appeal with the affected applicant and public having appeal rights similar to other Federal agency appeal processes. An alternative was suggested, but not agreed to, that called for both approvals and denials being subject to appeal but only the applicant and public that commented on the application having the right to appeal.

An exchange of views regarding the treatment of compensatory mitigation occurred during which a wide range of positions was expressed. Suggestions ranged from attempting some form of 1% exemption to subjecting all wetlands to evaluation for compensatory mitigation. Though most participants appeared to agree that certain high value wetlands (coastal wetlands and riparian areas) were more likely candidates for compensatory mitigation, disagreements were voiced regarding other wetlands. Some participants wanted low value wetlands and/or wetlands in cities and communities exempted from compensatory mitigation. Other participants opposed any proposal to exempt wetlands. A suggestion was made to recognize that it was only a remote possibility that low value wetlands would ever be subjected to compensatory mitigation and to rely on program flexibility. A response to this suggestion stressed the fear of how this flexibility might be used in the future.

The permit process discussion concluded with the suggested need for an information outreach program, an information clearinghouse, and moving decision making to the regions and the bush. The existing lack of public understanding of the permit process in rural Alaska was noted and an information outreach/education program encouraged. A monthly permit information clearinghouse which might provide applicant access to all the relevant agency representatives at one time was suggested. The need for a person or group of people representing all of the agencies to be available as a focal point for bush community concerns was identified.

Increased Funding

Stakeholders identified program funding needs including watershed planning, process streamlining, establishment of a clearinghouse approach, monitoring and enforcement efforts, resource inventory work, and new equipment required to access local wetlands data. It was proposed that the watershed planning effort focus on two or three key areas. A suggestion regarding enforcement monies recommended consolidation of agency enforcement authorities into an inter-agency enforcement effort using one inspector for several authorities. As a result, several people would not have to travel to bush areas to inspect the same project. Some stakeholders felt reprioritization of program needs and funding allocations rather than increased funding should be the approach. One response critical of relying on reallocations indicated that the government should provide additional monies to improve the program through a new clearinghouse and other actions which would benefit both developers and public interests.

The Corps of Engineers representative suggested establishing a written partnership with the stakeholders to help improve public understanding of the wetlands program. The partnership would help establish common interests and expectations. Stakeholders would help educate their constituencies. The general consensus of the stakeholders was to support this idea with the caveat that the effort not take resources away from other permit efforts.

General Permits

The Corps of Engineers representative presented an overview of existing and pending General Permits (GPs) for wetlands activities in Alaska. GP coverage areas ranged from cities, to regional activities such as residential or sewer and water construction in the bush, to nationwide permits for bank stabilization. Stakeholder opinion ranged from support of GP activity and a sense that too few had been granted to a reaction that the permits were not working and that too many were granted. It was emphasized that GPs are a tool that need to be used appropriately and responsibly.

A concern was raised that the cumulative impacts of GPs needed to be examined and public accounting required to minimize adverse GP impacts on wetlands. Adverse consequences associated with the Kenai River GP were referenced, and it was stated that improvement was needed and that the State and Federal agencies are reviewing the situation. Concerns were expressed about public input, but it was also indicated that public input on GPs is not lacking. The need for improved monitoring was stressed.

Some comments were made regarding the loss of valuable wetlands under the Anchorage GP and reference was made to the two page National Wildlife Federation Fact Sheet, addressing Anchorage GP

concerns. A response indicated the wetlands developed were consistent with the Anchorage plan.

Following an opportunity for public comment and closing comments by the stakeholders, the Anchorage Wetlands Roundtable Discussion was concluded at 5:00 P.M.

U.S. Army Corps of Engineers and U.S. Environmental Protection Agency

Wetlands Roundtable Sessions
Anchorage, AK

AGENDA
11/5/93

- | | |
|---------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 8:30-8:45am | Introduction |
| 8:45-9:30am | High value wetlands <ul style="list-style-type: none">- what are they (coastal/riparian/tundra)- how should they be addressed- prioritize inventory |
| 9:30-10:10am | Rural Regional Issues <ul style="list-style-type: none">- abundant low value wetlands- village location in wetlands- wetlands access- Togiak to Southeast- Kenai |
| 10:10-10:30am | Break |
| 10:30-11:50am | Compensatory mitigation <ul style="list-style-type: none">- high value wetlands- exemptions<ul style="list-style-type: none">* ANCSA land except high value* abundant low value* cities- mitigation banking- accelerated rehabilitation- codify MOA language |
| 11:50-1:15 | Lunch |
| 1:15-1:45 pm | Watershed/wetlands planning <ul style="list-style-type: none">- pre-planning- result: develop and preserve- special area management planning |
| 1:45-2:40pm | Improving permit process <ul style="list-style-type: none">- coordinated pre-application process- public notice procedures (elevate notice categories)- time-frames- local input/decision making- APP's- appeals- exit interviews |
| 2:40-3:00pm | Break |

- 3:00-3:45pm General permits
- what types
 - greater use
 - public notice and comment
 - cumulative impact
- 3:45-4:15pm Wetlands classification
- permit processing usefulness
 - hemlock
 - permafrost
 - spruce bogs
- 4:15-4:50pm EPA/Corps funding
- increase regional/field presence
 - permit review
 - monitoring and enforcement
- 4:30-5:00pm Public comment and closing comments



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January 31, 1994

TO: AFN Land Managers
Julie Kitka, AFN President
Nelson Angapak, AFN Wetland Coordinator

FROM: Robert W. Loeschner
Co-chair AFN Land Managers

RE: Comparison Between AFN and State of Alaska Positions on Wetland Management

On January 28, 1994 I provided a paper comparing the wetland position of AFN and the State of Alaska. This comparison delineates those areas where AFN and the State may disagree on philosophy or approach to wetlands management in Alaska. The areas of potentially contradictory positions are:

- Use of the Alaska Coastal Zone Management Program (ACMP) as an administrative vehicle to implement a wetlands management program.
- Use of core-township or circle general permits for administration of programs in rural Alaska.
- State support of the National Wetlands Inventory (NWI).
- Mitigation banking as a vehicle to ameliorate wetlands compensation and sequencing requirements.
- Continued support for the 1% exemption.
- State assumption of the wetlands management program.

On January 31, 1994 Mr. Harris and I met with Dr. Paul Rusanowski and Bill Lawrence, of his staff to discuss the State's position on these issues. Dr. Rusanowski and he provided clarification on the State's position. Briefly the State's position with respect to the issues are:

Use of the Alaska Coastal Zone Management Program (ACMP) as an administrative vehicle to implement a wetlands management program.

The State believes that the ACMP could be a model but not a vehicle to develop a wetlands management program in Alaska. He recognized that the ACMP program has short comings and that the relationship between CZM and Native corporations has been awkward in the past.

Use of core-township or circle general permits (GPs) for administration of programs in rural Alaska.

The state believes that circle permits would provide relief to wetlands permitting in rural Alaska. Our concern is that this approach either grants local governments with extra-territorial wetlands regulatory jurisdiction (i.e. outside their regulatory boundaries) or will require creation of a new quasi governmental body. In either case the concerns are: 1) the cost to administer these functions 2) there is no promise of Native corporation representation in these organizational structures and 3). creation of a new quasi government entities gaining governance over ANCSA lands. These entities may not be inclined to recognize the intent and objectives of ANCSA.

The creation of numerous quasi governmental entities poses additional problems for the regional corporation. Each corporation may have to coordinate with 10 or more entities each with distinct policies and objectives. The effect is fractionalization of land management administration and significant increase in costs for ANCSA corporation to manage their lands.

The use of circle GPs permits would involve over 4.6 million acres (23,000 ac. x 200 villages). The creations of these GPs may involve more wetland acreage than the Federal government is willing to tolerate. Second the circle GP is not sensitive to the places where use of wetlands may need to occur. Dr. Rusanowski suggested the circle GP could be delineated as an area comprising approximately 23,000 acres that would be defined in each GP. Although this maybe an improvement the administrative organizational structure fails to address the issue of representation and feasibility of representation of the private landowners within the boundaries of the GP. The circle GP does not appear to address the needs of ANCSA regional corporation whose land and potential economic development resource anomalies would be outside the circle GP.

State support of the National Wetlands Inventory (NWI).

The State's position on the NWI is consistent with the position taken by AFN. Specifically there needs to be significant changes in the NWI if it is going to be useful in Alaska.

Support of mitigation banking as a vehicle to ameliorate wetlands compensation and sequencing requirements.

The State is initiating EPA funded studies to evaluate the practicality of mitigation banking in Alaska. They believe that since mitigation banking is part of the National agenda they must evaluate its potential in Alaska. However, his preliminary opinion is that its use will be limited to the major urban areas of Alaska and then only if it makes sense to that urban center. Generally application to all of Alaska is unlikely.

Continued support for the 1% exemption.

Although the 1% initiative has lost favor in Washington DC, there is still a political advocacy within the State and some or all of the congressional delegation to perpetuate the 1% position. The 1% argument will continue until the representative political body concludes that there is no support for the 1% exemption. Until that realization occurs the 1% argument will be a part of the State's position. The Governor's Division of Governmental Coordination (DGC) is cognizant of the situation in Washington D.C., but is constrained to change the State's position at this point. We pointed out to DGC that this continuing position could create problems as we forward new amendments to the Clean Water Act (CWA) related to wetlands and could effect our credibility as we work in Washington D.C.

State assumption of the wetlands management program.

The State has received funding from EPA to further evaluate the assumption of the 404 wetlands permitting program. However, as the Clean Water Act (CWA) is written the assumption of the wetland program is not in the interest of the State or its citizens. There would have to be several amendments to the CWA before it would be palatable to the State. Amendments required include:

- Granting management and permitting authority over all wetlands. Current assumption authorities limit State assumption to freshwater and upland wetlands. Coastal wetlands (e.g. all of Southeast Alaska, and Prince William Sound) would not be covered by the State assumption).
- Shift the burden on permitting decisions from the State to the Federal government. Currently the State must prove its permit decisions are consistent with Federal law. The State's amendment would require the Federal agencies to prove that a State permit decision is contrary to Federal law.
- Eliminate the Federal requirement that a State program must be as restrictive or more restrictive than the Federal standards. The State wants the option to have the opportunity for less restrictive and more restrictive standards than Federal requirements.
- Authority to regionalize the wetlands delineation manual.

Conclusions:

We discussed the State's formal position regarding the Clinton wetlands initiative and the lack of substantive written material on this issue (the most definitive comments are from the oral hearing record). We have learned that the State is just now beginning the preparation of its comments and that they will not be as detailed as those submitted by AFN. We concluded:

- The State is hampered by diverse interagency opinions, consequently it is impossible to develop a comprehensive State position.
- The commissioners of DNR, DFG, DEC, and DOTPF are focusing on more immediate short term issues and do not have a pressing concern for the outcome of this long range issue.
- The State will use an ad-hoc strategy to address discrete issues but will not publish a comprehensive wetland strategy. The ad-hoc approach enable the State to avoid internal conflicts in the resource cabinet.
- The State has both a conceptual legislative and administrative strategy that is still in the formative phase. The two strategies and elements of those strategies are:

LEGISLATIVE STRATEGY

1. Amend the Clean Water Act to remove hurdles to State assumption of the 404 wetlands permitting program
2. Coordinate with Native Corporations wetland legislative initiatives.
3. Coordinate with other interests who may be advancing legislative solutions.

ADMINISTRATIVE STRATEGY

1. Seek appointment of a State of Alaska and an Alaska Native representative to the White House wetland policy task force. The State's believes that Alaska's program will be decided by the White House task force.
2. Low level participation in the Clinton EPA/COE Alaska Wetland initiative.
3. Use back-channel communication with EPA/COE to advance the State's position in the Alaska Wetlands initiative.

4. Follow the legislative lead of the congressional delegation, to secure a 1% exemption for Alaska on the Senate floor.

4. Continue a parallel process with COE/EPA to encourage them to use existing authorities to develop GPs, Circle GPs, and other friendly permitting processes and administration of those programs.

5. Cooperate with third parties by lending State support to positions advanced by third parties (e.g. oil & gas, Natives, RDC, communities) but not to take a public leadership or coordinating role.

6. Initiate various studies that use Federal moneys and address priority initiatives in the National wetland policy (e.g. wetland assumption, mitigation banking, etc.).

7. Provide funding to AFN to help coordinate Alaska Native wetlands position development.

The State has a limited legislative agenda focusing on the 1% argument and amendments for assumption of the 404 program. The congressional delegation remains committed to securing a 1% exemption for Alaska through the floor debate on the CWA. Consequently the State is reluctant to advance other equally valid legislative solutions. To that extent they are willing to go "shoulder to shoulder" to support other legislative approaches but their support is likely to be limited so that their position does not cross the congressional delegation strategy.

The State's administrative and legislative strategy will result in direct or indirect assumption of the management of wetlands in Alaska. My January 28 memo raised a specific concern:

"The State expects to pursue the assumption of the program over all wetlands within its administrative control. The AFN land managers would like to maintain control over ANCSA lands in this regard. We have postulated the idea of having a direct relationship with the federal government under tribal status which would allow ANCSA corporations federal recognition, and for funding, planning,

inventory and administration - leaving final permitting to the Army Corps of Engineers."

If the State is successful in assumption of the program, the thread between ANCSA corporations and the Federal government is broken. The federal governments contract with ANCSA corporations would become subservient to the policies of the State. Before we can endorse any State assumption of the 4C4 program, there must be some statutory protections for ANCSA corporations. Some initial thoughts and ideas are:

- recognition of regional delineation manuals.
- a wetland management system that allows use of both abundant and low value wetlands.
- a legislated leadership role in the management of wetlands on ANCSA lands by recognizing ANCSA corporations as tribal entities for the purposes of wetlands.
- the State management system, must be regionalized to avoid multiple jurisdictions within the boundaries of each region directing ANCSA wetland land management practices.
- no mitigation or compensatory mitigation on ANCSA lands.
- use ANCSA land mitigation practices as marketable mitigation credits that can be sold to third parties to meet compensation requirements.

Please advise me of your thoughts in this regard.

RWL:ph

c.c.

Leo Barlow

Rick Harris

Bill Horn

Gail Oba

Jon Tillinghast

Sam Kito



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VIA FAX

January 28, 1994

TO: AFN Land Managers
Julie Kitka, AFN President
Nelson Angapak - Wetlands Coordinator

FROM: Robert W. Loescher
Co-chair AFN Land Managers

RE: Comparisor: Between AFN and State of Alaska
Positions on Wetlands Management

Please find enclosed a copy of a comparison between AFN and State of Alaska positions on Wetlands management. Under separate cover I will transmit by overnight mail a summary of remarks by Dr. Paul Rusanowski, Alaska Division of Governmental Coordination at the stake holders meeting in Bethel, Fairbanks and Anchorage October and November 1993.

As I had commented before the AFN Land Managers, I felt that the State's position has not been detailed out in a comprehensive manner. It is difficult to decipher Dr. Rusanowski's remarks into an administrative or legislative initiative framework. Mr. Harris and I intend to meet with Bill Lawrence and Roger Snippen and if possible Dr. Rusanowski (he is on travel status to Barrow, Alaska) of the State OGC to discuss the State's position prior to the Legislatures Joint Natural Resources Committee hearing on Wetlands, February 2, 1994.

I would like you to look carefully at Dr. Rusanowski's remarks, on behalf of the State, in the following areas:

- o 1) The State supports regionalization and even sub-regionalization to properly administer wetlands. The State advances the idea that the CZMP's across the State of Alaska would be a good administrative vehicle.

We endorse the regionalization of wetlands delineation and management. However, my experience is that the CZM plans do

not cover all areas of the State. Secondly, the State and local governments have opposed Native interests in the CZM process; and even opposed our legislation, previously advanced that would have provided major private landowners (ANCSA corporations) on the State's Coastal Policy Council. Lastly, in this regard the AFN Land Managers have observed that there are at least four (4) geographical ecologic wetland types in Alaska: 1) Arctic plain; 2) Interior; 3) Western Alaska and; 4) Coastal forest.

I believe we must convince the State of Alaska that the administrative system for wetlands should not be linked to the State CZM program.

- o The State still has it in their thoughts the business of protecting the "core townships".

As you are aware, the AFN land managers are concerned that this focus on the "core townships" is too limiting in some respects and too big and/or ill placed in other respects (ie one township or 23,040 acres in the wrong place). Our direction in this regard is to propose a law that:

- 1) protects public and private development(s) within the existing boundaries of traditional communities and established local government areas; and

- 2) allows for development of land and natural resource anomalies on ANCSA lands and adjacent State lands. Our view is that significant economic projects will probably occur on ANCSA lands and infrastructure development will most likely occur as close to the project area as possible due to costs of development and an effort to limit the "foot print" of development and impacts to the environment (including wetlands).

- o The State partially supports the National Wetlands inventory (NWI) as a mechanism to classify wetlands so that values can be assigned.

The AFN land managers see no value in the NWI project unless major changes can be implemented. Our problems with the NWI target:

- 1) errors in inventory;
- 2) the NWI is not done in digital format so we can use on state of the art GIS systems;
- 3) the governments lack of use of the best available information including higher resolution photography;
- 4) the inventory is not using the wetlands jurisdictional definition.

AFN Land Managers
Julie Kitka
Nelson Angapak
Page 3

I believe we must urge the State of Alaska to stand firm with AFN land managers with regard to the NWI.

- o The State feels that mitigation banking has some place, especially in areas such as Anchorage and Juneau.

AFN land managers feel that mitigation banking should not be applied to ANCSA lands; or for that matter be a practice anywhere in Alaska.

I believe we should work to persuade the State to abandon these thoughts at the outset.

- o The State still advances the concept of the 1% exemption.

AFN land managers have assessed this concept and our political intelligence is that this proposition is unacceptable and difficult in Washington, D.C.

I believe we should work to persuade the State to abandon the 1% proposition and ask them to work with AFN land managers on alternative legislative solutions.

- o The State expects to pursue the assumption of the program over wetlands within its administrative control.

The AFN land managers would like to maintain control over ANCSA lands in this regard. We have postulated the idea of having a direct relationship with the federal government under tribal status which would allow ANCSA corporations federal recognition, and for funding, planning, inventory, and administration - leaving final permitting to the Army Corp. of Engineers.

I believe we must clarify our respective approaches.

* * *

Please advise me or Mr. Harris of your thoughts on these matters. Our fax number is (907) 586-2304.

cc: Leo Barlow
Rick Harris
Sam Kito

FOREST INDUSTRY CONSULTING
6725 MARGUERITE STREET
JUNEAU, ALASKA 99801

Paul
SC

MEMORANDUM

January 27, 1994

To: Robert W. Loescher, Executive Vice President- Resource Management

From: Peter M Huberth *P. M. Huberth*

Subject: Companson Between AFN and State of Alaska Positions on Wetlands Management

Copy: Richard P. Hams, Vice President - Resources Planning and Administration

I have been directed to point out differences between the goals and objectives of wetlands management as presented by the State of Alaska in comparison with Sealaska/AFN positions as presented in the joint letter to be cosigned by yourself and John Rense. There are differences, however, all are relatively small or inconsequential because the philosophical approaches are relatively the same.

Currently, Sealaska does not have in its possession a formal document that details the State's position. Sealaska has relied on the testimony and remarks of Dr. Paul C. Rusanowski, Division of Governmental Coordination in the Governor's office, at the Stakeholders meetings in Bethel, Fairbanks, and Anchorage during October and November, 1993. Sealaska does not have the benefit of any revisions he may have made during the follow-up meetings in January, 1994. However, on November 4, 1993, in his opening remarks, Dr. Rusanowski succinctly outlined 14 points that express the State's position. Dr. Rusanowski did not enumerate the 14 points. Sealaska counted that number when it analyzed his remarks. There is no reason to believe that any of the State's positions have changed since his remarks were made during round 1.

Further analysis shows that Dr. Rusanowski failed to remark about many issues. Therefore, AFN is unable to determine if the State has, or will have, a position for each one. This analysis mentions several of the more important ones, but not all of the issues. One must expect (hope) that the State will have a very comprehensive paper addressing each issue, and that it will be similar in scope to the joint letter.

The State's remarks are broader than those expressed in the joint letter largely because the State is representing a broader spectrum of Stakeholders.

- The State feels strongly that prior laws must be honored in any wetlands management implementation. The laws most mentioned are: Statehood Act and the Alaska Native Claims Settlement Act. Once or twice, ANILCA was mentioned, too. The State strongly supports the Native reliance on ANCSA as taking priority over the CWA, but feels the Statehood Act should receive similar treatment.

Comparison Between AFN & State of Alaska Positions on Wetlands Management
January 27, 1994

- The State strongly feels that State and Federal reserves, refuges, etc. must be assumed to be part of any banking arrangement that can be used to offset future development activity on wetlands. The joint letter mentions areas, such as buffer strips, eagle tree buffers, habitat restoration and enhancement projects.
- The State supports regionalization, and even subregionalization to properly administer wetlands administration. For much of the State, the CZMP areas are supported as the best vehicle. The joint letter maintains its focus on Natives having full control of their lands. The CZMP is not mentioned, probably largely because Native corporation land managers are sometimes at odds with CZMP requirements in specific sub regions and see the CZMP as placing restrictions on their land stewardship opportunities.
- The State feels that the lowest common denominator, in terms of over 300 villages must exercise substantial authority over the administration of wetlands in the immediate vicinity of each entity. The State feels that local rural people have the best knowledge of their wetlands and should exercise quite a bit of control. At times this can be at odds with the purposes of Native Corporation's land management goals in the same township
- Both parties support a 60 day period for processing applications for permit. The State goes beyond this and advocates that the Federal time frames be the same as each State's time frame and that there be one central processing entity. By implication, this would be the State, because the mechanism is in place such as CZM, etc. In fact, one remark mentions that the State should assume administering the process.
- Both parties support an appeals process. The State is silent regarding the ability of 3rd parties to appeal and participate in the appeals process.

Areas of difference between the Joint Letter and the State include:

- The State partially supports the National Wetlands Inventory as a mechanism to classify wetlands so that values can be assigned. However, the State says that the NWI is imperfect. Also, a classification system must be chosen up front and that is the system that everybody will recognize. The joint letter does not support the NWI and feels that it in no way should be used to assist the regulatory process.
- The joint letter expresses that mitigation banking should not be applied to Native lands. The State feels that mitigation banking has some place, especially in urban areas such as Anchorage and Juneau. There may not be a difference here.
- The State still advances the concept of the 1% exemption. They support this argument with the analogy to the 53 million acres of farmland exempted. The joint letter does not directly address the 1% concept.
- The State has a goal to track wetlands disturbance. The joint letter is silent on this idea.

Comparison Between AFN & State of Alaska Positions on Wetlands Management
January 27, 1994

- The State expects to pursue assumption of the program over wetlands within its administrative control. By implication, the State feels that it should have control over much of the navigable waters currently reserved to administration by the Corps. The joint letter is silent regarding this issue.
- The State is very concerned that wetlands regulations diminish property values. The Joint letter does not address this issue.
- Neither party discusses preplanning as something that should be encouraged. However, most participants supported some idea of preplanning.
- The joint letter addresses sequencing; the State remarks do not.
- The State discusses special permitting and efficiency be given to CIP projects in the bush. The joint letter is silent.
- The Joint letter discusses "isolated wetlands." There is no record of State remarks.
- The joint letter discusses some of the problems with using Facultative species to classify wetlands; hemlock is the prime example used. The State does not remark about this issue.
- The joint letter discusses planning by using watersheds as the basic unit. There is no record of the State addressing this issue.

*Paul
SC*

SUMMARY OF REMARKS

BY

DR. PAUL C. RUSANOWSKI

**ALASKA DIV. OF GOVERNMENTAL
COORDINATION**

**AT STAKEHOLDERS MEETINGS IN
BETHEL, FAIRBANKS & ANCHORAGE**

OCTOBER & NOVEMBER, 1993

SEALASKA CORPORATION

January 25, 1994

FIC

Following is a summary of remarks and discussions in which Dr. Paul Rusanowski participated at Stakeholders meetings held in Bethel, Fairbanks, and Anchorage in October and November, 1993.

- State goals as stated in a formal presentation in Anchorage include:
 1. Maximize local decision making within the wetlands permitting process
 2. Identify and protect critical wetlands.
 3. Preclear the state's wetlands for protection and management
 4. Create a tracking system to account for wetlands disturbance
 5. Maximize GP's; develop abbreviated permit processing (APP)
 6. Develop an umbrella mitigation banking plan
 7. Implement a uniform classification system for Alaska wetlands.
 8. The function and value system must be extended across jurisdictions, political boundaries, cultures, and lifestyles.
 9. Pursue CWA changes allowing States to assume the permitting program.
 10. Allow exemptions for various activities and land status.
 11. An exemption for Alaska similar to the farm exemption.
 12. GP's and APP's need to incorporate local values and needs.
 13. State and ANCSA lands must have their guarantees under the laws that created these entities. The wetlands permitting law must be built on the existing law
 14. Local and State consultation must be recognized by the Federal government

- Throughout the meetings the State emphasized local input, control, and authority.

- Great emphasis on recognizing the Statehood and ANCSA laws. The compacts and agreements that are in place have to be the starting points for the solutions, not an afterthought. Ask what was the intent, what are the solutions? Where Natives were forced to select lands, those areas should be exempt from everything. This is no different than exempting 53 million acres of farm land.

- CZM is a logical vehicle to assist in much of the planning and permitting. This takes into account the needs of sub regions

- In the permitting process, in terms of time, the State time frames should dictate the time frames in wetlands permitting

- Strong emphasis on increasing GP's and APP's. Allows time for higher priorities.

- It is too early to beat up on the NWI. However, everybody must know what classification system will be used. Maybe some definitions need to be changed. We can define wetlands any way we please because the definitions are societal driven, not scientifically driven

- State assumption is on hold until the CWA is reauthorized.

- Must have an appeals process. The appeals process needs to be codified in some manner. It should allow for negotiation. Applicants and others need to have their rights guaranteed

State of Alaska - Department of Governmental Coordination Presentations
Paul Rusanowski

Bethel, Alaska, October 28, 1993

- Need to deal with the duplication of State and Federal processes on different timelines. Results in not a coordinated response in the permitting cycle. P 59
- Inadequate local input and deference to local knowledge within the permitting process. P 59
- Lack of respect for previous agreements and contracts, ANCSA and State lands. P 59
- The compacts and agreements that are in place have to be the starting points for the solutions, not an afterthought. Ask what was the intent; what are the solutions? Where Natives were forced to select lands, those areas should be exempt from everything. This is no different than exempting 53 million acres of farm land. P 145
- The permitting process does not address priorities. Need to address issues that are truly significant and relevant where we can make a difference. There are too many trivial solutions that dilute efforts to conserve and preserve environment. P 60
- We need to deal with balance. We can not hide behind our authorities. All issues must be treated. We can not preserve lands at all costs without looking at other values, etc. P 60
- We need to endorse and incorporate a consensus type processes such as the State CZM program. P 60
- One of the first issues that needs focus is the use of some sort of exemption for resolving particular issues. These might be in the form of land status exemption, ownership exemption, use exemptions, or whatever. P 116
- Also, need permit mechanisms to reduce the trivial evaluation of projects, such as GP's and abbreviated permitting. These would cover minor impact projects and projects of no significant impact. P 116
- Exemptions can mean that the permitting process could recognize projects with potential impact on areas of high subsistence or cultural value that would be exempted to a higher level of review requiring more full scrutiny. In Alaska, many areas bearing special attention cover such sensitive issues. Therefore, the statutory authority is in place. P 136
- Where should there be absolute exemptions? Where should exemptions be limited to compensation? Where does it make sense to look at ownership as some form of exemption? P 146
- We are not looking at what is being brought to the table. We are looking at what is and saying how do we fit what you want into it. P 146

- We are adding encumbrances to conveyed lands by additional regulation. Also the permit process adds time and costs to projects. In SE Alaska water has to be crossed to develop lands for timber. The permitting should have been handled at the time of the compact. P 158
- Perhaps a variation to the general permit process would be that a threshold would have to be met. The threshold might be a certain type of low value wetlands being affected activities on which would be exempted until the limit was reached. This makes better use of agency time. P 175
- Probably the exemption issue can only work within a sub region of Alaska. There is a greater opportunity to achieve consensus at such a level (Said in context of high versus low value wetlands). P 193
- The CZMP represents the best integration of total information, local decision making, and local knowledge. The threshold concept would work where CZM has been implemented. P 194
- Community input is directly related to interest in a project. Very little interest means very little input. No amount of requirements will change the amount of input; the community may feel it is being imposed upon. Big interest means lots of comments. Pre notification can help a community decide the level of interest. If they choose not to comment, that really is support for a project. If, after 2 years, the project should not have been done, then monitoring will discover it and the information is available for the future. P 229
- Agencies have not tried to maximize the values of GP's in allocating time, effort and expediting. P 233
- Maybe there should be regional GP's as opposed to community in order to make sure the whole population is covered. P 240
- The permit process should be a one stop shop with one permit that serves the needs of all the Federal and State agencies. P 250
- The preplanning process sounds nice, but it is voluntary on the part of the agency. Sometimes the agency still reserves judgment which does not benefit the applicant. P 264
- CIP's do not need the extra burden of lots of review. Water, sewage, schools, etc are going to be built right in the community so compensatory mitigation makes no sense. P 300+
- Regionalization of permits makes the most sense because Alaska is so large and diverse - but, not within regions. P 367
- When it comes to subsistence we need to focus on much more than the FWS mandates of species needing protection. Need to watch way of life, cultural

centage, etc. We can't get stuck in western thinking habits when thinking about subsistence. P 386

- NWI can address abundance and scarcity of wetland types. Wetlands need to be classified before assigning value. P 460 We are being a bit premature in beating up on the NWI. The accuracy is suspect. However once a definition and classification are in place then locating it on the ground is easier. P 411
- Salt marshes should not be an issue because they are just about completely protected. In Cook Inlet every acre of salt marsh is either in a refuge, reserve or has been identified as a special area in the coastal zone process. P 422
- We have to agree right at the beginning what classification system will be used. NWI or another system. P 434
- Also, the state needs to have an umbrella mechanism for mitigation banking. It should be used where appropriate. P 437 It might be appropriate in Juneau and Anchorage where further development probably will erode the base of high value wetlands. Communities would not have to develop their own programs because the state program would be in place and available. P 434
- The state is pursuing maximizing the benefits of GPs and APPs. P 434
- The state is putting together a system of information transfers so that everyone will have the opportunity to know what everyone else is doing. P 434

State of Alaska - Department of Governmental Coordination Presentations
Paul Rusanowski

Fairbanks, Alaska, November 2, 1993

- Introduced Harvey Marlin who pointed out problems with developing lands for commercial and residential purposes. Felt that ground truthing needed besides aerial photos that classify tree species. P 87
- Introduced Scott Grundy, former habitat supervisor with ADF&G, discussed how a wetlands designation reduces the value of raw, developable land. The small individual can not cope with the permit process. Expand GP's. It is a Federal taking to convey homestead land and then deny cleaning and utilization of the ground. P 93
- Commences a series of questions following up on property value decreases. In one case the denial for a individual Permit contained 16 pages, but the material did not provide meaningful direction regarding mitigation and minimization. Permitting does not necessarily conform to Fairbanks master plan for an area. P 152
- State Assumption - on hold pending passage (re authorization) of the CWA in 1994. Alaska needs clear messages where the program is going and the rights of States in that program P174
- The state has entered into an agreement with COE to look at developing general permits for activities that make sense throughout the State and looking at geographical locations for those activities that make sense. Some activities will fall into an Abbreviated Permit Process (APP) P174
- Starting developing a uniform classification system to address the functions and values component. Trying to develop a consensus on what wetlands look like. Trying for systematic approach starting with identification. P175 The plan should cover the State. It should not infringe on Native lands, community rights, rural Alaskans. If the Feds do it, too, then the two programs will have to mated. etc. P 322 The principles to be applied here are different from the other states. P 326
- Developing a conceptual plan for mitigation banking that will umbrella the communities for which such an approach is useful. P175
- Asked that the appeals process be discussed. P 183
- Mentioned the 360,000 acres of very high value coastal wetlands that with practically no exception are in refuges, etc. However, only a biological decision making matrix was applied to determining the areas for refuges, etc. A cultural matrix needs to be included P 220
- During the permitting process, there is a need to look at the exact location, circumstances impacting it, and fashion remedies that meet those circumstances.

The agency can not cookbook remedies across vast areas of the State for similar applications. (Used house locations for the example.) P 136

- We can define wetlands any way we please because the definitions are societal driven, not scientifically driven. P 247
- The definition of wetlands may change, but the classification system should remain intact. Under 404, change the definition and wetlands acres will change, using the same classification system. P 251
- Restoration - the State's perspective is not to return land back to a point where it exactly matches its original character. Make it something more productive that fits a wetlands use. P 289
- When you look at compensatory mitigation for Alaska, mitigation banking as a concept should be kept in mind. It involves land and money. P 293
- Mitigation banking is a broad concept. It is establishing a line of credit for services provided for wetlands values. You can enhance, restore, reclaim, modify to improve an impacted wetland or change the value of a wetland. The credit can apply to losses of wetlands in another location. Or you can put dollars into the bank to accomplish the same thing. In addition by banking, the effort can be directed to a specific area. Juneau is working on what may be the first plan. P 310+
- CIP project problems apply to rural Alaska where the need for facilities and services is tremendous. Some high value wetlands will be impacted. But the people's needs must be remedied. The high value wetlands must be looked at from the eyes of the local people, not western values. P 332
- Communities in western Alaska have their locations fixed by western standards. People are not free to roam as they have in the past. ANILCA 7 ANCSA fixed them and basically fixed the purposes for them. We must make sure that basic rights conveyed to people are not being denied as relates to their futures. Bush Alaska is different. P 355
- Perhaps private lands that have held that status for many years need to have a different status for development. It usually is in communities. (By implication, he seems to be saying that there should be fewer restrictions.) P 375
- Incorporate more long range planning into the permitting process. If a project is phased, everything should be reviewed up front as is the case in CZMP. P 394+
- Mentioned maniculture that has very specific permitted areas, time frames, and other restrictions. P 406
- Suggested more outreach by having COE employees living in other communities. P 431. Also, outreach by the Federal agencies should include the schools - the citizens of tomorrow.

- Delineation and classification, if done right, can help focus and expedite the 404 program on the areas of real need. P 444 This includes better communications as to what is needed in applications for permits. P 450
- Must have an appeals process. The appeals process needs to be codified in some manner. It should allow for negotiation. Applicants and others need to have their rights guaranteed. It has to be a system that is not abused such as the high number of appeals of Forest Service actions taking place now. P 463

State of Alaska - Department of Governmental Coordination Presentations
Paul Rusanowski

Anchorage, Alaska, November 4, 1993

- The State supports the 5 principles for wetlands as stated by the Clinton administration, but they can not be applied uniformly to all 50 states. The principles must be guides to policy. NNL has no practical value in Alaska. A huge proportion of existing wetlands are protected now - 37%. Much of the high value coastal wetlands are protected. CZMP provides additional protection. The 404 process is held with suspicion by the public; mostly Juneau examples cited. P 78+
- State goals include: P 86+
 1. Maximize local decision making within the wetlands permitting process.
 2. Identify and protect critical wetlands.
 3. Preclear the state's wetlands for protection and management.
 4. Create a tracking system to account for wetlands disturbance.
 5. Maximize GP's, develop abbreviated permit processing (APP)
 6. Develop an umbrella mitigation banking plan
 7. Implement a uniform classification system for Alaska wetlands.
 8. The function and value system must be extended across jurisdictions, political boundaries, cultures, and lifestyles.
 9. Pursue CWA changes allowing States to assume the permitting program.
 10. Allow exemptions for various activities and land status.
 11. An exemption for Alaska similar to the farm exemption.
 12. GP's and APP's need to incorporate local values and needs.
 13. State and ANCSA lands must have their guarantees under the laws that created these entities. The wetlands permitting law must be built on the existing law
 14. Local and State consultation must be recognized by the Federal government
- Does the Corps account for compensatory mitigation required by other agencies in side negotiations, etc. The answer was "No, only Corps enforceable requirements." P169 The COE waffled a bit on P 391
- Points out that 37% of wetlands are already in protected systems. If more need protection, then each instance must be justified regarding having such high value. If lands are put in a refuge, you have assigned a value to them. Judgments have been made on acreage, relationships with off-refuge lands, and values. P 225+
- ANCSA village problems of being situated in one place as opposed to moving around within the region for better subsistence, etc. Local communities must have more input to decisions. Differences of opinion are unilaterally resolved by the Corps. Local values and issues must be addressed and satisfied. P 265+ Although most permit applications are approved, it would be better to have local control so that the Corps could concentrate on more important issues. P 282 The local people in rural areas will make sure that their long-term self interest is met. P 286. More emphasis P 289 If Federal agencies encourage more local planning, then

there must be a commensurate increase in local control. P 354 Planning must have authority, too.

- CZMP has the only money available to help fund community planning. When a plan is in place, the Federal government is required to follow it in the permitting process. P 362
- The State permitting process and Federal permitting process must get into sync. P 379 The Corps should manage their timelines to fit those in each state.
- If one does not want to move the authority to the bush, then move some of the COE people to the bush. They should be located down to sub regions. P 412
- GP's are important. They are a tool to take care of problems of the people. We need the number of GP's necessary to serve the people. P 440 The GP process goes through extensive review including a major assessment every 5 years. P 447

ALASKA FEDERATION OF NATIVES
LAND MANAGERS COMMITTEE

January 31, 1994

Mr. Al Ewing
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Re: Response to Alaska Wetlands Initiative 12/17/93 Draft Issues Paper.

Dear Messrs. Ewing and Oja:

The Alaska Federation of Natives (AFN) Land Managers Committee is submitting the following comments on the Alaska Wetlands Initiative. The AFN land managers are a committee of AFN and represent their respective corporations' views on issues of common interest. The AFN land managers committee includes representatives of eleven Alaska Native Claims Settlement Act (ANCSA) Regional Corporations who manage over 40 million acres of Native land throughout Alaska. Attached is a list of the AFN land managers.

Throughout the Alaska Initiative process, the AFN Land Managers Committee has participated through the representation of Mr. Robert Loescher, Executive Vice President, Resource Management, Sealaska Corporation; Mr. Nelson Angapak Sr., AFN Wetlands Coordinator; and Mr. Nathan Bergerbest, Legal Counsel, Doyon Ltd. This issue is of vital importance to AFN because individual ANCSA Corporations have between 45% to almost 100% of their land base currently categorized as wetlands.

The AFN Land Managers appreciate the opportunity to participate in the Alaska Wetlands Initiative. Our experience with the wetlands permitting program in Alaska has been frustrating at times, but overall we would grade the program as effective. The program, as we interface with its requirements, is generally successful because we have been able to clearly delineate issues and advance those to the Corps, EPA, State

and the public. Usually these groups have been open to change and willing to find solutions. Successes include the predictability of the log transfer facility permitting program, the 404(f) exemptions, and general permits for minor activities. Contrary to the comments of some uninformed critics, we voluntarily testified that our experience is that the program is performing satisfactorily, although some continuing corrections could occur.

Although the program has been working well in Alaska, the change in the National policy and the President's wetlands goal of "no overall net loss of the Nations wetlands" creates extreme anxiety that major changes to Alaska's successful wetlands regulatory program are imminent. Our concerns are justifiable when wetlands protection advocates attack the Alaska program. They maintain that it is too lenient, demand stricter application of the law, less flexibility and slavish adherence to a "no net loss" policy regardless of the function or value of the wetland or the human impact of such irrational pronouncements.

Our comments are in two parts. Part I is a general response to the Alaska Wetlands Strategy. Part II responds to the recommendations of the December 17, 1993 issues papers.

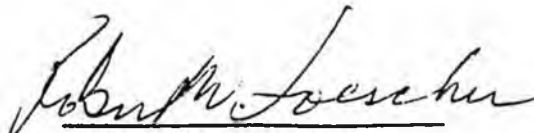
There are several fundamental policies that must be included in any National wetlands policy effecting ANCSA Corporations


- A National wetlands policy should not diminish the intent and objectives of ANCSA.
- A National wetlands policy must ensure **maximum participation by, and deference to the statutorily-protected needs of Alaska Natives in decisions affecting their ANCSA rights and property.**
- ANCSA conveyed lands should be exempt from wetlands restrictions, including no-net-loss. ANCSA Corporations should receive additional compensation should wetlands policies diminish the land and resource values authorized by Congress to fulfill the intent of ANCSA.
- Involved agencies must recognize the different functional or productive values of wetlands and allow the use of Alaska's abundant and low value wetlands by developing realistic definitions and flexible criteria for use of wetlands.
- Wetlands policy must allow development of regional systems for wetlands classification and definition of function and value, and must provide regulatory flexibility based on regional options and opportunities. That policy must also recognize the programs of ANCSA Corporations that protect, restore or enhance wetlands use and productivity.

Thank you for the opportunity to comment and your sincere consideration of our comments.

Sincerely,

Co Chairma.:
Alaska Federation of Natives
Land Managers


Robert W. Loescher


John Rense

AFN
LAND COMMITTEE

November 9, 1993

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COMMITTEE FUNCTIONS

Purpose / Responsibilities:

To advise the AFN Board on policy issues affecting ANCSA/ANILCA and/or other land management issues.

Membership/Meetings: Membership is composed of regional land managers; meetings will be held at least quarterly.

ALASKA FEDERATION OF NATIVES
LAND MANAGERS COMMITTEE
COMMENTS TO
THE ALASKA WETLANDS INITIATIVE
PUBLIC REVIEW DRAFT ISSUE PAPERS
DECEMBER 17, 1993

PART I

Alaska's Wetlands Regulatory Program Should Provide Flexibility for Use and Management of Alaska's Wetlands

The abundance of wetlands in Alaska would suggest that there is little justification for the "no net loss goal" in Alaska. Advocating a policy of wetlands regulatory flexibility does not imply that abuse of wetlands will be tolerated, or that regulatory control over wetlands use will disappear into a regulatory void. The State, Federal and local governments current wetlands regulatory programs should continue. We believe that there are important "surgical" corrections that can be made to the program to improve its efficiency, predictability and continued protection of wetlands. These modifications can be accomplished without a quantum change in Alaska wetlands regulatory/permitting program advocated by the proposed "no overall net loss" policy.

Alaska Wetlands Policy and Regulations Must be Consistent with Congressional Objectives of ANCSA. Exempt ANCSA Corporations from Compensatory Mitigation and Provide Credits for Wetland Protection, Restoration and Enhancement

The underlying Congressional intent of the Alaska Native Claims Settlement Act is to assist Native people in their bid for self-determination and for regional corporations to be the economic foundation which would allow Alaska Natives to build upon the settlement to meet their cultural, social and economic needs. Consequently, governmental bodies contemplating regulatory actions that may erode the fundamental intent of the Act would be contrary to the carefully-crafted relationships between Alaska Natives and the Federal government. The relationship between ANCSA and other Federal laws, which we believe include Section 404 of the CWA, is established by ANCSA itself:

"To the extent that there is a conflict between any provision of this act and any other federal laws applicable to Alaska, the provisions of this Act shall govern."

The relationship between the government and ANCSA Corporations is further clarified by Section 2(b) of the Act

" the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with

maximum participation by Natives in decisions affecting their rights and property, without establishing any permanent racially defined institutions ..."

The relationship between ANCSA and Section 404 needs more attention than it has received in the current wetlands debate. Under ANCSA, village corporations and regional corporations were required to select lands from a very limited geographical area. At the same time, Congress intended that Alaska's Natives realize their pressing social and economic needs from that limited land menu. Materially restricting development of those lands--lands which the federal government itself often forced Natives to select--would seriously undercut ANCSA, and create a statutory conflict with, at best, a highly uncertain outcome. Moreover, both ANCSA and court decisions under it require the Secretary of Interior to manage withdrawn and pre-conveyance lands with the maximum participation of Natives in decisions affecting their rights and property. Similarly, the Corps and EPA must ensure maximum participation of Native Corporations in decisions under the Corps and EPA's domain. The agencies must not cross the line that negates the intent and purpose of ANCSA.

The reconciliation between the objectives of ANCSA and the National desire to protect wetlands does not have to be confrontational. An Alaska wetland management program should establish partnerships with ANCSA Corporations and provide maximum participation in decisions effecting Native rights and property. Alaska wetlands policy must exempt Native corporations from any compensatory mitigation. It would be a serious breach of the ANCSA covenants to require Natives to pay to use their own lands when there are no practicable alternatives. Further, Corporations must be given credits for land and resource management practices that protect and enhance wetlands (e.g. riparian buffers, and fish and waterfowl habitat restoration and enhancement projects). The recognition of these contributions to maintaining the Nation's wetlands has thus far been ignored by the Alaska Wetlands initiative and must be incorporated into any final recommendations.

Alaska's Size and Diversity Requires Regionalization of the Classification and Functional Value System. Permit Decisions Should Recognize Functional Value and Provide Permitting Flexibility for Abundant and Low Value Wetland

There is a strong consensus that Alaska must have flexibility in regulation and management of its wetlands. This flexibility must extend from permit decisions regarding use of wetlands through determination of wetland functional value to the fundamental delineation of wetlands. True wetland management flexibility requires regionalization of wetlands delineation (responsive to regional vegetation, hydrology and soils) and functional value determinations based on those delineations. Regionalization of wetland delineation and functional value will be more responsive to permit decisions and provide flexibility for abundant and low value wetlands. Regionalization will encourage and be more responsive to local wetlands planning and management efforts.

The Current Individual Permit Process is Working. Procedural Modifications to Establish More Definitive Timelines and Applicant Appeals Will Improve the Permit Process.

We support a 60 day timeline for permit decisions. The applicant should have some flexibility to request a permit processing pause, enabling the applicant to submit additional information and to resolve interagency or inter-governmental disputes. Conversely the applicant must have the right to a quick decision and further appeal if resolution cannot be achieved within the required timelines. The applicant should have ready access to an appeals process limited to applicant concerns—including permit denials, questionable conditions, jurisdictional and functional value determinations.

Alternative Permit Processing Procedures is a Substantive Reason Why Alaska's Wetlands Regulatory Program is Working.

We strongly endorse the efforts of the Corps and EPA to develop administratively efficient and environmentally responsible programs to streamline the wetlands permitting process. The agency willingness to issue more General Permits is a fundamental underpinning of any flexible Alaska regulatory program. Our primary criticism of General Permits is that it takes an extraordinary amount of time to decide if a GP is appropriate and to issue the initial General Permit. We urge that the procedures to issue a GP be evaluated and a more efficient process to determine what activities warrant a GP and issuance of the GP be expedited.

We agree with General Permits critics that periodic audits of various General Permits are in order. These audits should determine if 1) the conditions of the GP are reasonable, 2) the GP is meeting its intended objective, 3) the GP is providing the flexibility to manage wetlands and 4) the GP is not creating significant environmental impacts.

The Mitigation Sequencing of Avoidance, Minimization and Compensation is Unrealistic in Alaska. Alaska's Regulatory Process Must Eliminate Redundant, Meaningless and Costly Administrative Processes

Rigid application of the sequencing process in Alaska is the single most egregious element of the wetlands regulatory program. Emphasis should be on minimization. Compensatory mitigation should not be required. Further, local governments, the State and land owners should receive minimization and avoidance credits for land and resource management practices that protect and enhance wetlands (e.g. riparian buffers, and fish and waterfowl habitat restoration and enhancement projects and greenbelts). These contributions to maintain the Nation's wetlands have been ignored by the Alaska Wetlands initiative. These conservation contributions must be incorporated into any final recommendations.

Partnerships for Wetlands Delineation, Functional Value Determination, Planning and Management is One Vehicle to Provide ANCSA Corporations with Maximum Participation in Decisions Effecting Their Rights and Property

We encourage the Corps and EPA to be receptive to developing partnerships with the respective ANCSA Corporations or consortium of Corporations to manage wetlands and meet the intent of ANCSA. These partnerships must recognize ANCSA corporations as full and equal participants, and should provide cooperative funding to assist Corporations in the development of these partnership resource management efforts. These partnerships must be endorsed and supported at the highest levels of the respective agencies. The partnerships should be flexible and responsive to the technical and financial capabilities of Native Corporation participants. Each Corporation should have the opportunity to participate in such partnerships or to opt-out.

Wetlands Permitting and Regulatory Decisions Should not Use the National Wetland Inventory. Development of Regional Classification Systems Should Occur to Provide Predictability in Delineation and Permitting.

The anxiety associated with 404 wetland permitting is due to the uncertainty of wetland delineation, functional value determination and sequencing requirements. The Corps and EPA throughout this process are advocating numerous preplanning initiatives to eliminate the uncertainty of permitting. However, suggestions that classification be delayed until "permitting decisions" are made flies directly in the face of those management efforts to simplify and improve the predictability of permitting. A philosophy that delays classification decisions until the permit decisions, is a disincentive for any private or government entity to enter into advance planning, and partnerships.

The management and protection of wetlands will succeed or fail on the efficiency and predictability of the administrative process. We suggest that a joint effort be undertaken to develop regional delineation procedures, establish functional value determinations and use GIS based technology and other local knowledge to make wetlands classifications. Lands classified as Upland would not be required to undergo any further wetlands determination. Abundant and low value wetlands would be regulated under GP or other expedited permitting procedures. The remaining wetlands would be managed directly under individual permits following procedures that would allow reclassification based on specific information, permitting practicability and flexibility.

Partnerships with Native Corporations and Local governments Will Advance Outreach and Education Programs.

We fully endorse a wetlands management program that uses local knowledge in evaluating resource values, and use of GIS based land management systems in use by Native Corporations, local governments and other State and Federal Agencies.

PART II

RESPONSE TO ALASKA INITIATIVE PUBLIC REVIEW DRAFT ISSUES PAPERS

Issue #1 How can the goal of "no overall net loss" of the Nation's wetlands be fairly applied in Alaska?

The "National Wetlands Policy Forum" offers guidance to implementing the "no net loss" goal. The Forum advises that "the goal does not imply that ... the no-net-loss standard should be applied on an individual permits basis" and that "the goal may have to be implemented at different rates in various regions of the country to reflect regional wetlands needs, conditions, and types." We applaud the Forum's recommendation for temperance when implementing the no-net loss policy, but also recognize that the Forum's guidance will require continuing change to the management of wetlands in Alaska. We believe that quantum change to the Alaska wetlands permitting program is necessary only when there is a reasonable finding that Alaska's wetland use and management is significantly affecting either regional or Statewide wetlands.

We endorse the Administration Plan to develop improved analytical tools for wetlands functional assessment. Both the Administration and the Alaska Specific Actions suggest use of the Hydrogeomorphic Classification System (HGM). We have not had an opportunity to review the HGM but request that the Administration keep an open mind to alternative functional value assessment methodologies.

We remain uncertain about the Administration's mitigation banking proposals under the Section 404 regulatory program. Mitigation banking guidance and mitigation planning guidance may or may not be appropriate to Alaska. Our position is: 1) there should be no compensatory mitigation, particularly on ANCSA lands and; 2) credits should be granted for wetlands protection, enhancement and restoration (e.g. riparian buffers, riparian or coastal eagle nest tree buffers, fish and waterfowl habitat improvement and enhancement projects).

Issue 1: Alaska Specific Actions:

o Develop interagency guidance to clarify how physical circumstances in Alaska such as the extent and type of wetlands affect the determination of "practicability" under the Guidelines mitigation requirements.

We endorse the Alaska action recommendation including the recognition that "minimization" is the primary mitigation tool and determination of "practicable alternatives" will consider the extent of wetlands and relative opportunities to restore wetlands. We believe that the Alaska actions should exclude ANCSA lands from

compensatory mitigation and grant credits for other land management activities which provide wetland protection and enhancement. The Alaska actions recommendation frequently advocates participation by non-Federal parties. However, when policies are being considered, the recommendations fail to include participation by Native Corporations. Any actions that effect ANCSA lands must occur in conformity with ANCSA including maximum participation by Natives in decisions affecting their rights and property.

- o **Recommend that the Executive Order on wetlands articulate flexibility in implementing the Administration's goal of no overall net loss of the Nation's wetlands to reflect particular circumstances in Alaska.**

We support the proposed action and recommend that it be incorporated as an Administration sponsored amendment to the CWA.

- o **Develop Interagency Guidance to Clarify how Circumstances in Alaska such as the Abundance of Wetlands can Reduce Opportunities to Avoid Impacts to Wetlands and Affect how Rigorously Alternatives are Evaluated.**

The August 24 flexibility guidance has not been provided; consequently, it is difficult to provide meaningful comment. However, we endorse the one excerpt provided. Any guidance development should make special effort to ensure maximum participation by Natives in decisions affecting their rights and property.

- o **Develop accelerated restoration program for oil and gas projects.**

This is a responsible approach to minimizing the effects of wetland use. Similar considerations should be included for mining operations where reclamation is required after use. These temporary uses of wetlands should not be treated as "net losses" and should be viewed as part of the minimization strategy. The final Alaska Strategy recommendations should recognize reclamation in addition to the concept of accelerated restoration.

- o **Recommend written partnerships be established between the Corps and all interested stakeholders on Section 404.**

We strongly endorse this concept and remind the parties that there is a special relationship with ANCSA Corporations that necessitates that the Corps and EPA take the extra step to ensure maximum participation by Natives in decisions affecting their rights and property.

Issue #2 *How can the Section 404 program be best implemented in light of the Alaska Native Claims Settlement Act (ANCSA), Alaska National Interest Lands Conservation Act (ANILCA), and Statehood Acts?*

The Administration's August 24, 1993, Wetlands Plan established five principles to guide the specific provisions of the Plan. Two principles pertinent to this issue are: 1) Regulatory programs must be efficient, fair, flexible, and predictable; and 2) the Federal

government should expand partnerships with State, Tribal and local governments. Although the Administration's plan does not specifically recognize ANCSA Corporations the Act requires **maximum participation by Natives in decisions affecting their rights and property.** The provisions of ANCSA are not inconsistent with the Administration's partnership objectives.

Issue 2: Alaska Specific Actions:

The Alaska specific actions are:

- Increase use of Alternate Permit Procedures (APP).
- Propose the development of additional General Permits (GP).
- Continue to consider the public interest in Section 404 permit actions.
- Continue to develop regionalized general Permits based on comprehensive wetlands plans.

These proposed actions fail to address the issue! The Administration's programs can not selectively choose which laws and regulations it must apply, nor can they simply put on blinders and attempt to ignore other potentially conflicting legal requirements. As previously cited, the relationship between ANCSA and other Federal laws is established by the Act:

"To the extent that there is a conflict between any provision of this act and any other federal laws applicable to Alaska, the provisions of this Act shall govern."

Under ANCSA, the Federal government has a responsibility to ensure maximum participation of Natives in decisions affecting their rights and property. The Corps and EPA must ensure maximum participation of Native corporations in decisions and not cross the line that negates the intent and purpose of ANCSA. The proposed Alaska actions do not ensure **maximum participation by Natives in decisions affecting their rights and property.** Major changes to this section are necessary to address the issues of reconciliation of ANCSA objectives with National wetlands policies.

The National desire to protect wetlands and meet ANCSA objectives does not have to be confrontational. An Alaska wetland management program that establishes partnerships with ANCSA Corporations, provides maximum participation in decisions effecting Native rights and property; and provides those Corporations with the flexibility to use and manage their resources consistent with ANCSA will serve to meet the intent of ANCSA and the Nation's wetlands policy. This philosophy does not suggest that wetlands can be willingly abused. In previous testimony Sealaska has offered detailed alternatives to establish management relationships, including:

- Exempt ANCSA lands from wetlands management restrictions or provide additional compensation to ameliorate for the impacts of wetlands restrictions.
- Allow ANCSA Corporations to assume management of wetlands.
- Exempt ANCSA Corporations from wetland restrictions except uncommon wetlands.

- Create ANCSA Corporation delineation manuals for Alaska's major geographic regions.
- Exempt ANCSA from unreasonable avoidance and compensation strategies.

These recommendations must be revisited and become part of the final recommendations to the Administration.

Issue #3 How can the Section 404 program be best implemented to reflect the physical environment and wetland characteristics in Alaska?

The Administration's wetland plan proposes:

- Develop improved analytical tools for wetlands functional assessments.
- Issue Section 404(b) (1) Flexibility Guidance.
- Encourage Advance Planning Efforts.
- Regionalize General Permits for Activities in Defined Categories of Waters.
- Support the use of the 1987 Wetland Delineation Manual by the Corps., EPA, Soil Conservation Service, and USFWS pending evaluation of the NAS study.
- Recommend that Congress add examples of isolated water to the statutory definition of wetlands.
- Increase state, local, and tribal roles in wetlands protection and regulation.

We conceptually endorse the Administration's proposals, with three exceptions: 1) failure to maximize Native corporation involvement, 2) the addition of "isolated wetlands" to the wetland statutory definition, and 3) failure to recognize the abundance of wetlands in Alaska.

Without the advantage of seeing the proposed "isolated wetland" definition, we are concerned that this definition will not recognize the problems that an overly broad definition will have in Alaska. Wetlands that are isolated due to geomorphic conditions or permafrost do not always provide habitat for waterfowl and fish or provide other wetland benefits. These situations (depending on the Administration's proposed definition) would require expenditure of limited funds and staff time to administer a regulatory program that provides a marginal return. These resources could be better utilized managing higher value wetlands. Any definition must be narrowly constructed to eliminate those wetlands that have limited value.

The problems that precipitated the "no-net loss" strategy were caused by the long-term abuse of wetlands in the continental United States. The Administration's strategy does not recognize abundance of Alaska's wetlands whose function and value are intact. If other States could make the same claim it is unlikely that the "no-net loss" initiative would have even been considered. The Administration's plan needs to include specific direction for Alaska with a strong recognition of the abundance of Alaska's wetlands, that use of wetlands will be necessary for basic needs and commerce and a higher degree of flexibility in the 404(b)(1) guidelines for States with abundant wetlands.

Issue 3: Alaska Specific Actions:

- o **Evaluate the need for further Alaska specific regionalization of the 1987 wetlands delineation manual.**

The agency analysis finds fault with the recommendation that Hemlock forests exhibiting medium to high vigor should not be delineated as wetlands. The agency analysis attempts to side-step problems with wetland plant associations, and offers solace that western hemlock forests must still meet the other two wetland delineation requirements (hydrology and soils) before western hemlock forests are wetlands. This conclusion creates extraordinary costs to administer the wetlands management program. Vegetation is an expedient way of eliminating large tracts from further wetlands consideration because vegetation interpretation can be done by relatively inexpensive remote sensing techniques. The failure to remove hemlock from a facultative species list leaves large tracts of land in wetland categories until more extensive and very costly field verification of hydrology and soils can occur. Further, it is ironic that the Washington State delineation manual lists western hemlock as a facultative upland species, which further supports our observations that the Alaska facultative vegetation category is overly broad.

We believe the only effective way to resolve these issues is to develop specific regionalization of the delineation manual.

- o **Continue to develop regionalized general permits (GP) and Develop the Hydrogeomorphic Classification System within Alaska for wetland functional assessments.**

We support GPs. We recommend that the procedures to develop and issue the initial GP permits be streamlined.

Conceptually we endorse the objective of finding methods to efficiently and predictably determine the functional value of wetlands. We are unaware of the HGM procedures. We have some reservations regarding HGM use in Alaska because it appears to be a National initiative, which will then lack regional sensitivity. The Alaska strategy should develop its own regionalized functional value systems. Vegetation should not be eliminated as an indicator of wetlands functional values.

- o **Provide Alaska priority status in terms of funding for development of Wetland Conservation Plans. Supplementary fund acceleration of the NWI mapping efforts in certain areas.**

We are perplexed by the continuing emphasis on the NWI. The Corps and EPA have already stated that the inventory is not for regulatory purposes, yet it continues to become a primary strategy to address Alaska's wetland problems. Priority should be given to regionalization of wetlands delineation and functional value analysis and regional mapping that can address the regulatory aspects of Alaska's wetland management. If the NWI continues to be used it must be modified by using improved

mapping techniques, using higher resolution photography, producing digitized mapping products and delineating wetlands using the jurisdictional definition.

Issue # 4 *How can the role of State and local governments, and Native interests be improved in the protection and regulation of Alaska's wetlands?*

The Administration Plan offers numerous suggestions to address this specific issue including:

- Assist States, Tribes, and Local Governments in Taking a Stronger Role in Wetlands Protection.
- Provide Incentives for States, Tribes, and Regional and Local Governments to Integrate Watershed and Wetlands Planning.
- Increase Deference to State, Tribal, Regional, and Local Wetlands Decision Making.
- Endorse State/Tribal Wetland Conservation Plans.
- Encourage State/Tribal Assumption of Section 404.
- Provide State/Tribes with access to Wetlands Delineation Training.

We can conceptually endorse the objective of the administration and believe that incentives, assistance and cooperation offered tribal groups should be also extended to ANCSA corporations. We disagree with the Administration's exclusive focus on wetlands protection. The resolution of this issue in Alaska will require flexibility.

Issue 4: Alaska Specific Actions:

The Alaska specific action include:

- Develop Regional General Permits.
- Develop Circle General Permits for Alaskan communities.
- Conduct Monitoring of Existing and Future Cumulative Wetland Impacts of General Permits.
- Provide Technical Assistance for State Assumption.
- Recommend written partnerships be established between the Corps and all interested stakeholders on Section 404.

The Alaska specific actions do not fully address the issue. The comments on Issue #2 are germane to this section.

Issue #5 *How can the Section 404 individual permit process be best implemented in a fair, flexible, and efficient manner in Alaska?*

The Administration Plan includes:

- Establish Deadlines for Permit Action.
- Adopt an Appeals Process for jurisdictional determinations, permit denials, and administrative penalties.
- Issue Section 404(b) (1) Flexibility Guidance.

We endorse the Administration's position to establish timelines for permit decisions. However, we believe there is a need to allow the applicant to "toll" the timelines in order to resolve any questions that would lead to precipitous permit decisions. We strongly disagree with the Administration's position that third parties should have equal standing in any permit denial appeals unless there is an obligation by the government to process such appeals in a timely manner. Moreover, third parties must participate in permit denial appeals to retain standing in any judicial action.

Issue 5: Alaska Specific Actions:

- o **Develop Interagency Guidance to Clarify how Circumstances in Alaska such as the Abundance of Wetlands can Reduce Opportunities to Avoid Impacts to Wetlands and Affect how Rigorously Alternatives are Evaluated.**

We support the proposed Alaska actions with three caveats. First, we have not had an opportunity to review the August 24 flexibility guidance and must withhold comment. However, we reiterate that Federal actions must ensure **maximum participation by Natives in decisions affecting their rights and property**. Second, compensatory mitigation should not be required on ANCSA lands. Third, the Alaska actions recommend that compensatory mitigation would not be required for areas with abundant low value aquatic areas. We believe that it more correctly stated that compensatory mitigation will not be necessary in "areas with abundant or low value wetlands".

- o **Conduct Exit Polls or Interviews with Permit Applicants.**

We continue to support this effort.

- o **Ensure Sufficient Regulatory Resources.**

We support this effort.

Issue #6 *How can alternative permit processing procedures be best implemented in a fair, flexible, and efficient manner in Alaska?*

Issue 6: Alaska Specific Action:

- Expedite Development of Abbreviated Processing Procedures (APP).
- Propose the Development of Additional General Permits.
- Conduct Cumulative Impacts Evaluations for General Permits.
- Develop Circle General Permits for Alaskan communities.
- Conduct Exit Polls or Interviews with Permit Applicants.

We endorse the Alaska specific recommendations. We offer that the proposed "impact evaluations" should be redefined as audits and that the scope be expanded to a critical review of the general permit. These audits should include evaluation to determine if a

GP is administratively efficient, the special conditions are reasonable, the GP is applicant friendly and meets the environmental protection objective.

Issue #7 **How can the mitigation sequence best be applied in Alaska?**

Issue 7: Alaska Specific Actions:

- o **Develop interagency guidance to clarify how physical circumstances in Alaska such as the extent and type of wetlands affect the determination of "practicability" under the Guidelines mitigation requirements.**

We conceptually endorse the proposal, but stress that any program should consider regionalization in-order to be responsive to regional conditions and ensure **maximum participation by Natives in decisions affecting their rights and property.**

- o **Recommend that the Executive Order on wetlands articulate the flexibility in implementing the Administration's goal of no overall net loss of the Nation's wetlands to reflect particular circumstances in Alaska.**

We suggest that the proposal be changed to recommending amendments to the CWA to provide flexibility to accommodate Alaska's circumstances. There needs to be a clear statement that mitigation sequencing will not work in Alaska. Rigid application of the sequencing process in Alaska is the single most egregious element of the wetlands regulatory program. Emphasis should be on minimization. Compensatory mitigation should not be required. Further, local governments, the State and land owners should receive minimization and avoidance credits for land and resource management practices that protect and enhance wetlands (e.g. riparian buffers, and fish and waterfowl habitat restoration and enhancement projects and greenbelts). The contributions of these efforts to maintain the Nations wetlands has thus far been ignored by the Alaska Wetlands initiative and must be incorporated into any final recommendations.

- o **Issue a Special Public Notice (or Local Supplement to the "Mitigation MOA") on application of the mitigation sequence in Alaska.**

We have not been provided with a copy of this MOA and withhold any comment. Conceptually we endorse the proposal provided that the agencies provide for **maximum participation by Natives in developing and implementation of the MOA to the extent decisions affect their rights and property.** This request is not unreasonable. Sealaska and the U.S. Fish and Wildlife Service cooperatively prepared a manual for management of Bald Eagle habitat. Similar benefits will result from further cooperation with ANCSA Corporations.

- o **Acknowledge pre-application avoidance and minimization efforts.**

We fully endorse the proposal and request that it be modified to include credits for management practices that protect, restore and enhance wetlands (e.g. riparian

buffers, and fish and waterfowl habitat restoration and enhancement projects). The recognition of these contributions to maintaining the Nation's wetlands has thus far been ignored by the Alaska Wetlands initiative and must be incorporated into any final recommendations

Issue #8 How can compensatory mitigation be best implemented in Alaska?

Issue 8: Alaska Specific Actions:

- o **Develop interagency guidance to clarify how physical circumstances in Alaska such as the extent and type of wetlands affect the determination of "practicability" under the Guidelines mitigation requirements.**

The development of any guidance regarding compensatory mitigation, if it will effect Alaska Native lands and resources, must ensure **maximum participation by Natives in decisions affecting their rights and property**. This is not an unreasonable request. Native Corporations have shown leadership in developing responsible forest practices, cooperating with EPA to undertake TMDL assessments and developing guidelines with USFWS to develop Bald Eagle Habitat management brochures.

- o **Recommend that the Executive Order on wetlands articulate the flexibility in implementing the Administration's goal of no overall net loss of the Nation's wetlands to reflect particular circumstances in Alaska.**

We concur with the recommendation but suggest that it should be included in legislation as an amendment to the Clean Water Act.

- o **Incorporate mitigation into advance planning efforts.**

We endorse the proposal but are concerned that it ignores the potential contributions of Native Corporations. Further, the proposal is narrowly focused and fails to recognize the ability to enhance wetlands use. For example Sealaska, Kivilco and the USFS entered into a partnership to provide fish passes past two barrier falls on Old Franks Lake. The effect will be to increase the natural production of Coho from the system by over 12,000 fish annually. In allowing the pass to be constructed on its lands, Sealaska incurs the mandatory obligation to retain riparian buffers around the entire lake and tributary streams. The administration speaks about incentives for private landowners to participate in wetland restoration but ignores the enhancement opportunities. A successful program will require recognition of the effort of private land owners to not only protect, but enhance and restore valuable wetlands.

- o **Develop mine site reclamation guidelines.**

We support the effort and particularly commend the recognition that the agencies need to work with the affected parties and other regulators to find a mutually satisfactory solution. Before embarking on a "new" initiative we recommend that the current state and federal reclamation requirements be evaluated to determine the degree to which they meet wetlands requirements.

- o **Develop accelerated restoration program for oil and gas projects.**

We support accelerated restoration as a vehicle for minimizing wetlands impacts.

- o **Develop and implement bonding procedures for restoration/reclamation projects.**

Bonding should not be a program of first resort. Only if there is a question regarding permittee abilities, lack of tangible assets, lack of insurance and no contribution to form other bonding pools (e.g. mining reclamation bond pool) should bonds be required.

- o **Establish mitigation banking pilot project.**

We endorse this proposal. The mitigation banking concept is a regulatory void that has varied meaning to each person involved. A pilot program would be beneficial. We would encourage that such efforts be regionalized to achieve the special opportunities in each area.

- o **Assess the effectiveness of mitigation efforts in Alaska.**

We fully support this effort. Alaska and the lower 48 are covered with well meaning mitigation and restoration efforts that were expensive, but which did not achieve their purpose and in some cases were detrimental to aquatic ecosystems. An intelligent scientific approach that undertakes mitigation pilot projects and continues to monitor such projects will benefit everyone.

Issue #9 *How can advance planning and watershed management be best implemented to improve the predictability and effectiveness of the Section 404 permitting process and the protection of wetland resources?*

Issue 9: Alaska Specific Actions:

The following tactics are useful to develop a model watershed management program in Alaska. However, there must be a recommendation in this section that the Administration recognize these efforts and allow Alaska the time and funding necessary to accomplish the tactics. Further, the tactics do not adequately address the issue of improving predictability and effectiveness of the 404 process. Instead, there is encouragement for locals to do more, but the experience of Juneau raises questions regarding what local groups will be allowed to accomplish. Further, the tactics do not show how they will be integrated with ongoing regulatory programs and the level of flexibility that will be given to develop these programs.

- o **Provide greater emphasis on the use of advanced planning mechanisms.**

We support this proposal and are heartened by the recommendation to involve Natives. ANCSA corporations have developed large land and resource data bases and in several instances very sophisticated analytical tools. We encourage close cooperation with each Native Corporation to the degree they wish to participate.

- o **Continue efforts to provide technical assistance for wetland planning.**

Technical assistance can flow both ways. We encourage close cooperation and coordination with ANCSA Corporations to achieve a synergy between the parties to develop model demonstration programs. Where Corporations have not yet developed complex land and resource data bases and management systems, outreach assistance from the Corps and EPA will be beneficial.

- o **Develop a watershed-based demonstration project.**

We encourage that demonstration projects be regionalized. In some instances in Southeast Alaska extensive efforts are underway to develop watershed management plans. We strongly suggest that the Corps and EPA cooperate with the ongoing USFS and Sealaska efforts.

Issue #10 *How can wetlands inventory, classification, and categorization be best implemented to improve the predictability and effectiveness of the Section 404 permitting process and to protect wetland resources?*

Issue 10: Alaska Specific Actions:

- o **Support efforts to identify and collect wetlands data in focus areas (watersheds) where development is likely to occur.**

Conceptually we endorse this proposal, but stress that these efforts must include participation by ANCSA Corporations and use of alternatives to the NWI. We have already shown that the NWI is not up to the job. We recommend that the focus should be in those areas where there is a strong interest in partnerships to develop regionalized programs and to use the extensive resources that may be available.

- o **Investigate the feasibility of centralizing wetlands information.**

It is appropriate to centralize wetland information; however, we strongly disagree if the centralization fosters a "one-size-fits-all" approach to Alaska wetlands management. The only way to have a successful Alaska wetlands program is to maintain a high degree of regional flexibility in planning, delineation, valuation and regulation.

- o **Accelerate the National Wetlands Inventory mapping project.**

NO! Before we can support further effort in the NWI for the Alaska strategy there must be an explanation of how it fits into the Alaska strategy.

- o **Continue to support the State's effort to select and apply a wetland classification method.**

We are happy to see that there is a willingness of the Corps and EPA to work with the State to support an agreed upon wetland classification system. We are concerned that State's flexibility is being constrained by the caveats of this strategy such as

requirements to include the Cowardin system used in the NWI mapping effort. Any system must be regionalized using the jurisdictional definition.

- o **Continue to support activities related to comprehensive wetlands planning.**

We endorse this strategy.

Issue #11 *How can education and outreach efforts be improved to best inform the public of the value of wetlands and the provisions of Section 404?*

Issue 11: Alaska Specific Actions

Issue 11 suggests a series of Administrative processes to clarify and facilitate the permitting process. We support these administrative efforts. We also recommend that the Agencies review the process for development of general permits and offer recommendations to speed the development of general permits. We strongly endorse recommendations to establish partnerships.

Alaska Wetlands Initiative Briefing
Alaska Senate Resources Committee
Alaska House Resources Committee
February 2, 1994

By Alvin L. Ewing
Assistant Regional Administrator
U.S. Environmental Protection Agency

Mr. Chairman, Committee Members, ladies and gentlemen, my name is Al Ewing. I am the Director of Operations for the U.S. Environmental Protection Agency in the State of Alaska. I appreciate the invitation to brief your Committee on the process which is currently underway to consider environmentally appropriate means to assure regulatory flexibility and the feasibility of alternative permitting procedures for the Clean Water Act Section 404 wetlands regulatory program in Alaska.

The Clinton Administration's August 24, 1993 Wetlands Plan stated the intent to withdraw the proposed "Alaska 1% rule". The Plan further directs the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) to meet with interest groups in the State of Alaska to identify and address concerns with the Clean Water Act Section 404 program in Alaska. Specifically, the Plan states that the agencies will "initiate meetings with the Federal resource agencies, State and local government agencies, representatives of native villages, industry groups including oil and fishing interests, and environmental groups, to consider other environmentally appropriate means to

assure regulatory flexibility and the feasibility of alternative permitting procedures in Alaska."

On October 12, 1993, the agencies in Alaska (EPA and the Corps) invited a diverse and comprehensive group of Stakeholders to participate in a series of independently facilitated meetings in Juneau, Bethel, Fairbanks, and Anchorage. These meetings took place in late October and early November. The two-day meetings provided the opportunity for Stakeholders to present oral testimony as well as to discuss concerns in a roundtable format. The public was invited to attend these meetings, to submit written comments, and to participate in a Statewide teleconference linking 20 locations throughout Alaska. Approximately 75 Alaskans took advantage of these public comment opportunities. Furthermore, approximately 1,500 letters were mailed to Alaskans who, over the last five years, had applied for Section 404 permits, to survey their opinion regarding experience with the regulatory program.

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At the conclusion of the first round of meetings, EPA and the Corps, with assistance from the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), and with oversight by the White House Interagency Wetlands Working Group, developed a set of 11 Issue Papers. The Alaska Wetlands Initiative Issue Papers have been available for public comment since December 17. In response to your request, we

extended the closing date for comments on the Issue Papers from January 21, 1994 to February 4, 1994.

During the month of January, we held a second round of Stakeholder meetings in Juneau, Bethel, Fairbanks, and Anchorage specifically to garner feedback on the issue papers. These meetings were also managed by an independent facilitator and resulted in a summary report, prepared by the facilitator, which will be used as we refine the Issue Papers and prepare an action plan. All meetings, throughout the process, were recorded, and written transcripts are available.

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Upon conclusion of the public comment period we will summarize and analyze public comments. The public comments, in conjunction with results of the roundtable meetings, and public meetings will serve as guidance as we revise the Issue Papers and develop an action plan for implementation of recommendations. EPA and the Corps will have the lead in this refinement process and we will be assisted by FWS and NMFS with oversight from the White House Interagency Wetlands Working Group. We expect the process to be concluded in March 1994. Implementation of the action plan is expected to begin immediately thereafter, and depending on the nature of the actions, could take up to several years to complete.

We have made available to you copies of the December 17, 1993 public review draft of the Issue Papers. Topics covered by the Issue Papers are:

1. No Overall Net Loss of Wetlands Goal
2. Alaska Legal Issues
3. Alaska Physical Environment
4. State, Local, and Native Roles
5. Individual Permit Process
6. Alternative Permit Processing Procedures
7. Mitigation Sequence
8. Compensatory Mitigation
9. Advanced Planning and Watershed Management
10. Wetlands Inventory, Classification, and Categorization
11. Outreach and Education.

Each Issue Paper contains background information, a summary of Stakeholder and public comments and analysis, and proposed recommendations. Proposed recommendations are in two categories -- those applicable actions contained in the Clinton Administration's August 24, 1993 Wetlands Plan and Alaska specific actions.

In the interest of time, I will not recapitulate what is contained in the Issue Papers, but I will be happy to respond to any questions you may have regarding either the process we are engaged in or the substance of the Issue Papers.

Again, thank you for this opportunity to discuss the Alaska Wetlands Initiative Process.

STATEMENT OF DR. PAUL RUSANOWSKI
DIRECTOR
DIVISION OF GOVERNMENTAL COORDINATION

BEFORE

ALASKA STATE LEGISLATURE

SENATE
AND
HOUSE OF REPRESENTATIVES

RESOURCE COMMITTEES

2/2/94

INTRODUCTION

The State of Alaska commends the Clinton Administration for recognizing and addressing the climatological, physiographical and demographical circumstances which make wetlands management in Alaska unique. These circumstances led to the exemption policy of the previous administration and the Alaska Wetlands Initiative of the Clinton Administration.

The State further commends the federal government for its diligent effort in addressing wetland issues critical to Alaska. We are therefore looking forward to seeing the Action Plan that results from the Alaska Wetlands Initiative.

The Alaska Wetlands Initiative and Action Plan must deal with the many truly unique features of the State in establishing a fair, flexible and effective Action Plan.

- State has nearly 175 million acres of wetlands; with historical cumulative losses of less than 200 thousand acres.
- Most wetlands are still in public ownership. Of that 175 million acres, the Federal Government itself owns nearly 115 million acres. That's 65%. The State of Alaska owns 40 million acres; Native wetlands comprise about 20 million acres, and private non-native wetlands less than 200 thousand acres.
- Of the 115 million acres of federally owned wetlands, over half are in highly protected status. Specifically, 18.4 million acres are in federally designated wilderness areas, and an additional 40 million acres are in national parks and refuges. Another 56.4 million acres are in federal multiple use areas.
- When the protected wetlands owned by the State of Alaska are added, the protected area totals 63 million acres. That's 36% of all wetlands in Alaska now being in a protected status.

- The State is dominated by Arctic and subarctic climatic zones which occur nowhere else in the U.S. Permafrost is common throughout most parts of the State and is the dominant lowland feature in Northern and Western Alaska.
- Most communities in the State are small, rural and widely dispersed throughout the State. A few communities account for most of the 550 thousand population; with 75% of the people living in 38 communities, and almost 50% living in the Municipality of Anchorage; only 25% of the population lives in the approximately 300 remaining communities.
- Most communities are not connected by roads depending instead on water and air transportation modes. Small community size, remoteness, lack of easy access and harsh climates make the costs of providing basic services extremely expensive.
- The State is highly dependent on natural resources for both its economic welfare and that of its citizens. Most rural areas are highly dependent on subsistence for both economic and cultural survival. Native lands must be used to support both traditional lifestyles and to generate income to provide basic health and community services to shareholders.

PROCESS

The process to carry out the Clinton Administration wetland plan has been rapid. The national plan was announced on August 24. Meetings were initiated last fall and concluded early this month. We approve of the concept of getting the Alaska Initiative completed as soon as possible, but this accelerated process has come with a cost. The State of Alaska was allowed to participate as "Stakeholder" only, not as a full State partner. There has been very limited opportunity for public participation. The issue papers were released for review and comment on December 17, over the holidays, when many people typically are on vacation. Meetings were scheduled for the first workdays in January.

Clearly, the State believes there should have been more appropriate opportunities for public participation. We have continually asked for more public participation and involvement, and have asked that the process be broadened. We do appreciate that the Corps and EPA adjusted the process to accommodate more public input, were able to extend the public comment period, and that the State Legislature, the elected representative of the public, have been allowed to review the actions to date.

ISSUES

On December 17, the Corps of Engineers and EPA released a set of 11 issue papers with draft recommendations. Several of the recommendations are encouraging. The State of Alaska genuinely

believes that if these recommendations are implemented, major progress will be made in implementing and addressing wetlands issues and concerns that are highly important to all Alaskans.

- We are encouraged that the federal government recognizes that there must be a flexible implementation of the National "No Net Loss" goal. Specifically implementation of "No Net Loss" will be attained through avoidance and minimization rather than restoration and creation of wetlands.
- We are concerned that only federal agencies are now specified as developing guidance to implement "No Net Loss." Policy should be developed with state and stakeholder participation, not solely by the federal government for the State. Moreover, if the guidance is truly going to reflect unique regional circumstances, then the stakeholders who live and work in the regions must be brought into the process too.
- Recognition that experience in Alaska shows that minimization of impacts is the primary tool in mitigation sequencing. Compensation should be used for those truly remarkable wetlands, many of which are already in protected status, where avoidance and minimization fail to adequately address wetlands concerns.
- The Corps and EPA state they will recommend that the Executive Order on Wetlands will articulate flexibility in implementing the Administration's goal of no overall net loss of the Nation's wetlands to reflect special Alaska circumstances.
- With some reservations the State of Alaska can support minimization as the primary tool of mitigation sequencing. It is important that the federal government and other Outside interests recognize that in many Alaska towns and villages, basic services are lacking. Many towns and villages in Alaska are located in wetlands or are totally surrounded by wetlands and therefore are under federal jurisdiction. Facilities which many Americans take for granted, like water and sewer services do not exist. There are few roads and transportation networks. To complete the kinds of development and basic infrastructure commonplace in the rest of the country, some wetlands are going to be developed. To force these communities to create more wetlands as compensatory mitigation, such as replacing or creating additional wetlands is a poor solution.
- Also, the State of Alaska expects to be involved in developing and implementing policy specifying when and where compensatory mitigation will be required. As presently proposed, the effort will be conducted entirely by the federal government.
- We support the emphasis on alternative permitting procedures, general permits and circle permits. These measures recognize

the unique circumstances that exist in the State. Where appropriate, their use should be maximized. These general permits should focus on logical regional, traditional, local existing government and management boundaries. However, the paperwork associated with obtaining and administering such programs is beyond the reach of many communities without financial and technical assistance. It is critical that the federal Action Plan, which is forthcoming, provide for this assistance.

- Wetlands management plans may be appropriate in some areas, but are not practical or within reach of many smaller, remote and less sophisticated villages or regions of the State where wetlands are abundant. In fact in many of these locations wetlands are the predominant landform. It is precisely these kinds of places that need general permits the most. In fact in some of these locations, GPs may be more burdensome than necessary to protect and safeguard wetlands. We ask that wetlands planning in Alaska focus on protecting wetlands of critical value and their functions, not all wetlands regardless of function and value.
- The practicality and expense of complex and sophisticated planning efforts is not commensurate with the level of wetlands development or conservation activities that would occur in the near future. The State believes that decisions affecting local communities need to be made at the lowest practical level, preferably at the local community level.
- Recognition of the need for a regionalized wetlands delineation manual, perhaps for several regions in Alaska, along with support for inventory and classification, are longer term solutions which will do much to reduce wetlands controversy in the State. More emphasis should be placed on this aspect to ensure that necessary tools are available to all parties as part of the Alaska Wetlands Initiative. Any wetlands delineation manual must be comprehensive and must be linked directly to the wetlands permitting process, and must be applicable on a program basis thus avoiding case by case delineation of wetland.

A good example of a costly federal program not working for the wetland permitting program is the National Wetlands Inventory of the U.S. Fish and Wildlife Service. The federal government has continued to carry out this program for many years; the Fish and Wildlife Service has a major role in the wetlands permitting process. The program has errors in inventory, is not state of the art, uses less than the best available information and is not used for any jurisdictional or delineation determinations. Unless these problems are corrected NWI cannot be used to support a wetlands regulatory program.

- The State is looking forward to continued productive dialogue and interaction with the Corps and EPA as the Action Plan is developed for the Alaska Wetlands Initiative.

PARTNERSHIP

One of the five principles for federal wetlands policy issued on August 24, states "The federal government should expand partnerships with State, Tribal, and local governments, the private sector and individual citizens...." While there has been a good start on recognizing and discussing important issues on wetlands, an essential component that must be fully realized in the federal Action Plan is development of an effective partnership between federal and Alaska permitting authorities, as well as the Native community.

The success of this initiative and current recommendations is critically dependent on full participation by both State and Native interests. We embrace the "partnership" concept, but believe we thus far have been limited to a participant stakeholder rather than a full partner. The State has continually asked to participate as a full partner in developing the Action Plan for the Alaska Wetlands Initiative and sharing in the responsibility for its success. The Corps and EPA have developed the issue papers; and, the State is available to participate in development of the Action Plan.

- The partnering agreement now in place between the Corps and Division of Governmental Coordination is a good example. More use of this type of regulatory flexibility would go a long ways to solving problems of Alaskans. The Corps' and EPA's commitment to expedite action on Public Health Service and Village Safe Water projects will significantly contribute to improve the infrastructure and the standard of life in many Alaska villages.

The commitment to propose additional general permits statewide and circle general permits to communities will greatly improve the regulatory process. The State of Alaska should be a partner in developing any regulatory scheme for Alaskan communities. Programs, such as advanced identification of wetlands, circle general permits, and watershed planning, incorporate local and regional values, and accommodate community needs to be successful. There must be a balancing of community needs, resource values, and environmental management that is supported by consideration of multiple issues, rather than a single issue, no matter how compelling that issue might be. The balancing and consideration of all relevant issues and points of view in this process will foster cooperation and public support for requisite regulatory programs and overall success of the Alaska Wetlands Initiative.



HOUSE RESOURCES COMMITTEE

SUBJECT OF MEETING:

WETLANDS BRIEFING

DATE: 2/2/94

PLACE: Capitol, Room 124

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Paul Rusanowski	STATE -	DAC				(Y) N	wetlands
						Y N	
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