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8018 HOUSE RESOURCES

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Several provisions of the Administration's August 24, 1993, Wetlands P..n are related to alternative permit processing procedures. In addition, there are specific actions that the Federal agencies in Alaska recommend to address issues relative to implementation of alternative processing procedures in Alaska.

Administration Plan

- Encourage Advance Planning Efforts. The Federal agencies will provide technical assistance for advance planning efforts addressing wetlands conservation, and will counsel planning participants on methods to link local or regional planning with Section 404 regulatory decision making. Wetland categorization will be supported within the context of an approved advance plan to provide landowners with early identification and characterization of wetlands on their property, streamlined permit review, and more flexible mitigation sequencing where appropriate. The Administration recommends changes in the Clean Water Act to provide incentives (financial and regulatory) for wetland planning efforts. Congress should provide the Federal agencies the authority to use grant monies to fund both the development and implementation of these plans.

- Regionalize General Permits for Activities in Defined Categories of Waters. Nationwide Permit 26 (NWP 26) authorizes certain discharges into isolated waters and waters above the headwaters point on streams. The Corps will undertake, in close coordination with relevant State and Federal agencies, a field review and evaluation of NWP 26 for the purpose of regionalizing and improving its use. Revisions to NWP 26 will focus on ensuring that appropriate levels of wetlands protection are provided through national and regional terms and conditions.

Alaska Specific Actions

- Expedite Development of Abbreviated Processing Procedures (APP). The Corps and EPA would expedite action on the Abbreviated Permit Processing Procedure for proposed projects involving Public Health Service and Village Safe Water. They agencies would explore future opportunities for use of APP procedures which include or combine other alternative procedures intended to ease the regulatory burden on the Alaska public, including but not limited to joint applications and joint processing procedures.

- Propose the Development of Additional General Permits. The Alaska District would continue development of general permits for log transfer facilities statewide, residential and community fills for communities in the southeast, residential fills for the Harding Lake area, floatcamps associated with logging activities, residential and commercial fills in the Kodiak area, residential

subdivision fills in Klawock, and fills for oil and gas activities on the North Slope. The Corps is also evaluating the possibility of expanding the floathouse general permit to include floatcamps, and expanding the placer mining general permit to allow activities on patented lands, to increase the size of mines covered and also to cover suction dredge and other recreational mining activities in non-navigable (not subject to Section 10 of the Rivers and Harbors Act) waters of the U.S. (these activities are already covered in navigable waters if the conditions of the placer mining GP are met).

- Conduct Cumulative Impacts Evaluations for General Permits. The Alaska District should take the following actions: 1) for proposed GPs the District should make its cumulative impact analysis available for public review prior to GP implementation; 2) for renewals, extensions, or expansions of existing GPs the District should include a summary cumulative impact analysis of the GP with the public notice for comments. The summary analysis should describe the extent of monitoring done for specific GP authorizations, compare GP impacts to those predicted prior to the GPs implementation, and provide an updated cumulative analysis of expected future impacts.

- Develop Circle General Permits for Alaskan communities. General permits (GPs) could be developed for each recognized community in Alaska. All wetlands within study area watersheds of these communities (or "circles") would be evaluated using Advance Identification (ADID) procedures (see Wetlands Inventory, Classification, and Categorization Issue Paper). The ADIDs would identify low value wetlands and GPs would be developed to authorize community-endorsed activities solely within these low value wetlands. In developing these GPs, the Corps would ensure that the environmental consequences of anticipated community activities in low value wetlands would be individually and cumulatively minimal and in compliance with the Section 404(b)(1) Guidelines. The communities would administer the Circle GPs based on their individual needs and values. All development within waters of the U.S./wetlands areas not covered by the Circle GPs would be administered under applicable Corps regulations.

- Conduct Exit Polls or Interviews with Permit Applicants. A recent Alaska District questionnaire sent to all permit applicants within the last five years should be continued and used as a basis for identifying concerns with the regulatory program in Alaska. The Alaska Wetlands Initiative Stakeholders and other interested parties should be given the opportunity to suggest improvements to the questionnaire. In addition to the questionnaire, all applicants should be given the opportunity for an oral exit interview.

ALASKA WETLANDS INITIATIVE
ISSUE PAPER - 7

SUBJECT: The Mitigation Sequence

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

BACKGROUND

General

The Clean Water Act Section 404 (b)(1) Guidelines [Guidelines] are the substantive environmental criteria used in evaluating discharges of dredged or fill material into waters of the United States, including wetlands. The Guidelines specify mitigation requirements that include: 1) avoidance of adverse environmental impacts; 2) minimization of unavoidable impacts; and 3) compensatory mitigation for unavoidable adverse impacts (see Compensatory Mitigation Issue Paper). "Mitigation" refers to this wide range of actions to reduce the impacts of developing in wetlands. The "mitigation sequence refers to the stepwise consideration of these types of mitigation.

The mitigation sequence is designed to establish a consistent approach to be used in ensuring that all practicable measures have been taken to reduce potential adverse impacts associated with proposed projects in wetlands and other aquatic systems. The first step in the sequence requires the evaluation of potential alternative sites to locate the proposed project so that aquatic impacts are avoided to the maximum extent practicable. As the next step in the sequence, remaining impacts are minimized, by making changes in project design or construction methods that reduce overall project impacts. Lastly, after all practicable and reasonable steps have been taken to avoid and minimize potential adverse effects, compensation for remaining unavoidable impacts is sought by such measures as wetlands creation or restoration, if these measures are practicable, in order to replace lost aquatic functions and values.

In 1990, the Department of Army (Army) and the Environmental Protection Agency (EPA) entered into a Memorandum of Agreement (MOA) to clarify requirements regarding the mitigation sequence contained in the Guidelines. Specifically, the MOA recognized that avoidance, through the identification of a less damaging alternative to the proposed project, and compensatory mitigation, are not required in circumstances where it is determined that potential alternatives are not practicable and that opportunities to offset project impacts are not practicable.

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Practicable is defined in the Guidelines as "available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes."

In 1992, Army and EPA issued joint guidance further clarifying the Guidelines and the MOA with respect to Alaska that emphasized "that there are areas, including many locations in Alaska, where it may not be practicable to restore or create wetlands; in such cases compensatory mitigation is not required under the Guidelines," and that "[w]here there is a high proportion of land in a watershed or region which is wetlands, it is likely that avoiding impacts to wetlands will not be practicable depending on project size and other logistical considerations."

There are many areas in the State where it is virtually impossible to avoid wetlands. Therefore, in much of Alaska, particularly in regions with abundant wetlands such as the State's North Slope, minimization efforts constitute the primary form of mitigation. Examples of minimization efforts include reducing the scope of fill, stabilizing slopes against erosion, timing discharges to avoid spawning/migration seasons, and shifting fill locations to wetlands of lower value. Both the Guidelines and the MOA limit minimization requirements to those that are "appropriate and practicable." The preamble to the Guidelines notes, with respect to these terms, that actions which would be "unreasonably costly or would be infeasible or which would accomplish only inconsequential reductions in impact need not be taken" (emphasis added). The Alaska District Corps required compensatory mitigation on less than one percent of the permits it issued in 1991 (the most recent year for which data have been compiled).

Stakeholder and Public Comments

A number of observations, concerns, and recommendations with regard to how the mitigation sequence could be applied in Alaska were raised by the stakeholders and public commentors. The divergent comments include those that stated Alaska should be exempt from requirements of the mitigation sequence to those that stated the need for stricter implementation of the mitigation sequence to comply with the National goal of no net loss (see No Overall Net Loss of Wetlands Goal Issue Paper). The comments are summarized as follows:

- A concern shared by many commentors was that the mitigation sequence is too rigid for use in Alaska, due to physical, climatological, and social circumstances that are unique to the State (see Alaska's Physical Environment and Alaska Social-Political Environment Issue Papers). For example, due to Alaska's abundance of wetlands, there was an assertion that avoidance is not practicable

- Rural Alaskans were concerned that stringent requirements for avoidance would

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prevent villages from providing basic human service and infrastructure which are still absent.

- Some commentors expressed concern that avoidance and minimization efforts taken prior to applying for a permit may not be recognized. There were also misgivings that planning decisions about avoidance and minimization are most often based on economics, not aquatic resources.

- There were several suggestions for modification of the 404 mitigation requirements for Alaska. Some commentors believed that modifications weren't currently necessary, but may become so with the implementation of the President's No Net Loss goal (see No Overall Net Loss of Wetlands Goal Issue Paper).

- Some commentors suggested that acknowledging Alaska's unique character should include formally codifying the Mitigation MOA.

- Many commentors recommended modifying or waiving the mitigation sequence for all, or portions, of the State (e.g., all or some of the Native- or State-owned lands, cities and communities, lower value wetlands) and/or certain activities (e.g., public, water-dependent, or small projects, especially in rural Alaska).

- Some commentors expressed concern that many of the suggested exemptions would result in impacts to high value aquatic resources, and that unmitigated losses in these areas would have cumulatively substantial effects. These commentors considered wide-scale exemptions unacceptable, and recommend that analysis continue on a case-by-case basis. They also noted the difficulty of accurately defining "low-value" wetlands for exemption, especially on broad geographic bases (see Advance Planning and Watershed Management Issue Paper).

ANALYSIS AND PROPOSED RECOMMENDATIONS FOR DISCUSSION

Based upon their explicit consideration of appropriateness and practicability, the Section 404(b)(1) Guidelines and the Corps' permitting regulations incorporate substantial flexibility to allow for the consideration of Alaska's unique circumstances. The 1990 Corps-EPA Memorandum of Agreement on Mitigation and the 1993 Corps-EPA Guidance on Mitigation Banking and the Flexibility of the Guidelines further emphasize this adaptability. Given the inherent flexibility provided by the Guidelines and the Corps permit regulations, the Corps and EPA do not believe that explicit exemptions from the mitigation sequence are necessary to accommodate Alaska's unique circumstances. However, the agencies recognize that additional clarification reflecting circumstances in

Alaska would be helpful.

Several provisions of the Administration's August 24, 1993, Wetlands Plan address concerns relative to the mitigation sequence. In addition, there are specific actions that the Federal agencies in Alaska recommended to address issues relative to the mitigation sequence.

Administration Plan

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

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

Alaska Specific Actions

- Develop interagency guidance to clarify how physical circumstances in Alaska such as the extent and type of wetlands affect the determination of "practicability" under the Guidelines mitigation requirements. The Corps and EPA, in coordination with the U.S. Fish and Wildlife Service and National Marine Fisheries Service, would develop guidance that clarifies existing mitigation requirements under the Section 404(b)(1) Guidelines as they apply in Alaska. The guidance would explicitly consider how circumstances in Alaska, such as the extent of wetlands and the relative opportunities to restore wetlands, affect the determination of "practicable" under the Guidelines. The guidance would reflect experience in Alaska that demonstrates that minimization of impacts is the primary mitigation tool and that avoidance and compensatory mitigation are required only where practicable, consistent with the clarification of this term for Alaska.

- Recommend that the Executive Order on wetlands articulate the flexibility in implementing the Administration's goal of no overall net loss of the Nation's

wetlands to reflect particular circumstances in Alaska. The Federal agencies in Alaska would recommend to the Administration's Interagency Wetlands Working Group that the Executive Order on wetlands under development contain appropriate language relevant to implementing the National goal of no overall net loss with regard to the regulatory program in Alaska. Similar to the text contained in the National Wetlands Policy Forum, language for the Executive Order recommended by the Federal agencies in Alaska would emphasize that the goal of no overall net loss should be implemented in a manner that effectively reflects regional circumstances.

- Issue a Special Public Notice (or Local Supplement to the Mitigation MOA) on application of the mitigation sequence in Alaska. Much of the concern regarding the mitigation sequence may stem from a misunderstanding of its requirements. The Federal agencies would address this concern by placing additional emphasis on public education opportunities (see Outreach and Education Issue Paper). A Special Public Notice (or Local Supplement) would 1) explain the mitigation sequence; 2) clarify how the sequence works in Alaska; and, 3) reaffirm the existing policy on flexibility.

- Acknowledge pre-application avoidance and minimization efforts. While the Corps does not require applicants to consider or incorporate measures for avoidance and minimization prior to submitting applications, applicants who demonstrate they have done so (through discussion in application packages and at pre-application meetings) certainly benefit. Involving resource agencies in that part of project planning would help ensure that they are aware of the steps that have been taken. The Federal agencies would promote inter-agency consultation on avoidance and minimization at the pre-application stage is needed by encouraging applicants to participate in pre-application meetings, particularly for large or potentially controversial projects. The District would also advise applicants to document the avoidance and minimization steps their projects reflect, even if no such consultation/meeting takes place.

ALASKA WETLANDS INITIATIVE
ISSUE PAPER - 8

SUBJECT: Compensatory Mitigation

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

BACKGROUND

General

The Section 404 program requires appropriate and practicable compensatory mitigation for adverse impacts which remain after avoidance and minimization have been implemented (see Mitigation Sequence Issue Paper). Although compensatory mitigation is commonly thought of as the creation of new wetlands from uplands, that is only one recognized method of offsetting unavoidable adverse impacts. In fact, since successfully creating productive wetlands from uplands is often technically very difficult, or impossible, to achieve, it is the rarest form of compensation used in Alaska. Other, more common (and more successful) forms of traditional compensatory mitigation are enhancement (e.g., construction of nesting islands) and restoration (e.g., rejuvenation of impacted wetlands, reestablishment of stream meanders). Finally, in certain circumstances, preservation of existing wetlands is also accepted as compensatory mitigation.

In certain situations, out-of-kind (i.e., different habitat type) or off-site (i.e., different location) forms of compensatory mitigation may be appropriate. Examples of these situations include when an area is deficient in a different kind of habitat than the project would impact or when on-site mitigation opportunities are either absent or unwise for safety reasons or chances for success. In order to be most effective, off-site mitigation should usually occur near the site of impacts (e.g., within the same watershed).

Under certain circumstances (e.g., when a previously unrecognized critical area is threatened by permitted or non-jurisdictional activity), the Alaska District sometimes accepts/ requires non-traditional forms of compensatory mitigation. One example of such mitigation is the preservation of existing wetlands through mechanisms that ensure long-term protection, such as placing the wetlands under permanent easement or transferring title. Another less common, but sometimes acceptable form of mitigation is the designation of funds to wetlands restoration/creation projects being sponsored by private conservation groups such as the Nature Conservancy or Ducks Unlimited.

As with all mitigation, the Section 404(b)(1) Guidelines and the Corps permitting regulations call for compensatory mitigation only when it is appropriate and practicable. This requirement provides needed flexibility for considering circumstances unique to Alaska (e.g., the fact that a local or regional abundance of wetlands, especially when combined with a low level of existing development, may render compensatory mitigation either inappropriate or impracticable, or both) (see Alaska's Physical Environment Issue Paper). The Corps permitting regulations also promote consideration of the relative value of wetlands that would be impacted and the degree of those impacts. The regulations note that compensatory mitigation is required for "significant resource losses which are specifically identifiable, reasonably likely to occur, and of importance to the human or aquatic environment" [33 CFR 320.4(r)(2)]. The same regulation states that all required mitigation should be 'directly related to the impacts of the proposal and appropriate to the scope and degree of those impacts." These requirements are one reason why compensatory mitigation is seldom required for lower value wetlands in Alaska. Together with the practicability considerations required under the Guidelines, the EPA and Corps regulations provide significant flexibility in determining what is necessary mitigation on a case-by-case basis.

Stakeholder and Public Comments

A number of observations, concerns, and recommendations in regard to what type of compensatory mitigation is appropriate and practicable in Alaska were raised by the stakeholders and public commentors. The divergent comments included those that asserted that compensatory mitigation should never be required in Alaska to those that believe there is not currently enough compensation provided for loss of high value areas. The comments are summarized as follows:

- Several commentors were apprehensive that compensatory mitigation could create undue economic burdens and discourage needed economic development.

- Some commentors felt that, due to Alaska's unique circumstances, compensatory mitigation should never be required (see Special Alaska Circumstances - Physical Environment Issue Paper for detailed discussion).

- Other commentors believed that the regulatory program in Alaska is not providing enough protection or compensatory mitigation for high value areas (e.g., critical habitat, spawning/rearing areas, coastal salt marshes and nearshore waters, migratory bird nesting/feeding habitat, and areas important for flood control).

- Another concern was that impacts on tourism and recreational values do not receive enough consideration in mitigation decisions.

- Some commentors emphasized that recent statistics on the level of compensatory mitigation required in Alaska was far less than the lower 48 states. Cited was the fact that between October 1992 and June 1993, only 19 percent of the wetland acres that were permitted in Alaska were mitigated. During this eight month period, the Corps District permitted 866 acres to be filled in Alaska while requiring only 167 acres to be mitigated, resulting in an overall net loss of 700 acres.

- Some commentors suggested exempting all or parts of the State, and/or certain types of activities, from the compensatory mitigation step of the mitigation sequence.

- Some commentors suggested that as an alternative to compensatory mitigation, accelerated rehabilitation of gravel fill sites in the North Slope be used.

- Another area of debate centered on the definition of compensatory mitigation. Specifically, there was a question whether or not the following activities constitute compensation: 1) the reclamation/restoration of temporary project sites such as oil and gas pads and placer mines; 2) the preservation of existing wetlands, as in refuges and conservation easements; and, 3) monetary donations to funds for mitigation, research or public education. Some commentors asserted that these actions do not constitute compensation, because they do not result in an environmental gain. Another concern was that reclamation of permitted sites is not compensation since many permits require such action upon project abandonment anyway. An opposing view was that reclamation/restoration is indeed appropriate compensation, since the end result is no long-term net loss of aquatic resources.

- Other recommendations supported the implementation of "mitigation banking," a term which refers to the establishment of an area as a site for consolidated mitigation efforts performed in advance of permitting. "Withdrawals" or "debits" from the mitigation bank would then be made for projects which required compensation. Discussions related to mitigation banking include assertions that it would be a valuable tool for cities needing economic development, but that it may not be appropriate in areas (e.g., the North Slope), where other forms of mitigation (e.g., restoration) are available. There was also a recommendation that the concept should be implemented Statewide. Suggestions for inclusion in the mitigation banking concept include enhancement, restoration and preservation. There was concern that implementation of a banking system, however, would result in an increase in compensatory mitigation requirements. There is also strenuous opposition to the possibility that projects might require out-of-State mitigation.

ANALYSIS AND PROPOSED RECOMMENDATIONS FOR DISCUSSION

The Corps and EPA believe that the Section 404(b)(1) Guidelines and the Corps permitting regulations provide the necessary flexibility to accommodate the circumstances in Alaska (see Mitigation Sequence Issue Paper). Therefore, broad geographic or project-type exemptions from compensatory mitigation do not seem necessary. With respect to considering wetlands cited as already "preserved" in refuges, parks, and other similar areas as "banks" against future mitigation needs, the Corps and EPA believe that this is not actually the case. In many cases these wetlands are not specifically protected from, and in fact do undergo, development (e.g., mining, oil and gas production).

Several provisions of the Administration's August 24, 1993, Wetlands Plan address concerns relevant to compensatory mitigation. In addition, there are specific actions that the Federal agencies in Alaska propose to address issues regarding compensatory mitigation.

Administration Plan

- Endorse the use of mitigation banking under the Section 404 regulatory program. The Administration endorses the concept of mitigation banking--the restoration, creation, enhancement, and, in certain circumstances, preservation of wetlands expressly for the purpose of providing compensatory mitigation in advance of discharges into wetlands authorized under the Section 404 regulatory program.

- Issue mitigation banking guidance. EPA and the Corps, in coordination with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service and the Soil Conservation Service, have issued guidance to their field staff to clarify the manner in which wetlands mitigation banking is appropriately used within the Section 404 program.

- Issue mitigation planning guidance. The Corps, in coordination with EPA, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service, will issue guidance to their field staff to clarify the requirements for developing compensatory mitigation conditions in Section 404 permits.

Alaska Specific Actions

- Develop interagency guidance to clarify how physical circumstances in Alaska such as the extent and type of wetlands affect the determination of "practicability" under the Guidelines mitigation requirements. The Corps and EPA, in coordination with the U.S. Fish and Wildlife Service and National Marine Fisheries Service, would develop guidance that clarifies existing mitigation

requirements under the Section 404(b)(1) Guidelines as they apply in Alaska. The guidance would explicitly consider how circumstances in Alaska, such as the extent of wetlands and the relative opportunities to restore wetlands, affect the determination of "practicable" under the Guidelines. The guidance would reflect experience in Alaska that demonstrates that minimization of impacts is the primary mitigation tool and that avoidance and compensatory mitigation are required only where practicable, consistent with the clarification of this term for Alaska.

- Recommend that the Executive Order on wetlands articulate the flexibility in implementing the Administration's goal of no overall net loss of the Nation's wetlands to reflect particular circumstances in Alaska. The Federal agencies in Alaska would recommend to the Administration's Interagency Wetlands Working Group that the Executive Order on wetlands under development contain appropriate language relevant to implementing the National goal of no overall net loss with regard to the regulatory program in Alaska. Similar to the text contained in the National Wetlands Policy Forum, language for the Executive Order recommended by the Federal agencies in Alaska would emphasize that the goal of no overall net loss should be implemented in a manner that effectively reflects regional circumstances.

- Incorporate mitigation into advance planning efforts. With respect to mitigation, the Corps and EPA would encourage local/regional wetlands planning efforts to identify wetlands functions and values which would require mitigation, and to catalog potential restoration sites. (see Advance Planning and Watershed Management Issue Paper)

- Develop mine site reclamation guidelines. The Corps and EPA would work with placer mining industry interests (including landowners, placer mining groups, environmental interests, etc.) to clarify, then formalize, the requirements for reclamation as a form of mitigation. With regard to alternative, or creative, forms of compensatory mitigation, the Corps and EPA believe that there are projects for which site restoration (after avoidance and minimization) is sufficient to satisfy mitigation requirements, particularly in circumstances where other forms of mitigation are determined to be impracticable under the Guidelines.

- Develop accelerated restoration program for oil and gas projects. Accelerated restoration or rehabilitation prior to the deadline built into standard permits is a concept which would be further considered, particularly for the oil and gas industry.

- Develop and implement bonding procedures for restoration/reclamation projects.

Since follow-through is essential in ensuring adequate reclamation/restoration, a bonding system may be necessary to protect against default on restoration efforts. Consideration of permittee compliance records would also likely be prudent.

- Establish mitigation banking pilot project. The Corps and EPA together with USFWS and NMFS would work with industry/resource representatives and other interested parties to identify a mitigation banking pilot project. Two of the Administration's proposals address mitigation banking. We believe the concept could prove to be a useful part of the 404 program in Alaska. Study of the pilot project would indicate the feasibility of using the concept in Alaska and would facilitate the creation of guidelines for its use on a wider basis, where such use proves feasible.

- Assess the effectiveness of mitigation efforts in Alaska. The Corps and EPA together with USFWS and NMFS would work with interested parties, and to consult the scientific expertise available to our agencies, to develop a program to assess the effectiveness of various mitigation techniques in Alaska, and to refine those techniques as necessary. All concerned parties have a need to know how effectively mitigation provides the functions and values expected from it. This knowledge would guide permitting decisions away from unnecessarily requiring or accepting typically unsuccessful forms of mitigation, and toward forms which have proven to be more successful. We anticipate a final product of these efforts being general compensatory mitigation guidelines for the State.

ALASKA WETLANDS INITIATIVE
ISSUE PAPER - 9

SUBJECT: Advance Planning and Watershed Management

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

BACKGROUND

General

Comprehensive watershed planning provides an opportunity for local communities to enhance and streamline the Section 404 regulatory process. Although the process can be labor-intensive and costly, the benefits can be significant:

1) When decisions are made on a permit-by-permit basis, piece-meal wetland losses and degradation frequently occur. In contrast, comprehensive planning can improve resource protection by identifying wetlands protection and restoration needs within the watershed.

2) Comprehensive planning offers an opportunity for strong participation from private citizens and local governments to balance wetlands protection with development needs in a comprehensive and predictable manner.

3) A comprehensive plan which is consistent with the Section 404(b)(1) Guidelines can facilitate and streamline the permit process. When used as a framework for evaluating further permit decisions, and approved plan can increase predictability and reduce conflicts regarding activities affecting wetlands.

4) A comprehensive plan can address a large number of land and water-based activities which impact wetlands.

5) Finally, comprehensive planning allows wetlands to be managed within a broader, watershed context. This watershed-based approach recognizes the interconnections between water resources and the land, air, and water environment surrounding the resources. The watershed approach can integrate both regulatory and voluntary activities in order to address impacts on the ecosystem as a whole. The areas

covered in a particular watershed depend on the goals of the wetland planning effort, and may include specific drainage basins (e.g., Kenai River) or ecoregions (e.g., Southeast Alaska).

Advance planning generally involves at least the identification, mapping, and preliminary assessment of relative wetland functions within the planning area. For example, the Advance Identification process, conducted jointly by EPA and the Corps of Engineers, after consultation with the State and local governments, classifies areas as generally suitable or unsuitable for future discharges of dredged or fill material. Although this determination does not constitute a final permitting decision, the Advance Identification process involves an evaluation of the likelihood that the use of an area for discharges of dredged or fill material would be consistent with the Section 404(b)(1) Guidelines.

Another example of a comprehensive wetland planning tool is the Special Area Management Plan (SAMP). A SAMP was originally defined by the Coastal Zone Management Act as a "comprehensive plan providing for natural resource protection and reasonable coastal dependent economic growth ... in specific geographic areas within the coastal zone." The development of a SAMP within a watershed or planning area should reduce case-by-case permit review problems, increase predictability for developmental interests, and assure environmental interests that individual and cumulative impacts are analyzed in the context of broad ecosystem needs. Since comprehensive planning can be costly and labor intensive, efforts should concentrate on sensitive areas under strong developmental pressure. The plan should have sponsoring local agency to reflect local needs and interests; full public involvement should be encouraged throughout the planning and development process. Finally, all parties should be willing to conclude the SAMP with a regulatory product. These regulatory products may include appropriate local and State approvals and/or restrictions and a Corps general permit (GP) or Abbreviated Processing Procedure (APP) (see Alternative Permit Processing Procedures Issue Paper).

Another opportunity for participation in comprehensive planning is the development of State/Tribal Wetland Conservation Plans. This is a new tool for states/tribes to develop strategies to achieve wetland management goals. State/Tribal Wetland Conservation Plans may integrate both regulatory and cooperative approaches to protecting wetlands. The plans may address diverse land and water-based activities impacting wetlands which are not addressed by any single Federal, State, or local agency program. States are well-positioned between Federal and local government to take the lead in integrating and expanding wetland protection and management programs.

In Alaska, comprehensive wetland management plans have been completed for Anchorage and Juneau. These plans rely on detailed maps showing the location and

classification of each wetland area. In both communities, categories were assigned to wetland units based on ecological functions and values. These categories then formed the basis of a wetland management plan. In Juneau, the list of impaired habitats and restoration projects was generated for potential mitigation. Both efforts were spearheaded by local communities, with substantial financial and technical assistance from State and Federal agencies.

The Anchorage Wetland Management Plan provided the foundation for two Corps GPs allowing certain activities to occur in "developable" wetlands. The Juneau Wetland Management Plan was proposed as a framework for a Corps general permit allowing discharges into certain wetland categories, although the final GP has not yet been issued.

In addition, a watershed plan is currently being developed for the Kenai River basin, supported by both State and Federal funding. In the first phase, EPA provided $30,000 to the State to identify aquatic resources within the Kenai River watershed. This portion of the project includes a survey of existing information on the ecological significance and relation of the various components of the Kenai River ecosystem. A second phase includes the distribution of watershed information to landowners and interested parties, and the development of a locally-based stewardship group.

Stakeholder and Public Comments

A number of observations, concerns, and recommendations were raised in regard to how advance planning and watershed protection could be applied in Alaska. The comments included those that stated more advance planning was needed to protect wetland resources to those that stated how planning can provide for more regulatory certainty.

- In general, the commentors believed that wetland planning can be used as a tool to 1) balance wetland protection with development needs, 2) stream-line the permit process, 3) identify concerns ahead of time, and 4) identify areas most appropriate for development. To this end, commentors would like to direct additional resources toward wetland planning efforts.

- Some commentors agreed that wetlands differ in value, and expressed a preference for steering development into lower value wetlands. Regulation of low value wetlands should be stream-lined, relaxed, or even removed for areas where wetland plans are available.

- Other commentors supported the use of wetland planning to protect higher value wetlands. They recognized the need to protect critical habitat, "even in bush

Alaska." Development projects proposed in high value wetlands deserve more rigorous consideration in the permit process.

- Commentors emphasized that wetland plans should incorporate local input to the maximum level possible, and include consideration of long-range community plans.

- Commentors recognized that cost is a major factor in all phases of wetland planning, and suggested that efforts should be concentrated in areas with high resource values and subject to development pressure.

- Some commentors felt that preliminary identification provides developers with a rough yardstick to assess at the outset the likelihood that permits will be granted for certain activities.

ANALYSIS AND PROPOSED RECOMMENDATIONS FOR DISCUSSION

Comprehensive wetland planning can be an effective tool to balance wetlands protection with needed development projects in Alaska. Comprehensive wetland planning should be based on wetland functions and values, and should reflect strong local participation. An advance plan tied to the Section 404 regulatory process provides benefits such as increased predictability in the outcome of permit applications, a streamlined process, and more comprehensive identification and protection of wetland resources.

Several provisions of the Administration's August 24, 1993, Wetlands Plan address concerns relative to comprehensive planning. In addition, there are specific actions that the Federal agencies in Alaska recommend to address issues relative to comprehensive planning.

Administration Plan

- Encourage Advance Planning Efforts. The Federal agencies will provide technical assistance for advance planning efforts addressing wetlands conservation, and will counsel planning participants on methods to link local or regional planning with Section 404 regulatory decision making. Wetland categorization will be supported within the context of an approved advance plan to provide landowners with early identification and characterization of wetlands on their property, streamlined permit review, and more flexible mitigation sequencing where appropriate. The Administration recommends changes in the Clean Water Act to provide incentives (financial and regulatory) for wetland planning efforts. Congress should provide the Federal agencies the authority to use grant monies to fund both the

development and implementation of these plans.

- Provide Incentives for States/Locals to Integrate Watershed and Wetlands Planning. The Administration plan recommended that the Clean Water Act be amended to authorize the development of State watershed protection programs, which should include local and regional involvement and Federal approval of the State programs. Wetlands should be incorporated into the overall watershed approach, with minimum standards for wetlands protection and restoration planning. Approved watershed plans would receive a high priority for technical and financial support.

- Endorse State/Tribal Wetlands Conservation Plans. The Administration plan recommended that Congress endorse the development of State/Tribal comprehensive wetland plans, with the goal of supporting State and Tribal efforts to protect and manage their wetlands resources.

- Provide for Greater Integration of Advance Planning Into the Section 404 Regulatory Program. The Administration will support efforts to better integrate advance planning into the Section 404 regulatory program, including appropriate local or watershed-based categorization frameworks and regionalized improvements to implementation of the existing Nationwide Permit 26 in headwaters and isolated waters.

- Revise the Executive Order on Wetlands. The existing Executive Order on wetlands will be revised to direct the Federal agencies to take a watershed/ecosystem approach to wetlands protection and restoration.

Alaska Specific Actions

- Provide greater emphasis on the use of advanced planning mechanisms. The Federal agencies, led by EPA and the Corps, would encourage greater use of comprehensive advance planning, particularly with state, regional, native, and local involvement. These planning efforts would be tied into the Section 404 regulatory program.

- Continue efforts to provide technical assistance for wetland planning. The Federal agencies would assist State and local entities in wetland planning and would continue to support general and watershed-based efforts to develop wetland planning, outreach, and mitigation strategies.

- Develop a watershed-based demonstration project. The Federal agencies, led by EPA and the Corps, would provide technical assistance and coordinate with

Federal, state, local, and private entities to initiate a demonstration watershed project. Once identified, EPA and the Corps would establish an interagency team to help develop a comprehensive wetlands management plan within that watershed.

ALASKA WETLANDS INITIATIVE
ISSUE PAPER - 10

SUBJECT: Wetlands Inventory, Classification, and Categorization

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

BACKGROUND

General

Wetlands inventories, classifications, and categorizations are typically the basis for planning mechanisms and associated regulatory actions in the Section 404 program. In general, comprehensive wetlands planning involves a three-step process of information collection and generation before completion of a plan: 1) an inventory to identify wetland types within a watershed; 2) a classification to define ecological, biological, and social functions of those wetlands; and 3) a categorization to assign values or to rank those wetlands. In addition, wetlands plans may provide guidelines for activities and alterations which would be acceptable within a particular wetlands category.

The U.S. Fish and Wildlife Service is mapping the country's wetlands in their National Wetlands Inventory (NWI) effort. Alaska's wetlands are being inventoried as a part of this National project. As of October 1993, approximately 26 percent of Alaska's wetlands have been initially identified. The NWI process yields small scale maps that may be used as a basis for regional planning and an initial assessment of wetland resources in proposed project areas. However, these maps do not substitute for Section 404 jurisdictional determinations. The total cost of preparing NWI maps for the Alaska is estimated to be $27 million.

Large scale wetlands maps that define jurisdictional boundaries cost roughly ten times that to produce NWI maps. In the State of Alaska, only Anchorage, Homer, and Juneau have been able to afford the production of these maps. For instance, the cost of the Juneau Wetland Management Plan exceeded $300,000, and was largely borne by the city.

Although there are a number of classification systems that may be applied to wetlands, the Section 404(b)(1) Guidelines outline one process known as Advance

Identification (ADID). Areas classified under ADID may be considered as either possible future disposal sites, or areas generally unsuitable for disposal site specification. Advance identification of these areas involves an evaluation of the likelihood that use of the area in question is consistent with the Section 404(b)(1) Guidelines. The ADID process provides information to facilitate individual or general permit processing. The nature of the classification is strictly advisory, and does not constitute a permitting decision. Since ADID is usually based on watershed planning, it is extremely compatible and more effective when implemented with comprehensive planning efforts (see Advance Planning and Watershed Management Issue Paper).

The ADID process is jointly conducted by EPA and the Corps of Engineers, after consultation with the State and appropriate public notice of the identified areas. Advanced Identification provides the involved local community with information on values of wetland areas that may be affected by their activities, as well as a preliminary indication of factors likely to be considered during review of a Section 404 permit application. The ADID adds predictability to permitting process and improves accounting for impacts of losses from multiple projects within a geographic area.

In Alaska, Advance Identification has been completed for Homer and Juneau. In addition, a wetland evaluation system is being developed to facilitate planning of the Yukon-Pacific Gas Line. These projects were completed with extensive technical and financial support from several Federal agencies.

Categorization of wetland values (e.g., as "high," "medium," or "low") on an a priori basis is generally an impracticable task, given the large geographic variation of wetlands, differing functions of wetlands in particular areas, and the differing values associated with wetlands in particular locations. However, categorization that reflects the individual considerations of wetlands in a particular location is generally practicable and is often an important step in developing final wetlands or other comprehensive plans.

In some cases, baseline information about certain types of wetlands is a useful starting point for evaluating the specific values of that type of wetland in a particular location. EPA has funded some of this baseline information collection. In 1992, EPA awarded $70,000 in grant monies to the State of Alaska to compile information regarding the functions and values of black spruce bogs and treeless bogs in Alaska. The overall project objective is to provide a technical basis for evaluating and mitigating impacts to a predominant wetland habitat type of the state.

In 1992, EPA issued a grant for $62,670 to the State of Alaska in order to review several methods of wetland classification and evaluate their applicability and feasibility in the state. In 1992, EPA provided an additional $256,000 to the State to explore the

development of a wetland classification scheme.

Stakeholder and Public Comments

A number of observations, concerns, and recommendations in regard to how wetlands inventory, classification, and categorization could be applied in Alaska were raised by the stakeholders and public commentors. The divergent comments included those that stated how wetlands inventory, classification, and categorization is too costly to those that cited the increased predictability of regulatory decisions when this information was known. The comments are summarized as follows:

- Alaskans commenting on the Section 404 program suggested that the Corps should focus planning efforts on larger communities, important drainages, and/or high value wetlands.

- While recognizing cost limitations, several commentors felt that the existing NWI maps did not provide adequate detail for planning purposes. However, the cost of producing large scale wetlands maps that define jurisdictional boundaries is roughly ten times the cost to produce NWI maps.

- Some commentors expressed frustration with the lack of understanding of arctic ecosystems (presumably by regulators). Unfortunately, wetlands data are extremely limited, and expensive to obtain. Classification methods evaluate a wide range of complex wetland functions, from fish and wildlife habitat to hydrology.

- Some commentors mentioned that data collected from one region of the State are probably not applicable to another region. For instance, functions such as flood control may be more important within developed areas. The value of a given wetland type may also depend on its regional abundance or scarcity.

- Some commentors seemed discouraged that a single classification and categorization method was not uniformly applied throughout the state.

- Commentors noted the lack of criteria defining high and low value wetlands and suggested that attributes or types of high value wetlands should be identified.

- Other commentors suggested that human values, such as subsistence, recreation, and scenic viewing, should be included in the consideration of wetland values.

- While commentors agreed that wetlands differ in function, they recognized that conflicts may arise over how to weigh those functions in a ranking system. For

instance, a wetland type may represent recreational values to one group, and commercial opportunities to another group.

- Some commentors also raised concerns over the impact of wetland categorization on property values and the "takings" implications.

ANALYSIS AND PROPOSED RECOMMENDATIONS FOR DISCUSSION

Experience has shown that "all wetlands are not created equal," and supports local and regional efforts to inventory, classify, and categorize wetlands. Although NWI maps do not provide jurisdictional information, they can be valuable in the early stages of planning efforts. Likewise, the development of methods for classifying wetlands and assessing their functions and values is important, especially in the planning context. However, developing a comprehensive wetland ranking system requires extensive and detailed information on wetland functions, consideration of regional influences and uses, and scarcity or abundance of wetland types, both locally and regionally. While "a priori" (high-, medium-, or low-value) categorization and ranking systems appear attractive, a national a priori categorization and ranking system is unworkable due to technical, fiscal and environmental implications. There is currently no scientific basis for a nationwide ranking of functionally distinct and diverse wetland types; any such scheme would be extremely difficult to develop and would likely require many years to complete.

In contrast to a national a priori categorization system, opportunities do exist for regional categorization in local or regionally developed advanced planning studies conducted on a watershed basis. Local advanced planning studies can provide a scientifically sound and workable framework for early consideration of variations in wetland functions within the Section 404 program. Appropriate functional assessment techniques can be applied within a planning or watershed area. Reasonably foreseeable development needs can then be superimposed upon wetland inventories and functional assessments to identify appropriate regulatory responses. Highly functional or ecologically significant ("high value") wetlands can be identified as deserving a very high standard of protection; conversely, wetlands with limited function and ecological significance ("low value") can be identified as appropriate for general permits or other regulatory streamlining methods. These categorization approaches should be local or regional in nature, and reflect the full range of impacts and functions that affect wetlands within the watershed or planning area.

Several provisions of the Administration's August 24, 1993, Wetlands Plan address concerns relative to wetlands inventory, classification, and categorization. In addition, there are specific actions that the Federal agencies in Alaska recommend which relate to these steps in the planning process.

Administration Plan

- Develop improved analytical tools for wetlands functional assessment. The Federal agencies will expedite development of an approach for wetlands functional assessment known as the Hydrogeomorphic Classification System (HGM). The HGM methodology is being developed by the agencies and the academic community as an analytical tool to make timely and accurate assessments of wetland functions.

- Encourage Advance Planning Efforts. The Federal agencies will provide technical assistance for advance planning efforts addressing wetlands conservation, and will counsel planning participants on methods to link local or regional planning with Section 404 regulatory decision making. Wetland categorization will be supported within the context of an approved advance plan to provide landowners with early identification and characterization of wetlands on their property, streamlined permit review, and more flexible mitigation sequencing where appropriate. The Administration recommends changes in the Clean Water Act to provide incentives (financial and regulatory) for wetland planning efforts. Congress should provide the Federal agencies the authority to use grant monies to fund both the development and implementation of these plans.

- Regionalize General Permits for Activities in Defined Categories of Waters. Nationwide Permit 26 (NWP 26) authorizes certain discharges into isolated waters and waters above the headwaters point on streams. The Corps will undertake, in close coordination with relevant State and Federal agencies, a field review and evaluation of NWP 26 for the purpose of regionalizing and improving its use. Revisions to NWP 26 will focus on ensuring that appropriate levels of wetlands protection are provided through national and regional terms and conditions.

Alaska Specific Actions

- Support efforts to identify and collect wetlands data in focus areas (watersheds) where development is likely to occur. Federal agencies should continue to support regionalized efforts to collect wetlands data. Information should include NWI maps, other wetlands mapping, local knowledge, Alaska Coastal Management Plans, resource agency data, etc. All wetland functions need to be addressed, including fish and wildlife habitat, subsistence use, ground water recharge and discharge, flood control, sediment trapping, nutrient retention, and recreational use.

- Investigate the feasibility of centralizing wetlands information. Federal agencies would investigate the feasibility of centralizing wetlands information, including

that relevant to location, type, functions, and values. This information should be easily accessible to the public to facilitate wetland planning efforts.

- Accelerate the National Wetlands Inventory mapping project. The current rate of map production (2% of Alaska per year) does not meet the demand for baseline wetland information. The Federal agencies would pursue additional funding sources to complete this work by the year 2004. Expand detailed mapping efforts that serve as the basis for wetland management plans or general permits.

- Continue to support the State's effort to select and apply a wetland classification method. EPA and the Corps would continue to support the selection of a wetlands classification method. The classification method should be modified to reflect site-specific characteristics within each identified watershed. The results of classification effort should be integrated into the Cowardin classification system used in the NWI maps.

- Continue to support activities related to comprehensive wetlands planning. The Federal agencies would continue to supply technical assistance that supports the development of comprehensive wetlands planning (e.g., local inventories and classifications, mitigation banking opportunities, associated regulatory products).

ALASKA WETLANDS INITIATIVE
ISSUE PAPER - 11

SUBJECT: Outreach and Education

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

BACKGROUND:

General

An important aspect of the Section 404 regulatory program is the need to inform and educate the public about regulated activities, public resource values of waters regulated, and how to efficiently interact with the regulatory program.

The Alaska District Corps, EPA, and Federal resource agencies in Alaska have ongoing programs to educate and inform the public about the variety, values, and importance of Alaskan wetlands, the legislative and regulatory basis of Section 404 and related laws, and on the most effective means for interacting with the Corps regulatory process. Low population density, relative lack of transportation infrastructure, severe climate, large size, remote location, seasonal occupation, and small community size of many towns and villages, use of aboriginal languages, distance and expense of transportation are all unique Alaskan conditions which contribute to the difficulties of outreach efforts.

The Alaska District Corps has an ongoing outreach and education program, consisting of public speaking, school presentations, printed literature, news releases, media spots, media interviews, partnerships with other agencies for dissemination of program information, publication of newspaper and public notices, and monthly activity reports. EPA, U.S. Fish and Wildlife Service (USFWS), and National Marine Fisheries Service (NMFS) are all active participants in public forums and in disseminating program information through the media. For example, in a recent 12-month period, the Alaska District Corps gave over 60 presentations on the regulatory program throughout the State. The Corps is also developing a wetlands package to be used for presentations to school children. In addition, the Corps established field offices in Juneau and Fairbanks in 1991 to provide greater public access to information and to improve public understanding of the program. The Corps is also working cooperatively with the Alaska Department of Natural Resources and the Alaska Association of Soil and Water

Conservation Districts to provide detailed program information and jurisdictional determinations to small private property owners.

The USFWS has a number of education and outreach programs nationally, and in Alaska. The Federal duck stamp program provides funds for wetlands habitat acquisition and management. The National Wetlands Inventory has an outreach component on the national level, and they produce a series of technical reports on wetlands. The USFWS's Region 7 office in Alaska has an environmental education program in schools throughout the state, and also participates in the Scientists in the Schools program. The USFWS is currently working cooperatively with the District to produce a series of public service announcements regarding the functions and values of Alaska wetlands, as well as a wetlands booklet for prospective Corps permit applicants with information on wetlands functions and values, instructions for applying for permits, and a game insert for children. The USFWS in Alaska is also currently developing a detailed guide to Alaska wetlands. The USFWS also has an ongoing national and regional campaign of many years standing to disseminate information, brochures, posters, and slide programs on the fisheries and wildlife values of wetlands. The USFWS offices in Alaska also make frequent presentations to the public and special interest groups on their agency's program.

EPA has an active outreach effort which fosters public and private partnerships, provides technical assistance, and educates the public. EPA has established a toll-free Wetlands Protection Hotline, (800) 832-7828, to address public questions and requests for information. EPA also participates each May in American Wetlands Month, along with USFWS, other Federal, state, and local governments, and private organizations to increase public awareness of the values and productivity of wetlands. EPA sponsors a variety of forums encouraging informed discussion on wetlands issues including State programs, wetlands and watershed management, categorization, mitigation, altered wetlands, and education. EPA also distributes a number of publications on a variety of wetland subjects. EPA's Alaska Operations Office has had an ongoing, active effort for many years of educating and informing the public regarding their role in the Section 404 program, and of wetlands protection, functions and values.

The Alaska office of NMFS also has an active program to better inform the public of their responsibilities in the program. They frequently respond to requests to make presentations in public forums and to school groups, on commercially important marine fisheries and other marine resources, and how these are affected by wetlands.

Stakeholder and Public Comments

A number of issues and proposed solutions were raised by stakeholders and public commentors concerning the need for public outreach and education. These issues

included the following:

- Some commentors suggested an increase in education and outreach programs, to include an additional funding source, and additional assistance for the public in understanding the regulatory program. One commentor suggested several ways to generate additional funding for these efforts, including allowing permittees to gain credit through monetary support to the regulatory program, development of research grant funds from scientific foundations, and imposing user-fees for filling wetlands.

- Some commentors suggested that the Corps currently has adequate funding for outreach and education. Moreover, some commentors suggested that due to the high level of misinformation and unproductive debate about the program in Alaska, the Corps is forced to expend valuable resources to correct the misinformation to the extent that these efforts divert resources from more traditional public education efforts. Therefore, it was suggested that these "sunk costs" could be more appropriately dedicated to education/outreach, rather than allocation of additional funds and resources.

- Some commentors spoke about a lack of understanding of the program by the public. One stated that Alaska's regulated public has a fundamental misunderstanding of the Section 404 program, is unaware of the tremendous flexibility it presently provides permit applicants, both large and small, and is uninformed as to the astounding infrequency that the program actually impacts operations in Alaska. The same commentor stated that EPA and the Corps should initiate an aggressive education program tailored to Alaska's regulated community, explaining how the program works and why it does not stifle growth, and is not an impediment to the State's economic growth and development. Another commentor stated that many "problems" with the regulatory program are misconceptions that should be addressed through proactive public outreach and education about the regulatory process and its successes, and that myths about the program need to be dispelled.

- One commentor stated that there should be greater outreach to the bush communities and local governments to educate them about, among other things, existing general permits which authorize many projects, and in general to increase their understanding and comfort with the program and the permitting process.

- Some commentors suggested there should be greater involvement of the Congressional offices in sharing information on the Section 404 program.

- Some commentors stated that they were often unaware of notices published by the

Corps describing proposed projects and special events, such as the Alaska Wetlands Initiative meetings, and suggested that some effort be made to expand the current system of printed public notices, newspaper notices, and news releases. In particular, these commentors suggested greater use of newspapers to disseminate program information. The commentors also suggested that public notice comment periods be lengthened to accommodate special Alaskan social patterns, such as periods of subsistence fishing and hunting, when many people are at remote camps unable to respond to public notices.

- One commentor suggested that there be increased outreach efforts to inform local entities, particularly bush communities and village leaders, about existing general permits as well as other program requirements.

- Some commentors suggested that there be some prioritization of public notices advertising proposed projects based on public interest values and types of activities, to facilitate volunteer organizations awareness of these projects, and theses groups' opportunity for comment.

- One commentor suggested that the tourism industry can be an effective partner in educating the public on the importance of Alaska's wetlands, to include the concepts of conservation and preservation, and the movement of visitors to view and enjoy wetlands.

- Some commentors stated that the government does not use the Native and local knowledge base adequately in its evaluation of resource values, and that this data base needs to be given more emphasis.

- One commentor suggested a clearinghouse as a source of information on all the agencies' requirements in the permitting process, possibly to be expanded to include a single point of contact for all permit reviews.

- Another commentor suggested including an informational mailing as an insert with other mailings, such as annual tax assessments to private property owners.

ANALYSIS AND PROPOSED RECOMMENDATIONS FOR DISCUSSION

One provision of the Administration's August 24, 1993, Wetlands Plan addresses concerns relative to outreach and education. In addition, there are specific actions that the Federal agencies in Alaska recommend which relate to outreach and education.

Administration Plan

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

Alaska Specific Actions

- Develop a Comprehensive Strategy for Outreach and Education Efforts. The agencies would develop an interagency comprehensive strategy for public education/outreach efforts in Alaska. Additional efforts would be made by the Corps, EPA, NMFS, and USFWS to expand their public outreach and education efforts to bush Alaska, small communities, specific target audiences, and the general public.

- Issue a Series of Special Public Notices. A series of special public notices issued jointly by the Corps and EPA would be initiated to inform the public in a more focused manner on selected 404 topics, e.g., Alaska wetlands functions and values; distribution, type and relative abundance and scarcity of wetlands; regulatory program performance; dispelling popular "myths" about the program; important elements of the permit review process; compensatory mitigation; availability of the issue papers prepared for the Alaska Initiative; the Section 404 mitigation sequencing process and how it is applied in Alaska; and other topics.

- Conduct Informal Teaching W[illegible] the Corps and EPA would examine the feasibility of conducting a series [illegible]al teaching workshops tailored to specific community needs, including some for villages, Native communities, and remote locations.

- Train Staff for Interaction with "bush" Communities. The Corps and EPA would provide special training for all their employees who deal with bush community issues to better understand and interact with these important communities.

- Sponsor Regulatory Coordination Positions. The Corps would fund positions to be staffed by Federal and/or State resource agencies, and housed at the Corps District office, to facilitate preapplication coordination, proposed project reviews, and other regulatory functions.

- Increase Emphasis on Preapplication Meetings. In order to expedite proposed project reviews, and to facilitate needed project modifications prior to formal

permit application submittal, applicants should be made aware of the availability, and strongly encouraged to participate in a preapplication coordination meeting with all pertinent regulatory and resource agencies.

- Initiate Mobile Regulatory Information Office. The Corps should initiate use of a mobile, seasonal regulatory office to provide easy access to program information by regulated communities accessible by road ("Wetlands on Wheels").

- Recommend written partnerships be established between the Corps and all interested stakeholders on Section 404. These documents would capitalize on the positive communications established during this Initiative, by clearly expressing mutually agreeable expectations and commitments associated with the Section 404 regulatory program. They would also describe communication networks to be established to better inform all constituencies of the purposes and procedures of Section 404 and to facilitate communication of concerns and priorities to the Corps by all stakeholders including Native communities.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
Alaska Operations Office
Room 537, Federal Building
222 W. 7th Avenue, #19
Anchorage, Alaska 99513-7588

January 27, 1994

The Honorable Mike Miller
The Senate of Alaska
State Capitol
Juneau, Alaska 99801-1182

The Honorable Bill Williams
House of Representatives
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Miller and Mr. Williams:

This letter is in response to a January 12, 1994 letter requesting a 45 day extension of the public comment period for the Alaska Wetlands Initiative Issue Papers. I am also responding to your January 24, 1994 letter which requests EPA and Corps involvement in the February 2, 1994 hearings.

We understand the issues covered in the papers are extremely important to all Alaskans. We believe the public process which resulted in the 11 issue papers has provided ample opportunity for written and oral testimony by all Alaskans. However, in response to your request, the public comment period was extended by 14 days. The extended comment period will close Friday, February 4, 1994.

As I have discussed with your staff, I will be available by telephone to participate in the February 2, 1994 hearings. I understand that you have copies of the December 17, 1993 public review draft issue papers. I am enclosing a copy of the facilitator prepared summary reports from the two rounds of meetings. If you need anything else in preparation for the hearing, please call me at (907) 271-5083.

Sincerely,

Alvin L. Ewing,
Assistant Regional Administrator
for Alaska

Enclosure

U.S. Army Corps of Engineers and

U.S. Environmental Protection Agency

Summary Report
Facilitated Alaska Wetlands Roundtable Discussions
Juneau, Bethel, Fairbanks, Anchorage
October 25 to November 5, 1993

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November 15, 1993

CONTENTS

INTRODUCTION

This report presents summaries of four facilitated Alaska wetlands roundtable discussions which took place in Juneau, Bethel, Fairbanks, and Anchorage, Alaska, between October 25 and November 5, 1993. These discussions were part of an effort by the U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA) to obtain input from Alaska interest groups regarding the Clean Water Act Section 404 wetlands permit program, and to consider environmentally appropriate means to provide regulatory flexibility for wetlands permitting in Alaska.

Each of the facilitated roundtable discussions took place following a day of presentations by invited stakeholders representing interest groups with a stake in the management of Alaska wetlands. The representatives identified problems and possible solutions concerning the Alaska wetlands permit system. The purpose of the roundtable discussions was to obtain additional information and clarification regarding stakeholder concerns. In addition, the roundtable discussions were to provide a better understanding of the divergent points of view on wetlands issues; identify wetlands regulatory problems, consensus areas regarding those problems, and suggested solutions; and note parts of the Alaska wetlands program that are working well.

The following summaries attempt to communicate the major themes, concerns, and possible solutions identified and addressed during each roundtable discussion. The summaries are based on notes taken by the discussion facilitators, were completed without benefit of the written transcripts, and do not represent the official record of the meetings. As overviews, these summaries do not reflect the amount of time spent on the various topics, nor do they note all of the points raised.

The summaries for the facilitated Alaska wetlands roundtable discussions are presented separately for each city. At the end of each summary is a copy of the stakeholder sign-up list for the particular roundtable discussion and a copy of the rough agenda used to guide discussion.

FACILITATED ALASKA WETLANDS ROUNDTABLE DISCUSSION

Juneau Summary Report
October 26, 1993

This facilitated Alaska wetlands roundtable discussion took place in Juneau, Alaska on October 26, 1993 at the Gastineau Salmon Hatchery Visitor Center. The roundtable discussion was sponsored by the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency. The discussion took place rollowing a day of presentations by invited stakeholders representing interest groups with a stake in the management of Alaska wetlands.

The stakeholder interest group participants included: Mr. Eldon Dennis (Commercial Fishing), Ms. Mary Nordell (Development Interests), Ms. Sharon Hawkins (Environmental), Ms. Tamra Faris (Federal Resource Agencies), Mr. Rick Harris (Forestry), Ms. Jan Caufield (Municipal Government), Mr. Bob Loescher (Native), Mr. Peter T. Hanley (Oil and Gas), Mr. Warren Wiley (Sport Fishing), Mr. Tim Cook (State of Alaska) and Ms. Karen Cowart (Tourism).

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

The purpose of the roundtable discussion was to obtain input from the primary wetlands stakeholders in Alaska to identify and address legitimate concerns regarding Federal regulation of wetlands in Alaska. In addition, the roundtable discussion was to provide a better understanding of the divergent points of view on wetlands issues; identify wetlands regulatory problems, consensus areas regarding those problems, and suggested solutions; and note parts of the wetlands program that are working well.

Discussion Summary

Areas of Agreement

The discussion was initiated by considering possible areas of stakeholder agreement. This effort was aided by a list of possible areas of agreement prepared by the facilitator which reflected common ideas noted in stakeholder presentations the previous day (see agenda outline). Consensus was reached on several areas of agreement which are stated below. Certain observations about the agreement statements made during the discussion are noted in

parentheses following each agreement statement. The stakeholder consensus is reflected only in the agreement statement:

- Wetlands resources are important. (The importance of wetlands resources was not disputed.)

- Need for an appeals process. (Concerns were voiced regarding which decisions were subject to appeal and how the process would work.)

- Need for a non-burdensome exit interview process. (Though the need for an exit interview/audit/program evaluation process was recognized, concerns were raised regarding the process creating an unacceptable administrative burden and diverting Corps personnel from the permit review process.)

- Need for permit processing time limits except for certain specified circumstances. (Concern was expressed regarding time limits causing either automatic denials or approvals.)

- Importance of wetland planning.

- Existence of high value wetlands. (Participants agreed that some wetlands had higher values than other wetlands.)

- Existence of low value wetlands.

- Need for flexibility in mitigation requirements. (Concern was expressed that flexibility not compromise critical habitat, e.g. fisheries protection.)

- Wetlands regulations serve a purpose.

- Need for a commitment of Federal funding and people to the Alaska wetlands management program. (The additional needs accompanying implementation of the President's program was one identified justification for additional fiscal/staff support.)

- Alaska's wetlands inventory needs improvement.

- Wetlands management in Alaska should be coordinated with other applicable laws.

Positive Aspects of Existing Program

After a brief discussion, stakeholders identified the following positive aspects of the current wetlands permitting program. These are not consensus points but rather points different stakeholders felt should be noted as good program aspects.

- Log transfer site facility issue. The joint Memorandum of Understanding (MOU) for permitting log transfer sites is a good program.

- Local Field Offices. Local Corps of Engineers field offices are a good idea and have provided help with wetlands delineation, permitting needs, etc. and have helped keep staff out in the field.

- The Section 404 wetlands law is a good law.

- The idea of public input and a public notice process as part of the Section 404 wetlands program is very important.

- The Abbreviated Permit Process (APP) used in the 80's was a good program.

- No wholesale changes needed in program.

General Issue Discussion

This discussion was aided by a list of issues prepared by the facilitator which were noted in stakeholder presentations on the previous day (see agenda outline). The discussion did not reach consensus but addressed the following issues:

Criteria for high value wetlands - Coastal estuarine, inter-tidal areas, and coastal salt marshes were identified as high value areas.

Need for improved wetlands inventory system - The need for a better resource inventory for wetlands including the need to provide for use of local data and the inventory's importance to watershed management were discussed. Agencies were encouraged to complete better inventories of wetlands. The expense of such an undertaking was acknowledged.

Need to improve the permitting process - Participants discussed the need for improvements in the permitting process in very general terms.

Other issues identified and briefly discussed included the need for cumulative impact analysis, consideration of access concerns, mitigation and mitigation banking, and General Permits.

Compensatory Mitigation

The discussion on compensatory mitigation reflected a variety of viewpoints. Some participants voiced concerns about compensatory mitigation being impractical to implement in parts of Alaska where no need would exist due to an abundance of wetlands and few places to create new wetlands. It was questioned whether compensatory mitigation was ever needed in Alaska. Some suggested that avoidance and minimization efforts, and accelerated restoration (on North Slope), should count as compensatory mitigation. It was also suggested that compensatory mitigation was not needed for even high value wetlands in some areas of the North Slope. Pre-planning was also suggested as an alternative to compensatory mitigation.

Other participants emphasized the need for compensatory mitigation if high value wetlands (critical habitat, salmon spawning and rearing habitat, etc.) were impacted. It was stated that compensatory mitigation for destroyed salmon habitat or other critical habitat was essential. It was also noted that destruction of marine shoreline resource environments should be subject to compensation. Other comments focused on the deterrent value of compensatory mitigation requirements; the acceptability of off-site mitigation; and the need for pre-planning to consider environmental impacts if it was going to be used for compensatory mitigation credit. Another stakeholder suggested that if a project impacted salmon habitat to the extent compensatory mitigation is required, the project should not happen.

The Corps of Engineers representative indicated that only 0.8% of the Alaska projects have been required to provide compensatory mitigation and that a great deal of concern may not be necessary. The discussion that followed noted that the concern was less over what the Corps of Engineers was doing now but rather the compensatory mitigation it may have to require in the future in view of the President's "no net loss goal". It was emphasized that finding feasible ways to add flexibility to Alaska wetlands management and deal with the "no net loss" concept was a purpose of the session.

Improve Permit Process

Participants indicated problems with permit timeframes and deadlines. Though it was admitted that these problems occurred on an occasional basis rather than an everyday basis, it was felt that the process could be improved with more clearly defined timeframes and deadlines. Timeframe concerns were not necessarily related to the Corps but with the pyramid of commenting resource agencies and the extra stipulations piled onto a project. It was noted that the other agencies should be accountable for their comments and the applicant should know "who wants what".

Another identified problem was applicant misuse of the "water dependent" category. Comments indicated tighter scrutiny is needed to determine if a project is really "water dependent". Follow up is also needed to see if the "water dependent" site is used for the designated purpose.

Certain participants indicated permit decisions are "pending" too long after adverse comments are received. A specific resolution process, possibly using a neutral third party, is needed to bring closure on permits. Certain evaluation terms such as "Aquatic Resource of National Concern" should have a clear definition so they are not inappropriately used in assessing a proposed permit.

Other participants felt the permit process was too lenient. It was emphasized that it should be very difficult to get a permit for a project in critical wetlands. The advantages of using a land use plan or watershed plan to guide permit considerations was also emphasized. Some participants voiced the need to consider cost, logistics, and existing infrastructure, as well as wetlands value in urban area permit decisions. It was noted that a plan could address such considerations.

Access to Wetlands Resource

Concern was expressed regarding access to or across high value wetlands. It was noted that it may be necessary to impact wetlands in order to showcase wetlands for tourism or educational purposes. The Corps of Engineers representative stated that the present system provides for wetlands access for visitor facilities through the use of impact minimization measures such as the use of pilings rather than fill. Such development can be allowed under the present system since it would be considered "water dependent" or "resource dependent". The Corps representative also confirmed that applications for road access across high value wetlands whether for access to a mine or visitor center would be subject to the same review and sequencing factors if the road footprints were the same.

General Permits

Several comments supported General Permits (GPs) as a good tool but recognized that a proposed GP should be carefully scrutinized to assure that it meets permit program requirements. Concerns were voiced regarding whether the Corps will finally approve GPs for urban areas (i.e., Juneau), whether the Corps will be willing to transfer real authority to local governments under GPs, and whether Washington, D.C., will interfere with GP approval at the last moment.

Some participants voiced a distrust of local government's ability to carefully use GPs, and a fear that local governments would abuse

GP authority. The need for close Corps oversight was emphasized. The need to consider cumulative effects of GPs was identified and a moratorium on GPs was suggested until the cumulative effects of existing GPs (especially on salmon habitat) were examined. It was noted that GPs should be based on wetland inventories and watershed plans, and that hard research was needed to develop such tools.

Other comments focused on the appropriateness of GPs for routine industrial activities such as oil development on the North Slope. Commentors indicated that a significant data base exists for North Slope wetlands and that a GP provides for resource protection at Deadhorse.

Possible Solutions

The discussion focused on possible solutions to problems identified in stakeholder presentations. The discussion did not attempt to form a consensus on the solutions but rather noted suggested solution possibilities and in some cases examined their potential. Solutions discussed included:

- Accelerated restoration could be used as an alternative to compensatory mitigation or to gain credit toward compensatory mitigation. This concept involves restoring or rehabilitating previously used industrial sites faster than is required by existing permits and gaining credit for early completion of the restoration project.

- Reclamation could serve as compensatory mitigation since the disturbed wetlands site is returned to wildlife habitat and/or its near original wetlands form.

- The wetlands on loan/no long term net loss concept should be used in assessing compensatory mitigation needs. This concept recognizes that certain types of development temporarily use wetlands with minimal impact and restore the site back to wetlands after use. Using this concept, such wetlands would not be charged against a "no net loss" policy requiring compensatory mitigation since in the long term no loss occurs. Identifying accelerated restoration and reclamation as adequate compensatory mitigation are consistent with this concept. The Corps representative noted that a problem with this approach is the developer leaving the site without completing the specified site reclamation. It was suggested that this concern be addressed through adequate pre-project bonding or a bonding pool.

- The creation of winter habitat for fish (deep over-wintering holes in streams) could be recognized as compensatory mitigation.

- Pre-project planning could be considered as fulfilling the avoidance and minimization sequencing requirements. This possible

solution assumes reasonable attempts are made during pre-project planning to avoid wetlands (or valuable wetlands) and to minimize impacts. A concern was raised that pre-project planning often primarily considers economic rather than environmental factors and thus was not a de facto good mitigation measure. Consequently, it was noted that pre-project planning would need to specifically address wetlands concerns and meet the purpose of avoidance and minimization requirements to replace such requirements.

- Different criteria for compensatory mitigation are needed for communities in bush Alaska except when critical wetlands habitat is impacted. The discussion noted that in much of bush Alaska (western, northwestern, North Slope, etc.) many communities are predominately located on and/or surrounded by wetlands. Any additional development whether for public facilities (sewer, water, schools, etc.) or businesses often necessitate wetlands use. In view of the abundance of wetlands in these areas, a "no net loss" compensatory mitigation policy has little justification and places unacceptable burdens on the communities. This impact is magnified since the communities are still developing basic services. It was noted, however, that even in bush Alaska, critical wetlands habitat should be protected and that compensatory mitigation may be appropriate if such habitat is impacted. The concern was voiced that even in a bush community, development could damage a salmon stream and impact the purpose/livelihood for the existing settlement.

Some points were made during the conclusion of the discussion. A participant requested that the recommendation that critical wetland habitats must be protected even in bush Alaska be included in this report. Another participant asked that the recommendation that no more General Permits be granted until we know the cumulative impacts of the existing permits be noted. Reflecting clarifying comments from the Corps representative and stakeholders, a concluding point was made that much of the wetlands management concern was focused on what might happen in the future under a "no net loss" policy rather than on existing Corps practices.

The Juneau Wetlands Roundtable Discussion was concluded at approximately 5:00 P.M. on October 26, 1993.

U.S. ARMY CORPS OF ENGINEERS AND U.S. ENIVRONMENTAL PROTECTION AGENCY

WETLANDS ROUNDTABLE SESSIONS

Stakeholder-
~~PUBLIC~~ SIGN-IN SHEET

GASTINEAU SALMON HATCHERY JUNEAU, ALASKA **10/26/93** PAGE 1 OF 1

Visitor Center-2697 Channel Drive

NAME	ADDRESS	REPRESENTING	PHONE NUMBER	FAX
Warren Wiley		Sport Fishing		
Bob Oja	Anchorage	Corps of Eng.	907-753-2712	FAX 753-5567
Tim Cook	Washington D.C.	Governor's Office	202 624 5858	
Jan Caulfield	155 S. Seward St. Juneau AK 99801	City and Borough of Juneau	907-586-5230	586-3365
Sharon Hawkins	P.O. 210654 Auke Bay AK 99821	Juneau Audubon	907 789-7414	
Karen Gillcart	3201 C St. Ste. 403 Anc AK 99503	Tourism AK Visitors Assoc	907 561-5733	561-5727
MARY A. NORDALE	P.O BOX 21211 Juneau AK 99801	F.S.C.	907-586-3340	586-6815
Peter Hanley	121 W. Fireweed Lane #207 Anchorage, AK 99503-2035	ADGA	907-564-5202	
Eldon Dennis	P.O Box 20070 Juneau, AK 99802	United Southeast Gillnetters Assoc.	907-586-3545	
Tamra Faris	Box 21668 Juneau, AK 99802	National Marine Fisheries Service	907 586-7235	
Rick Harris	ONE SEALASKA PLAZA SUITE 400 JUNEAU	ALASKA FOREST ASSN.	907-586-1572	
Bob Loscher	ONE SEALASKA PLAZA SUITE 400, JUNEAU	NATIVES, MITSUI SEALASKA CORP.	907-586-1572	

U.S. Army Corps of Engineers

AND

U.S. Environmental Protection Agency

Wetlands Roundtable Sessions

10/26/93 Juneau, AK

Possible areas of agreement

- Preservation of Wetlands Resources is important
- Need for an appeals process
- Need for exit interview
- Need for permit processing time limits
- Importance of Wetlands planning
- Existence of high value wetlands
- Existence of low value wetlands
- Need for flexibility in mitigation requirements
- use of general permits as a tool.

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

Wetlands Roundtable Sessions
10/26/93 Juneau, AK

IDENTIFIED ISSUES

- Criteria for High Value / Low Value wetlands
  - 1 Examples of each
  - 3 criteria considerations
- Higher value wetlands should have stronger mitigation requirements?
- Extent of permitting problems
  - approval / denial / withdrawal
- Improving permit process
  - processing time frames
  - streamlining process
  - lack of funds / staff
  - Public notice delay
- Mitigation (what constitutes) • regions
- Criteria / definition for mitigation banking
- General permits
  - requirements / definition
  - timeline
  - types of wetlands
  - transfer of authority

- Improving wetlands inventory and classification
  - regional criteria : western hemlock
  - use of detailed regional data
- Incremental Development / cumulative impact
  (watershed-wide / regional)
- Wetlands Access
  - maintenance and future provision
- Functions and relative values of wetlands
- Alternative Wetlands management
  - ie State / Native Corporation

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

Wetlands Roundtable Sessions
10/26/93 Juneau, AK

Possible Solutions

Mitigation

- accelerated restoration for North Slope mitigation
- required reclamation for mining mitigation
- long term preservation over short term mitigation
- recognition of pre-project planning as "avoidance and minimization" sequencing.
- Different criteria for "bush" Alaska
  ie Western and north western regions

General Permits

- expand general permits program on regional basis for routine industrial operation
  ie Oil and Gas on North Slope

- guidelines for wetlands planning

- develop criteria for acceptable general permit

Permit Process

- Re-initiate APP process
  (abbreviated permit process)

FACILITATED ALASKA WETLANDS ROUNDTABLE DISCUSSION

Bethel Summary Report
October 28 & 29, 1993

This facilitated Alaska wetlands roundtable discussion took place in Bethel, Alaska on October 28 and 29, 1993 at the Pacific Guest Hotel. The roundtable discussion was sponsored by the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency. The discussion took place following a day of presentations by invited stakeholders representing interest groups with a stake in the management of Alaska wetlands.

The stakeholder interest group participants included: Mr. Harold Sparks (Commercial Fishing), Ms. Becky Gay (Development Interests), Ms. Karen Samuelson (Environmental), Mr. David McGillivary (Federal Resource Agencies), Mr. William J. Hunter (Municipal Government), Mr. Nelson Angapak (Native), Mr. Mike Joyce (Oil and Gas), Dr. Paul Rusanowski (State of Alaska), and Ms. Karen Cowart (Tourism). During a portion of the discussion, Mr. Phillip Guy participated as the Native stakeholder representative.

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

The purpose of the roundtable discussion was to obtain input from the primary wetlands stakeholders in Alaska to identify and address legitimate concerns regarding Federal regulation of wetlands in Alaska. In addition, the roundtable discussion was to provide a better understanding of the divergent points of view on wetlands issues; identify wetlands regulatory problems, consensus areas regarding those problems, and suggested solutions; and note parts of the wetlands program that are working well.

Discussion Summary, October 28, 1993

The wetlands roundtable discussion began around 3:00 P.M. on October 28, 1993. After stakeholders identified priority issues for consideration, the discussion centered on possible exemptions from compensatory mitigation requirements based upon land ownership status and wetlands value.

Ownership Status Exemption (Native and State Lands)

The discussion considered the possibility of basing an exemption to Section 404 compensatory mitigation requirements on types of land ownership such as Native or State owned lands. The basis for such an exemption would be that these lands were established and identified by compacts between the landowner and the Federal government.

Some participants indicated that the Alaska Native Claims Settlement Act (ANCSA) represented a compact whereby the Federal government gave certain lands to Alaska Natives for purposes of economic development. Certain lands were required to be selected in core village townships and around rural Native village areas which in many cases were predominantly wetlands. According to this line of reasoning, it thus was not fair or consistent with the compact to now require Native Corporations to provide compensatory mitigation for economic development on their land. Such a requirement could represent a substantial economic burden which could discourage economic development of Native lands.

Some of the ANCSA land exemption options discussed included: applying the exemption either to part of the Native lands such as core townships which corporations were required to select or to all ANCSA lands due to the compact; applying an exemption to ANCSA lands according to wetland values (low value lands exempted); and requiring the Federal government to pay required compensatory mitigation costs. A concern was raised regarding whether this was a desirable exemption if it endangered important wetlands used for local subsistence or habitat purposes and that the function and value of the wetlands should be considered.

During this discussion, a question was raised regarding whether the existing wetlands permitting process was causing significant problems for ANCSA land development. The Native stakeholder indicated that the existing system was not a problem but that a future system which required compensatory mitigation to fulfill a "no net loss" policy would be a problem. The need for flexibility on ANCSA lands was emphasized. It was also suggested that the local development needs of villages surrounded by wetlands should be taken into consideration under any new policy. Provision of better information to the villages about the permit process and new policies was also encouraged.

Though it was not discussed at length, the comment was made that the same exemption considerations applied to ANCSA lands should be applied to the State of Alaska lands which were also established by a compact, the Alaska Statehood Act.

Exemption for Low Value Wetlands

The possibility of an exemption for low value wetlands was also discussed. There appeared to be a consensus that abundant low value wetlands should be exempted from compensatory mitigation requirements. The discussion leading to this conclusion considered the abundant wetlands situation in western Alaska and assumed a process that used resource planning and local information to back a low value designation.

Much of the discussion focused on the problem of defining low value wetlands. The different inventory and classification systems were noted as well as the limited knowledge of "how the arctic operates" and the need to consider off-site system wide impacts of wetlands development. A comment was made that wetlands value may be in the eye of the beholder and that some people feel there is no such thing as a low value wetland.

The discussion also noted that the U.S. Fish and Wildlife Service already makes a high value/low value wetlands determination when recommending site or project specific mitigation measures. It was also stated that the Corps makes such determinations on a site basis and does not require compensatory mitigation for low value areas. Consequently, it was suggested that the Corps practices regarding low value wetlands should become codified or set in regulation to reduce apprehension about the future. Participants stressed the need to consider local conditions and information.

Another suggestion regarding management of low value wetlands focused on establishing a system like the Alaska Coastal Management process which looked at impacts in a comprehensive manner. It was further suggested that some form of threshold of loss for wetlands in particular areas or regions be established and used as a compensatory mitigation guide.

Discussion Summary, October 29,1993

Permit Mechanisms for Minor Projects

It was felt that greater use of minor project permit mechanisms such as General Permits (GPs) and Abbreviated Permit Processes (APP) mechanisms could improve the Corps workload and allow low impact or routine projects to go forward more efficiently. It was noted that GPs directed towards a certain activity such as routine oil and gas activities on the North Slope could require "best management practices" and meet the permit purpose with less effort. Similarly, an APP could be used for minor projects such as adding fill to a drill pad using best management practices to avoid critical habitat and impact the smallest possible footprint.

The discussion continued with the Corps of Engineers representative explaining the current types of permits and how each permit is used. It was emphasized that 21 GPs are now authorized for a variety of purposes such as community residential and commercial development, industrial zones, placer mining, etc. The GPs are usually area or activity specific but some are issued on a statewide basis. APPs are used for conditions where the proposed activity could result in more impact but enables use of a streamlined process for meeting pre-set conditions.

The discussion indicated a general impression that GPs work and should be used on a broader basis. The participants agreed that the use of GPs in rural Alaska was adequate to cover residential and commercial development but not industrial development on a community basis. A consensus was also reached that a regional type of general permit was a good idea for residential and commercial development in rural Alaska. It was indicated that a Housing and Urban Development (HUD) GP already covered commercial and residential development in several bush communities and represented a good precedent. The importance of community involvement in the pre-notification phase for local GPs and for the Corps to carefully monitor GP use was emphasized. It was also suggested that an APP would be appropriate for waste water facilities and sewage lagoons in rural communities.

Mitigation

The discussion focused on alternative ways to practically approach mitigation in Alaska. Concerns were raised regarding rigid sequencing requirements (avoidance, minimization, and mitigation) and the need to encourage process flexibility rather than require that all steps be fulfilled. It was suggested that accelerated restoration of no longer used gravel pads on the North Slope be accepted in place of compensatory mitigation. It was also suggested that pre-planning of projects during which valuable wetlands were avoided and impacts minimized be credited for the avoidance and minimization sequencing requirements. Some participants cautioned that agency involvement and possibly criteria would be necessary in such pre-planning to assure adequate consideration of wetlands. The opinion was voiced that pre-planning should get credit if it addressed environmental and agency concerns.

This discussion continued with the clarification that "no net loss" was not now a requirement, that the current process has flexibility, and compensatory mitigation is not always needed. It was also clarified by Federal agency representatives that migratory nesting habitat was considered high value wetlands.

The discussion then addressed compensatory mitigation credit for wetlands already protected by existing refuges and credit for

mining reclamation. Some participants felt that since Alaska already had so many wetland acres in refuges that such acreage should be credit towards future wetlands disturbance. Other participants commented that this approach did not recognize that several types of development such as mining, oil and gas production and grazing take place in Alaska refuges and that "no net loss" protection cannot be assumed. Discussion of the use of mining reclamation for mitigation credit focused on how to assure that reclamation took place after credit was given. Bonding possibilities were suggested as well as consideration of a developer's past track record as part of the determination. It was reported that the Corps of Engineers has the authority to require bonding.

The consideration of mitigation concerns concluded with comments on the need for some form of a clearinghouse coordination entity to facilitate final decisions, to act as the final authority, and to avoid final hour objections and surprises. It was suggested that such a clearinghouse may require a broad base taking into account coastal management program concerns. One participant cautioned that this may make it more difficult to work out mitigation.

Other Exemptions

It was suggested that Capital Improvement Projects (CIPs) in bush Alaska be covered by a General Permit and exempt from compensatory mitigation requirements. The discussion acknowledged that such projects may impact wetlands but that a balance was needed regarding provision of public services and wetlands protection. The need for sewer and water projects as well as other public health related projects to go forward unimpeded was emphasized. The Corps representative indicated that an Abbreviated Permit Process for sewer and water projects was nearly in place to cover bush Alaska.

A general exemption for bush Alaska from compensatory mitigation requirements was suggested. The discussion considered alternatives to such a broad exemption such as: an activity related exemption for CIPs, education and public health facilities," water dependent" activities and transportation facilities; an exemption threshold established regarding size of projects; and applying an exemption to bush areas except for cities with existing environmental problems such as Unalaska. The appropriateness of such qualified alternatives was indicated as participants noted that critical wetlands habitat could be impacted and that the cumulative impacts of several projects in a specific area may be a concern. The need for balance in dealing with wetlands protection and the necessity of developing wetlands in many areas of bush Alaska was emphasized.

A clarification was also made that Federal policy does not mandate compensatory mitigation outside Alaska for Alaska projects.

Human Elements

Participants communicated the need to balance wetlands protection with human needs in bush Alaska and especially in western Alaska. A perceived need to elevate the human element in dealing with permits for rural Alaska was identified. The Corps representative clarified that the Corps already places significant consideration on the human element.

The discussion continued by emphasizing the unique situation in western Alaska including the abundance of wetlands, a local economy moving from a subsistence to a subsistence/money economy, the local cultural and language differences, high unemployment and a cultural respect for wildlife and the environment. The need to develop the area, gain employment and acquire basic services while protecting wetlands was stressed. Some participants also referred to the Alaska Constitution language regarding use of resources for benefit of the people and the inappropriateness of placing Lower Forty-Eight concepts on Alaska.

Wetlands access was also considered. The importance of transportation and other forms of access to coastal wetland areas to meet public education and tourism needs was noted. Involvement in pre-planning and coastal management program efforts was suggested as a good approach to addressing access to critical wetland areas. The Alaska Tourism Association's plan, "Destinations Alaska", was referenced as a starting point for such efforts.

Improving Permit Process

Comments regarding permit process improvements focused on processing timeframes and streamlining the process. The need for a defined processing timeline was identified. The discussion focused on a need for limiting the period for agency comments and permit recommendations. Some participants indicated that individual agencies could stop the clock with their concerns or use extended processing time as a lever to win concessions or agreements to stipulations.

Concern was also voiced regarding the duplication of effort required to discuss the same points separately with different agencies. It was suggested that some process be developed for collectively discussing a permit with different agency representatives at one time. This could lead to a collectively accepted solution to agency concerns and reduce processing time.

Another concern regarded providing an adequate opportunity for public and local government participation in the process. The limitations on local participation in part relate to a lack of local staff and resources. The use of the coastal management program as an additional means for local input was suggested by one participant. It was emphasized that process streamlining should not sacrifice public input but that such input should come during, not after, the process.

Subsistence

Participants from the Bethel area discussed the inter-relationship between subsistence and local wetlands. It was emphasized that people of the region are very dependent on the wetlands for food and did not consider any wetlands low value wetlands. In addition, concern was voiced that less critical wetlands served as backup habitat during dry years and also needed protection. Concern was also expressed about the possibility of habitat contamination. Local participants, however, envisioned development use of wetlands near communities as a necessary part of the relationship. It was suggested that western villages be exempt from compensatory mitigation requirements for village development. A stakeholder provided a further recommendation that wetlands regulations recognize the existence of areas where it is not practical to restore or create wetlands.

Comments also emphasized the need to give more weight to local knowledge and input as a part of the regulatory process including consideration of traditional and customary use of an area. The interdependence of the local ecology and economy was stressed.

Wetlands Classification and Mapping

The wetlands classification and mapping discussion began with a description of the existing wetlands delineation and classification processes by a Corps of Engineers representative. The U.S. Fish and Wildlife Service representative described the National Wetlands Inventory (NWI) system and its goal of completing the inventory for Alaska by the year 2000.

Participants discussed the need for better wetlands inventory and classification tools, the need for agreement between agencies on classifications and the identification process used to identify the 375,000 acres of coastal marshlands. It was noted that the NWI is a useful tool but that more detailed information is needed. Some participants voiced concern that the NWI was not very useful for permitting purposes and that a more useful approach was needed. Others commented on its usefulness as a reference for permitting.

The importance of agreeing on a system to classify low value wetlands was stated. The appropriateness of delineating and classifying wetlands related to smaller development areas was also stressed.

Other Areas of Concern

The roundtable session concluded with a discussion of recent State of Alaska efforts and mitigation banking. Noted State of Alaska efforts included: a common understanding for wetlands classification, an umbrella mitigation banking system to cover situations where compensatory mitigation is appropriate and necessary, and working with Federal agencies on the development of more General Permits and Abbreviated Permit Processes including one for sewage lagoons and water systems.

Additional comments focused on mitigation banking. It was noted that there was a need for mitigation banking to aid communities such as Anchorage and Juneau when compensatory mitigation is required for unavoidable loss of valuable wetlands. A comment was made that mitigation banking is not needed on the North Slope where other alternatives such as accelerated restoration should be able to satisfy compensatory mitigation requirements.

A comment which represented an apparent consensus indicated a preference for development to take place in low value rather than high value wetlands.

The Bethel Wetlands Roundtable Discussion was concluded at approximately 5:00 P.M. on January 29, 1993.

U.S. ARMY CORPS OF ENGINEERS AND U.S. ENIVRONMENTAL PROTECTION AGENCY

WETLANDS ROUNDTABLE SESSIONS

SIGN-IN SHEET

PACIFIC GUEST HOTEL BETHEL, ALASKA **10/29/93** PAGE 1 OF 1

BOX 1298

Stakeholders

	NAME	ADDRESS	REPRESENTING	PHONE NUMBER
10/28	Mike Joyce	ARCO Alaska PO Box 100360 Anch. AK 99510	AOGA	265 6534
10/28	Karen Carnahi	AVA 3201 C St Ste 403 Anc AK 99503	Tourism	561-5733
10/28	David McGillivary	1011 E. Tudor Rd. Anchorage Ak 99503	FWS	786-3605
10/28	Karen Samuelson	PO Box 414 Bethel, AK 99559	AMCC	543-3521
10/28	Nelson N. Angapak	601 W. 5th Ave, Ste 200 Anchorage, AK 99501	AFN/Cattlek	279-5516
10/28	Paul Russanovich	PO Box 110030 Juneau AK 99811	State of Alaska	465-3562
10/28	BECKY GAY	721 W. Fireweed Suite 250 Anchorage AK 99503	Development RIC, Inc	276 0700
10/28	Dave Hanson	1100 Airport #369 Anchorage AK 99501	Facilitator	271-8427
10/28	Niki Stewart	2440 E. Tudor #252 Anchorage	Asst. Facilitator	563-4666
10/28	Harold Spanck	Box 267 Bethel AK 99559	Fisheries	543-3788
	Don Kohler		CORPS	
10/28	Bob Oja		CORPS	
10/28	Al Ewing		EPA	
	William J. Hunter	City Manager	City of Bethel	543-2087

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

Wetlands Roundtable Sessions
Bethel, AK

AGENDA 10/29/83

8:30 - 8:40 am Introduction
8:40 - 9:30 am Permit mechanisms for minor impact projects
- APP, GP
- activity related
- resource related
- area/region
9:30 - 10:15 am Mitigation
- sequencing
- compensation
- reclamation
- increasing sequencing flexibility
- determination of offsite & secondary impact

Compensatory mitigation
Conservation of sub-strata

10:15 – 10:35 am Coffee Break

10:35 – 11:15 am Other Exemptions to Compensatory mitigation
- CIP
- activity related
- regional
- city/town related
- landuse related

11:15 – 12:00 noon Consideration of human element and intended use in relationship to wetland value
- Human element/use deserves elevated consideration
- Access decisions

12 noon – 1:15 pm =LUNCH=

1:15 pm – 2:15 pm Improving Permit Process
- processing time frames
- streamlining process
- lack of funds/staff
- public notice delay
- permit process streamlining for routine regional activities
- need to include local communities/government in permitting process
  a) incl. improved communication

2:15-3:00pm Subsistence related issues
- All lands have value
- Local/gov't cooperation to address negative natural processes and enhance wetlands related Salmon habitat.
- Wildlife management processes which result in contamination of natural food resources in wetlands.

3:00-3:15pm Coffee Break

3:15-4:00pm Classification, mapping, inventory

4:00-5:00pm Other issues and considerations

FACILITATED ALASKA WETLANDS ROUNDTABLE DISCUSSION

Fairbanks Summary Report
November 3, 1993

This facilitated Alaska wetlands roundtable discussion took place in Fairbanks, Alaska on November 3, 1993 at the Captain Bartlett Hotel. The roundtable discussion was sponsored by the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency. The discussion took place following a day of presentations by invited stakeholders representing interest groups with a stake in the management of Alaska wetlands.

The stakeholder interest group participants included: Mr. Joe Widman (Commercial Fishing), Mr. Karl Hanneman (Development Interests), Mr. Larry Landry (Environmental), Ms. Jeanne Hanson (Federal Resource Agencies), Mr. Pat Smith (Municipal Government), Mr. Nathan Bergerbest (Native), Mr. Mike Joyce (Oil and Gas), Mr. Dick Bishop (Sport Fishing), Dr. Paul Rusanowski (State of Alaska), Ms. Nancy Lethcoe (Tourism), and Mr. Ed Watts (U.S. Department of Energy).

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

The purpose of the roundtable discussion was to obtain input from the primary wetlands stakeholders in Alaska to identify and address legitimate concerns regarding Federal regulation of wetlands in Alaska. In addition, the roundtable discussion was to provide a better understanding of the divergent points of view on wetlands issues; identify wetlands regulatory problems, consensus areas regarding those problems and suggested solutions; and note parts of the wetlands program that are working well.

Discussion Summary

Wetland Values

The session began with a conversation regarding different wetland values and the identification of wetlands requiring greater protection. The suggested wetland types requiring greater protection based on biological importance included: 375,000 acres of salt marsh inter-tidal areas; riparian wetlands related to

steams, lakes, and rivers; inter-estuarine areas; sub-tidal to inter-tidal wetlands receiving freshwater input from streams and rivers; migratory waterfowl nesting habitat; brown bear habitat; and special aquatic sites. During the discussion, it was suggested that the criteria used for already protected wetlands should be used for any additional wetlands designations.

The discussion continued with a focus on human values for wetlands which may justify greater protection. The human value areas identified included: wetlands supporting subsistence activities; fish rearing and reproduction areas supporting commercial and sport fishing needs; wetlands important to recreational and tourism activities such as bird watching and wildlife viewing, sport hunting, rafting activities, and general scenic viewing; area specific wetlands important to aesthetic values or the local economy such as Kenai River wetlands and Bristol Bay area wetlands; and areas contributing to flood control and aquifer recharge.

The need to recognize location and existing use considerations was stressed as well as recognizing existing protections on wetlands. It was noted that since so much of Alaska wetlands were already in conservation units, they had significant protection and that this should be considered in determining further areas requiring protection. Other comments clarified that wetlands in conservation units are not necessarily protected from development since certain types of development can still take place, and that significant private inholdings as well as other State and private land do not have adequate protection.

The approach to prioritizing wetlands was discussed with emphasis placed on the need to rank more important wetlands. It was suggested that Corps efforts be prioritized on wetlands needing greater protection and that further ranking among high value areas was necessary. However, concerns were voiced that a single set of values (e.g., habitat values) should not be used to make wetlands decisions since equal value habitats may have different development demands. It was stressed that blanket classifications are not adequate and that site specific analysis is required. It was also stated that high value wetlands may be located in large low value areas and that all wetlands have values. Comments indicated that a key consideration was the relative value of a wetland and the impact of human activities. Stakeholders emphasized the need for evaluation and management flexibility due to different levels of use competition and that circumstances exist where high value wetlands must be used for development.

Compensatory Mitigation

Compensatory mitigation considerations initially focused on the meaning of the President's "no net loss" policy and the confusion surrounding the term. Questions were asked regarding whether "no

net loss" referred to the need to replace developed wetlands on an acre-for-acre, value-for-value, or function-for-function basis or some combination of the these approaches. It was stated that Alaska could not satisfy a "no net loss" policy since the State lacks degraded wetlands to rehabilitate, lacks areas for wetlands of equal value, and that many communities must develop wetlands to provide services. It was noted that "no net loss" applies to the entire national wetlands base and that the President's policy already recognizes that a different approach is required in Alaska. One suggested approach would be to codify policy language regarding flexibility for Alaska.

The discussion progressed to the consideration of alternative measures to meet compensatory mitigation requirements when such requirements are appropriately imposed. Accelerated restoration of no longer used drill pads or oil and gas development sites was suggested. Such action could restore a gravel pad to useful wildlife habitat fifteen, twenty or thirty years sooner than might be required by an existing permit. Accelerated restoration may also apply to a drill pad which does not have rehabilitation requirements. A concern was voiced that though accelerated restoration may be a good thing, is it really a gain and does it really provide compensatory mitigation since it might happen anyway. Other comments indicated that the agencies apparently like the concept, that it does result in meaningful wildlife habitat, and it is better than a gravel pad.

Reclamation for mining projects was also mentioned as a viable form of compensatory mitigation or as general mitigation when compensatory mitigation is not required. It was noted that most mining projects have a required reclamation plan. A question was raised concerning the appropriateness of linking reclamation to satisfaction of compensatory mitigation requirements, since nothing was gained. Another comment indicated that when wetlands valuable for tourism are lost, general reclamation in other areas might be appropriate. It was suggested that more flexibility is needed in looking at off-site mitigation.

Other comments indicated that there should not be a blanket compensatory mitigation requirement but that it should be limited to where it is appropriate and practical. Voiced reactions noted that there was not enough compensatory mitigation now, that a blanket exemption from compensatory mitigation was not acceptable, and that compensatory mitigation needs to be retained as an option. Further comment was made that compensatory mitigation is the exception rather than the rule, and that as a last step in sequencing, it is rarely used to provide on-site or off-site compensation. The possibility of monetary settlements being used was noted.

The Corps of Engineers representative explained that current practice takes into account tradeoffs and evaluates a project based

on costs and resources both to those benefiting from the development and the total social or public cost of the development. Other comments indicated the need to have compensatory mitigation when high value wetlands are impacted or major projects take place on moderate quality wetlands, the need to balance considerations of wetlands and development or equity in rural areas, and that the sole consideration should not be wetlands compensation.

Mitigation Banking

Following a short discussion of the definition of mitigation banking, stakeholders considered on-going mitigation banking efforts and options. It was reported that the City and Borough of Juneau is setting up a mitigation banking plan to address compensatory mitigation needs within the Borough. This plan may provide credit for enhancement or restoration of degraded wetlands within the Borough to offset other wetlands development. The use of wetlands conservation easements preserving Native Corporation and other private owner wetlands was identified as a possible source of mitigation bank credits. It was also suggested that private wetlands important to tourism could be purchased and saved from future impacts as a bank credit. A stakeholder indicated the State of Alaska is also beginning to formulate a statewide mitigation banking alternative since it is felt that some high value wetlands will be lost and some form of compensation will be needed.

Several concerns were raised about the mitigation banking concept. A question was asked regarding whether the existence of a mitigation bank would stimulate additional compensatory mitigation requirements since such mitigation may become appropriate and practical. Concern was also expressed that additional acre for acre mitigation requirements would result if a bank was in place. The equity question regarding the worth of lost wetlands was raised as an issue if money is used for bank credits. Another stakeholder questioned the need for a mitigation bank.

Compensatory Mitigation Exemptions

The possibilities of exemptions for bush Alaska, Capital Improvement Projects (CIPs) and Native Corporation lands were briefly discussed. Comments primarily addressed exempting CIPs in bush communities so unnecessary burdens would not be added to community efforts to establish basic services. Concerns were raised regarding the possible impact of CIPs on critical high value wetlands and that case by case analysis was still required. An alternative was suggested that CIPs on the existing road system in bush communities be exempted from compensatory mitigation but that the exemption would not apply to CIPs on new roads. The Corps of Engineers representative reported that no permits have been denied

for CIPs in the bush and that none of the permits have required compensatory mitigation. The Corps was reported to be in the final stages of implementing an Abbreviated Permit Process for sewage lagoon and water facilities in bush Alaska.

Human Element

Tourism and recreational use of wetlands was noted as a value which needed greater consideration in permit decisions. The tourism stakeholder indicated that the economic cost to the tourism industry in loss of existing business and future economic opportunity needed to be recognized. Projects need to be modified to preserve viewscape qualities and areas of undisturbed property. The Corps of Engineers representative stated that tourism and recreation values were two of twenty-two considerations assessed during the permit process. A comment was made that though it was in the regulation, tourism and recreation values deserve more consideration.

The need to balance wetlands protection with economic development in rural areas was also discussed. A comment was made that compensatory mitigation was not justified in bush Alaska. It was suggested that a 1% exemption be implemented for Native Corporation (ANCSA) lands or that the corporations be given direct management authority for wetlands permits. Reactions to this suggestion indicated that the 1% exemption for ANCSA lands would not work since it would also exempt critical high value wetlands. It was also suggested that a more acceptable alternative to Native Corporation assumption of wetland permitting authority would be a General Permit (GP) for corporation lands. A noted Native Corporation concern with this option was that though GPs were a step in the right direction, they usually did not apply to high value wetlands. Other shortcomings identified included the observation that a large percentage of corporation shareholders may not be area residents and may not care for the land and related subsistence values, and that corporation economic priorities might dominate wetlands management.

A conceptual consensus was reached that there should be accommodation in the permit program for economic development in rural Alaska. The unanswered question was how such accommodation should be provided. Some suggestions included the government compensating Native Corporations for any value loss due to wetlands permits, applying a 1% exemption principle to ANCSA lands except for high value wetlands, or codify the words "appropriate and practical" for wetlands protection in the bush. A final comment was made that though ANCSA lands were conveyed as a settlement, it did not mean that Federal regulations no longer apply.

Wetlands Impact on Property Values

A concern was voiced by a stakeholder that the wetlands permit program was causing wetlands property values to fall in the Fairbanks area. This decrease in property values was attributed to the public knowledge that a permit would be required before any development could take place on the wetlands. It was indicated that the existence of a permit requirement could amount to a taking without compensation. EPA and the Corps of Engineers were called upon to recognize this property loss and seek a way to make the property owners whole such as through the use of compensatory public funds.

The ensuing discussion focused on whether this was a problem of reality or perception. Some stakeholders indicated that the Corps permit requirements rarely prevented use of a wetland or resulted in onerous requirements and that the value drops must be related to misconceptions about the program. Some ideas suggested to help clear up misperceptions about the program included public education efforts regarding program requirements, an information program for Fairbanks real estate agents, involvement of the Congressional offices in education efforts, and use of newspapers. Another comment took exception to the value drop not being considered a "real problem" and suggested that some Corps permit restrictions are part of the problem. The discussion concluded with suggestions that the misconceptions be addressed and that compensation concerns could not be resolved at this roundtable.

Regional Impacts on Users

Roundtable participants briefly considered regional impacts of wetlands management on different wetlands users. The Kenai River was used as an example of user concerns regarding permit related protection. It was suggested that interest groups remain involved in permitting and regulating activities on the river. It was noted that the State was working on two impact studies regarding cumulative impacts of river development and management practices. The need to identify key user impacts by region was stressed. Concerns were also voiced regarding the ability of volunteer groups to keep up with public comment demands and whether there was a way for the Corps to prioritize important notices.

Use of Planning in Permitting Activities

The role of planning in permit activities was briefly considered. The need to consider long range community plans including identified present and future needs as part of the permit decision process was encouraged. Plan designations should be reflected in permit stipulations. Consideration of the comprehensive project plan and ultimate project design when permitting a phase or part of

a project was identified as an important step in the permit process. It was suggested that preauthorization of an entire development project, even if only part of the project was being considered for an immediate permit, would smooth the way for future project permits.

General Permits

The General Permit (GP) program was felt to be working well by some participants and additional GPs were encouraged. The GP for the Fairbanks industrial district was specifically mentioned. Another stakeholder indicated that GPs which impact tourism and recreation are not working well and referenced the GPs for mariculture sites and floating homes. These statewide GPs were labelled as a back door approach to development since they are not part of the local planning process and do not have to match up with uplands management plans. Three mechanisms were identified for impacting such GPs including comment before the GP is issued, the review of the GP after three to five years, and in the case of mariculture sites, the State coastal management plan and program. It was indicated that more public education and involvement of the effected parties at the front end of the GP process would improve the results.

Other comments indicated that statewide permits are too broad for a state as big as Alaska. The area covered was felt to be too large to be monitored by the public. A smaller regional or specific activity area focus for GPs was believed to be more appropriate. Another participant noted that GPs are used for regional/water basin related placer mining activity. Concern was also voiced that the cumulative impacts of the GPs and the overall GP program needed to be assessed. The key improvement discussed was the need to involve impacted interest groups up front since so much planning is completed before the permit is issued. Better notification for impacted parties was suggested so that they are aware a GP is being considered rather than learning about it after it is issued.

The Abbreviated Permit Process (APP) was also considered. It was emphasized that a full public comment process takes place at the front end as an APP is created, but that public comment is limited after an APP is in place since the review period is abbreviated. As the discussion concluded, the Corps was complimented on their efforts to acquire and consider public comments.

Increased Funding for Corps/EPA

Some participants supported additional funding for the permit education program. Other comments supported an increased emphasis on public education but questioned whether increased funding was

necessary. It was suggested that a reprioritization and allocation of agency efforts and existing funds might be the answer. Reference was made to the Clinton Program call for a strategic plan for education programs and the possibility of budget evaluations combined with possibly more money.

Additional comments indicated that several public education efforts including work with schools is ongoing. The value of the Corps field offices in educating and helping the public was noted as another thing the Corps is doing right.

Other noted funding needs included completing resource inventory and classification work, wetlands planning, preapplication activities and monitoring and enforcement.

Classification and Delineation

As a follow up to earlier comments, the emphasis for the wetlands classification effort was briefly discussed. Initially, it was suggested that classification efforts focus on high value wetlands areas. However, it was indicated that the classification process now focuses on community activity and development areas where permits may be needed in the near future. Community activity areas were felt to be a good priority for classification action.

Improving Permit Process

Comments regarding the permit process indicated a desire for a defined time period for a Corps of Engineers permit response and a more thorough, final information request step for additional permit application information after the initial Corps review. Corps and agency representatives indicated that a timeline did exist but that a common problem involved acquiring adequate information from the applicant to make a decision. Stakeholders suggested that additional "hands on" assistance be provided for permit applicants as well as example model project applications. Comments noted some of this type of information is already available. Additional funding was suggested to help establish an application assistance position.

Comments were also made regarding winter permit processing when only limited site data may be available but decisions are made anyway due in part to processing time considerations.

Appeals Process

Stakeholders supported the appeals process but disagreed over who should be able to appeal a permit decision. It was stated that the President's proposed appeal program would allow only permit

applicants to appeal and would limit appeals to permit denials. Some stakeholders supported this limited process since it did not allow the public to appeal approvals which could hold up every project. Other stakeholders felt the public or interested parties should also be able to appeal decisions, both approvals and denials. Other comments pointed out that appeals take time and money and as a result an open appeals process would not be abused. Others suggested possible misuse of a more open process could be discouraged by appeal guidelines, responsibility for court costs if you lose, and limiting the appeal rights to applicants and other parties involved in the comment process.

Following a public comment period and stakeholder closing comments, the Fairbanks Wetlands Roundtable Discussion was concluded at 5:00 P.M.

U.S. ARMY CORPS OF ENGINEERS AND U.S. ENIVRONMENTAL PROTECTION AGENCY

WETLANDS ROUNDTABLE SESSIONS

SIGN-IN SHEET

CAPTAIN BARTLETT HOTEL — FAIRBANKS, AK — **11/3/93** — PAGE 1 OF ___

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

Wetlands Roundtable Session
Fairbanks, AK
11/3/93

AGENDA

8:30-8:45am Opening

8:45-9:30am Consideration of different wetland values
- wetlands requiring greater protection (biological/habitat values, coastal/riparian, human need value)
- rank values of wetlands rather than change classification system

9:30-10:00am Compensatory Mitigation
- "No net loss" unworkable in AK
- difficult to accomplish
- accelerated restoration
- reclamation as mitigation
- compensatory mitigation fund (to research wetlands and educate citizens)

10:00-10:15am Break

10:15-11:15 am Human element in wetland discussion
- balancing wetlands protection and rural economic development
- greater consideration for tourism/ recreational use/need of wetlands
- Wetlands impact on property values
- regional impacts on different users ie. commercial fishing

11:15-11:45 am Use of planning in permit activities
- long range community plans
- watershed plans
- comprehensive industrial development plans

11:45-1:15 pm Lunch

1:15-2:00 pm Use of General Permits (G.P.'s) and Abbreviated Processing Procedures (A.P.P.'s)
- routine activities
- speculative development
- federal agency role
- cumulative impact database
- public involvement

2:00 – 2:30pm Improving Permit Process
- streamlining permit process
- appeals mechanism for the applicant

2:30 – 3:15pm Increasing funding for Corps/EPA
- Corps/EPA public education/information function
  * where are wetlands
  * what is value
  * what is regulatory process
  * application assistance
  * education programs
- Delineation/classification

3:15 – 3:30pm Break

3:30 – 4:30pm Other considerations
- State role in wetlands permit decisions
- Permit process problems as linked to Clean Water Act.
- other

4:30 – 5:00pm Public comment and final comments

FACILITATED ALASKA WETLANDS ROUNDTABLE DISCUSSION

Anchorage Summary Report
November 5, 1993

This facilitated Alaska wetlands roundtable discussion took place in Anchorage, Alaska on November 5, 1993 at the Loussac Library. The roundtable discussion was sponsored by the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency. The discussion took place following a day of presentations by invited stakeholders representing interest groups with a stake in the management of Alaska wetlands.

The stakeholder interest group participants included: Mr. Henry Mitchell (Commercial Fishing), Mayor John Handeland (Development Interests), Mr. Tony Turrini (Environmental), Mr. Dave McGillivary (Federal Resource Agencies), Mr. Don Gentry (Forestry), Ms. Paula Easley (Municipal Government), Mr. Peter Hanley (Oil and Gas), Mr. Jeff Parker (Sport Fishing), Dr. Paul Rusanowski (State of Alaska), Ms. Karen Cowart (Tourism), and Mr. Ed Watts (U.S. Department of Energy).

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

The purpose of the roundtable discussion was to obtain input from the primary wetlands stakeholders in Alaska to identify and address legitimate concerns regarding Federal regulation of wetlands in Alaska. In addition, the roundtable discussion was to provide a better understanding of the divergent points of view on wetlands issues; identify wetlands regulatory problems, consensus areas regarding those problems, and suggested solutions; and note parts of the wetlands program that are working well.

Discussion Summary

Common Ground

The roundtable discussion began with participants identifying consensus points to serve as common ground for issue discussions.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

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Discussion Summary

Common Ground

The roundtable discussion began with participants identifying consensus points to serve as common ground for issue discussions.

Consensus points included:

- Acceptance of Section 404 of the Clean Water Act as applying to all U.S. waters in Alaska;

- Agreement that no one is advocating exempting Section 404 requirements from Alaska entirely;

- Acknowledgement that all wetlands have some value and that some have higher values and some lower values;

- Some loss of low value wetlands is acceptable;

- Additional resources need to be directed toward studying, identifying, and classifying all wetlands; and

- That the existing program has adequate flexibility.

High Value Wetlands

Stakeholders identified some examples of high value wetlands including migratory fowl nesting grounds and feeding areas (i.e., eel grass and goose tongue marshes), bank-related anadromous fish river habitat (i.e., stable banks and transition zones), and important flood control areas. The discussion then focused on the attributes of high value wetlands. Suggested attributes included biological productivity, greater mix of functions, subsistence and cultural importance, presence of rare wildlife or plants, and location considerations such as importance for flood control. A comment was made that low value wetlands become high value when high value wetlands are lost and that value can be a function of scarcity. It was also noted that the bush Alaska perception of wetland values is different since development is viewed as a tradeoff.

Stakeholders also considered how high value wetlands should be addressed. A comment was made that wetlands already protected in existing refuges need to be considered in addressing other wetlands protection and that current approved developments in refuges serve as positive development examples. Several concerns were voiced that higher value wetlands should be protected more stringently than low value wetlands and that a higher level of consciousness regarding permit decision actions and consequences is needed for high value areas. An apparent consensus was reached that higher value wetlands deserve more rigorous consideration in the permit process. Follow up comments were made that the 404 review process already works that way, and that it should be easier to elevate high value wetlands decisions.

Wetlands Inventory/Classification

The inventory/classification discussion noted the need to first classify wetlands where development is to occur and that current efforts generally have this focus. It was emphasized that rural and local considerations need recognition and that inventory/classification efforts in local areas should be a collaborative effort between the different government levels using all available information.

Concerns were raised regarding the general nature of the National Wetlands Inventory (NWI) and it usefulness for permit processing. Government representatives identified the NWI as a starting point for permit decisions. Stakeholder response stressed the need to consider additional information and local information in the permit process. The Corps representative indicated that the Corps needs a better ability to tap into local information systems. Additional discussion focused on the role of wetlands indicators such as hemlock forests in southeast Alaska.

Rural/Regional Issues

The first portion of the rural/regional issue discussion considered the appropriate role of local governments in the permit system. A comment suggested that permit management should be shifted to local communities or that the Corps should give deference to local communities in permit decisions. It was also suggested that the State assume 404 permit authority. It was noted that local communities needed to develop wetlands for facilities. A response was voiced against giving free rein to local entities and that permit decisions should be tied to criteria. Possible legal problems related to the commerce clause were also indicated if local deference was granted. The need for resource agency consultation in local permit decisions was also stated.

The use of the existing General Permit (GP) process was suggested as a way to address local involvement in the permit system. It was noted that approximately 135 villages are already covered by a GP for some forms of development and an outreach effort could inform more local entities about the GP alternative. Another stakeholder spoke against additional local control, referred to poor control in some existing GPs for cities, and submitted a two page description of problems with actions taken under the Anchorage GP. Other participants responded that Anchorage needed to fill wetlands to develop and that deference to local control and values was important. Another stakeholder indicated a desire to have more input into the permit process rather than switch the process to the State.

The importance of considering the different values and perspective of rural Alaska, and the need to apply greater sensitivity to rural

issues was stressed. The Corps of Engineers representative indicated that part of the roundtable task was to identify opportunities for increased flexibility with appropriate environmental protection. He further indicated that great deference is already given to local entities in the permit process and that only one out of 600 proposals has been denied. A question was asked about whether the Corps should just let the locals do it since everything was approved anyway.

The possibility of Native Corporations obtaining GPs for their lands was noted. The Corps representative indicated that 164 Native Corporation permit applications had been approved while only one was denied, 10 withdrawn, and 20 applications closed during the past decade. Several other activities were indicated as being authorized on private land by nationwide and regional GPs. Individual stakeholders voiced both their opposition to local government control due to the power of politics to interfere with wetlands protection and, alternatively, their support for such control since local governments will provide the maximum level of protection. The use of the Abbreviated Permit Process was also suggested for rural Alaska projects.

A question was put on the table regarding how rural communities in Alaska are different from the rest of the United States. The question was linked to the possible need to justify treating Alaska differently under the President's wetlands policy. Stakeholder responses indicated that the third world conditions in rural Alaska including a lack of basic services and infrastructure was one consideration. The language and cultural differences whereby traditional villages still exist with elders councils and a spoken indigenous language were identified as other considerations. The economic uniqueness of rural Alaska with its subsistence/cash economy was also noted. Additional comments indicated the need to put emphasis on r viewing large projects in rural Alaska and allow villages to take care of their own needs. It was stated that local control can happen with good results if it is accompanied by good oversight.

Compensatory Mitigation

During the compensatory mitigation discussion, several participants indicated that the existing program use of compensatory mitigation was not viewed as a problem. The real concern related to the requirement of compensatory mitigation on a much greater scale in the future under the President's program. Different participants expressed the expectation that compensatory mitigation would be required more often in the future. Comments indicated that in some circumstances future use of compensatory mitigation may be motivated by the desire to compensate for loss of high value wetlands but that in other cases it would mainly reflect a tougher permit program.

The discussion focused on what compensatory mitigation policy makes sense for the State of Alaska. A stakeholder suggested that the use of avoidance and minimization procedures on the North Slope should remove the need for compensatory mitigation to a large extent. In view of the abundant high value wetlands on the Slope, the use of very limited high value areas would not degrade the overall wetlands quality. Thus it was suggested that there should be a way out of compensatory mitigation requirements.

Concern was raised that compensatory mitigation should not apply to low value wetlands in Alaska. The Corps of Engineers representative clarified that it has not been required for projects on low value wetlands in the state. It was noted, however, that it is difficult to discuss low value wetlands since some "low value" wetlands are considered to be high value by rural subsistence users. It was indicated that this situation is made more complex by the fact that most development takes place in wetlands ranked between low value and high value.

The issue of practicality was also stressed. It was noted that compensatory mitigation is a difficult tool to use, it is not practically possible to implement in some cases, and it is difficult to find a good compensatory mitigation choice. Suggested alternatives for these situations included acquisition of private wetland inholdings or conservation easements across private wetlands, wetlands compensation credits for completion of off-site mitigation on degraded wetlands, use of "best management practices" to enhance wetlands, and establishment of compensation through mitigation banking. Strong feelings were voiced that Alaskan developers should not be required to complete compensatory mitigation outside of Alaska.

Accelerated restoration of oil and gas development sites was also identified as a compensatory mitigation alternative. It was suggested that such accelerated restoration of North Slope sites would be appropriate on a case-by-case basis. The legitimacy of accelerated restoration as compensatory mitigation was questioned since the development area, in most cases, was already required to be rehabilitated at some point in the future. A stakeholder suggested that the accelerated rehabilitation time frame only meet part of the compensatory mitigation requirement. A problem of adequate follow through by the developer to assure the restoration took place was also stated. In response to questions, the Corps of Engineers representative indicated that the Corps had authority to use accelerated restoration and to require bonds, if necessary, to assure restoration. The possibility of using flooded gravel mine sites as fish habitat to meet compensatory mitigation requirements was also raised.

Wetlands/Watershed Planning

The use of wetlands and watershed planning was encouraged. Some stakeholders felt that such up front planning could streamline the permit process by identifying concerns ahead of time and identify the most appropriate areas for development. Participants indicated that such planning should build on the base of existing plans and planning processes, be a cooperative process, and involve the various levels of government. Planning efforts should be coordinated with related programs such as the coastal management program or the Advanced Identification Process (AIP) and complement rather than substitute for the 404 permit process. It was suggested that watershed plans serve as a basis for additional GPs and help coordinate any required compensatory mitigation.

Concern was voiced about the advantages gained by State and local governments through such planning. One advantage noted was the wetlands inventory and classification information gained through the effort. However, a key to the plan success was identified as the commitment of the local, State and Federal governments to use the plan in making permit decisions and for communities to have a say in the plan. Planning efforts were characterized as increasing development and preservation flexibility and as a way to responsibly address secondary impacts. It was stated that such plans along with comprehensive planning could lead to better decisions.

Prime locations for watershed plans were suggested to be villages covered by GPs, larger communities, and important drainage systems. Specific areas mentioned included Anchorage, the Kenai Peninsula drainages, Susitna Valley streams and the Bristol Bay drainage.

Since Alaska is still relatively undeveloped, participants noted that a watershed plan could get more "bang for the buck" in Alaska. Some participants noted that a grant program for watershed planning was needed. It was also noted the coastal management plan has money and some authority to do watershed planning. Some participants expressed caution towards the use of watershed planning.

Improving Permit Process

A variety of suggestions were offered for improving the permit process including a shorter, better defined permit processing timeline, the need for an elevation process, an exit interview process, coordination of State and Federal review processes, and an improved preapplication program. Though participants seemed open to better defined timelines, there was disagreement over whether a permit should be automatically approved or denied at the processing time deadline if no decision had been made. The elevation process suggestion referred to elevating a permit for decision to the

commenting agencies after the public comment period. The stakeholders seemed to agree that exit interviews for evaluation purposes were a good idea. Integration and coordination of State and Federal processes for wetlands management was suggested with particular emphasis on coordinated timelines or at least the flexibility to adjust timelines. The importance and benefits of the preapplication process were indicated and it was suggested that use of the process be encouraged through efforts such as monthly preapplication forums involving effected agency personnel and potential applicants.

The desirability of an appeal process for permit decisions was discussed. Though the appropriateness of the appeal process was recognized, significant disagreement existed regarding what could be appealed and who could appeal. Some stakeholders felt only permit denials should be appealed with the impacted party having the right to appeal. Other stakeholders indicated that both approvals and denials should be subject to appeal with the affected applicant and public having appeal rights similar to other Federal agency appeal processes. An alternative was suggested, but not agreed to, that called for both approvals and denials being subject to appeal but only the applicant and public that commented on the application having the right to appeal.

An exchange of views regarding the treatment of compensatory mitigation occurred during which a wide range of positions was expressed. Suggestions ranged from attempting some form of 1% exemption to subjecting all wetlands to evaluation for compensatory mitigation. Though most participants appeared to agree that certain high value wetlands (coastal wetlands and riparian areas) were more likely candidates for compensatory mitigation, disagreements were voiced regarding other wetlands. Some participants wanted low value wetlands and/or wetlands in cities and communities exempted from compensatory mitigation. Other participants opposed any proposal to exempt wetlands. A suggestion was made to recognize that it was only a remote possibility that low value wetlands would ever be subjected to compensatory mitigation and to rely on program flexibility. A response to this suggestion stressed the fear of how this flexibility might be used in the future.

The permit process discussion concluded with the suggested need for an information outreach program, an information clearinghouse, and moving decision making to the regions and the bush. The existing lack of public understanding of the permit process in rural Alaska was noted and an information outreach/education program encouraged. A monthly permit information clearinghouse which might provide applicant access to all the relevant agency representatives at one time was suggested. The need for a person or group of people representing all of the agencies to be available as a focal point for bush community concerns was identified.

Increased Funding

Stakeholders identified program funding needs including watershed planning, process streamlining, establishment of a clearinghouse approach, monitoring and enforcement efforts, resource inventory work, and new equipment required to access local wetlands data. It was proposed that the watershed planning effort focus on two or three key areas. A suggestion regarding enforcement monies recommended consolidation of agency enforcement authorities into an inter-agency enforcement effort using one inspector for several authorities. As a result, several people would not have to travel to bush areas to inspect the same project. Some stakeholders felt reprioritization of program needs and funding allocations rather than increased funding should be the approach. One response critical of relying on reallocations indicated that the government should provide additional monies to improve the program through a new clearinghouse and other actions which would benefit both developers and public interests.

The Corps of Engineers representative suggested establishing a written partnership with the stakeholders to help improve public understanding of the wetlands program. The partnership would help establish common interests and expectations. Stakeholders would help educate their constituencies. The general consensus of the stakeholders was to support this idea with the caveat that the effort not take resources away from other permit efforts.

General Permits

The Corps of Engineers representative presented an overview of existing and pending General Permits (GPs) for wetlands activities in Alaska. GP coverage areas ranged from cities, to regional activities such as residential or sewer and water construction in the bush, to nationwide permits for bank stabilization. Stakeholder opinion ranged from support of GP activity and a sense that too few had been granted to a reaction that the permits were not working and that too many were granted. It was emphasized that GPs are a tool that need to be used appropriately and responsibly.

A concern was raised that the cumulative impacts of GPs needed to be examined and public accounting required to minimize adverse GP impacts on wetlands. Adverse consequences associated with the Kenai River GP were referenced, and it was stated that improvement was needed and that the State and Federal agencies are reviewing the situation. Concerns were expressed about public input, but it was also indicated that public input on GPs is not lacking. The need for improved monitoring was stressed.

Some comments were made regarding the loss of valuable wetlands under the Anchorage GP and reference was made to the two page National Wildlife Federation Fact Sheet, addressing Anchorage GP

concerns. A response indicated the wetlands developed were consistent with the Anchorage plan.

Following an opportunity for public comment and closing comments by the stakeholders, the Anchorage Wetlands Roundtable Discussion was concluded at 5:00 P.M.

U.S. ARMY CORPS OF ENGINEERS AND U.S. ENIVRONMENTAL PROTECTION AGENCY

WETLANDS ROUNDTABLE SESSIONS

SIGN-IN SHEET

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3.	David McGillivary	1011 E. Tudor Rd Anchorage Ak 99503	US Fish & Wildlife	(907) 786-5605
4.	Jeff Parker	1201 Hyder Anchorage, AK 99501	AK Sportfishing Assn & Trout Unlimited	907 2745417 (h) 2729377 (w) 2729319 (F)
5.	HENRY MITCHELL	725 Christensen Dr. 99501	UFA BERING SEA F	279 6519
6.	Karen Cowart	3201 C St Ste 403 Anc AK 99503	Ak Visitors Assoc	561-5733
7.	Peter Hanley	121 W. Fireweed Lane Anchorage AK	AOGA	564-5252
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9.	Paul Rusanowski	PO Box 110030 Juneau Ak 99811	State of Alaska	465-3562
10.	Dave Hanson	1600 A St. #309 Anchorage, AK 99501	Facilitator	276-8827
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12	Unikisha Stewart	2440 E. Tudor Rd #250	Assist. Facilitator	274-1542
13	Edward Watts	U.S. Dept. of	Energy	(202) 586-8436
14	DON GENTRY	51 CUBE COVE JUNEAU, AK 99850	ALASKA FOREST ASSOCIATION	799-2259