

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8016

HOUSE RESOURCES

27

**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.



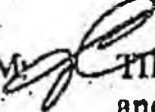
Attachment A


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. Digerness, 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)

08/24/83 13:18

☎202 248 2665

WH PRESS OFFICE

003

-- 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.

TABLE OF CONTENTS

I. Introduction	2
II. A Divisive Debate	2
III. The Interagency Working Group on Federal Wetlands Policy	3
IV. Five Principles for Federal Wetlands Policy	4
V. A Comprehensive Package of Reforms	4
A. Addressing Landowner Concerns	6
B. Advance Planning and Watershed Management	7
C. Agriculture	10
D. Categorization	12
E. Geographic Jurisdiction	14
F. Mitigation and Mitigation Banking	16
G. Restoration	18
H. Roles of Federal Agencies	19
I. Roles of State, Tribal, and Local Government	20
J. Scope of Regulated Activities	22
K. State of Alaska	22
L. Takings	24
VI. Conclusion	25
VII. Postscript: Lessons From the Flood	26

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

3

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

7

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

PROTECTING AMERICA'S WETLANDS:

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.

A FAIR, FLEXIBLE, AND EFFECTIVE APPROACH

9

● **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.

PROTECTING AMERICA'S WETLANDS:

• *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.

A FAIR, FLEXIBLE, AND EFFECTIVE APPROACH

11

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

PROTECTING AMERICA'S WETLANDS:

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.

A FAIR, FLEXIBLE, AND EFFECTIVE APPROACH**13**

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

PROTECTING AMERICA'S WETLANDS:

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

A FAIR, FLEXIBLE, AND EFFECTIVE APPROACH**15**

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

PROTECTING AMERICA'S WETLANDS:

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

A FAIR, FLEXIBLE, AND EFFECTIVE APPROACH

17

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

A FAIR, FLEXIBLE, AND EFFECTIVE APPROACH

19

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

PROTECTING AMERICA'S WETLANDS:

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

A FAIR, FLEXIBLE, AND EFFECTIVE APPROACH

21

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?
- The proposed rule would hinder management efforts for several Federally listed or proposed threatened and endangered species that utilize Alaska's coastal wetlands, as well as hastening the listing of additional candidate species. Bundled
- 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:

Administration Position: Because of the significant adverse environmental consequences that it would allow, the "Alaska 1% rule" will be withdrawn. The best way to address Alaska-specific concerns regarding the Section 404 program is through targeting the specific areas where questions about program policies or implementation have been raised. Finalizing the proposed "Alaska 1% rule" would have far broader and avoidable adverse environmental consequences.

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.

Many activities undertaken on wetlands either are not regulated at all, are explicitly exempted from regulation, or are authorized by general permits. In situations where individual permits are required, the Federal agencies can work with permit applicants to design projects that meet the requirements of the law and protect the environment and public safety, while protecting the property rights of the applicant.

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
Shelton

A FAIR, FLEXIBLE, AND EFFECTIVE APPROACH

25

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.

- *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.
- The proposed rule would hinder management efforts for several Federally listed or proposed threatened and endangered species that utilize Alaska's coastal wetlands, as well as hastening the listing of additional candidate species.
- 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.

Excerpt from Clinton Administration
Wetland Policy for Alaska.

102019331 GOVERNOR'S OFFICE #34

PROTECTING AMERICA'S WETLANDS:

Administration Position: Because of the significant adverse environmental consequences that it would allow, the "Alaska 1% rule" will be withdrawn. The best way to address Alaska-specific concerns regarding the Section 404 program is through targeting the specific areas where questions about program policies or implementation have been raised. Finalizing the proposed "Alaska 1% rule" would have far broader and avoidable adverse environmental consequences.

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.

Many activities undertaken on wetlands either are not regulated at all, are explicitly exempted from regulation, or are authorized by general permits. In situations where individual permits are required, the Federal agencies can work with permit applicants to design projects that meet the requirements of the law and protect the environment and public safety, while protecting the property rights of the applicant. 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

- *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.
- The proposed rule would hinder management efforts for several Federally listed or proposed threatened and endangered species that utilize Alaska's coastal wetlands, as well as hastening the listing of additional candidate species.
- 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.

Excerpt from Clinton Administration
Wetland Policy for Alaska.

PROTECTING AMERICA'S WETLANDS:

Administration Position: Because of the significant adverse environmental consequences that it would allow, the "Alaska 1% rule" will be withdrawn. The best way to address Alaska-specific concerns regarding the Section 404 program is through targeting the specific areas where questions about program policies or implementation have been raised. Finalizing the proposed "Alaska 1% rule" would have far broader and avoidable adverse environmental consequences.

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.

Many activities undertaken on wetlands either are not regulated at all, are explicitly exempted from regulation, or are authorized by general permits. In situations where individual permits are required, the Federal agencies can work with permit applicants to design projects that meet the requirements of the law and protect the environment and public safety, while protecting the property rights of the applicant.

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



Alaska State Legislature

Official Business

State Capitol

Juneau, Alaska 99801-1182

January 24, 1994

Alvin L. Ewing
Assistant Regional Administrator for Alaska Operations
Environmental Protection Agency
Alaska Operations Office
222 West 7th Avenue, #19
Anchorage, Ak 99513-7588

Robert K. Oja, Chief
Regulatory Branch
U.S. Army Corps of Engineers
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,

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)