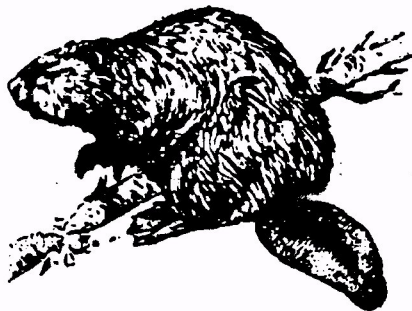


# EPA Wetlands Fact Sheets

Unsure of what wetlands  
information you need or  
where to find it?  
Call EPA Wetlands Hotline \*  
at 1-800-832-7828

What is a wetland  
and how are they  
identified?  
see fact sheet # 9

What assistance  
is available to  
private land-  
owners? see fact  
sheets # 17, 30



Beaver

For a complete Table  
of Contents,  
see next page



Whooping Cranes

Questions about  
404? Many relate to  
Swampbuster.  
see fact sheet # 19

Was the Clean  
Water Act really  
intended to  
protect wetlands?  
see fact sheet # 10



Mallard Ducks

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# WETLANDS FACT SHEET # 1

## Wetlands Protection - Overview

Over the past few years, the issue of wetlands protection seems to come up everywhere you turn. It's in the newspapers and on T.V. and radio news and talk shows.

### Why all the fuss?

Wetlands are, by definition, transitional areas between open water and dry land. The "natural" values of these wet areas have historically competed with their value as "dry" land where they can be converted for other purposes such as developments or agriculture. The water may not be on the surface all the time, making it hard to "know it when you see it."

However, wetlands are generally extremely valuable and produc-



tive ecosystems. They are home to many beautiful and rare species. They are the source of many commercially and recreationally valuable species of fish, shellfish and wildlife. They retain flood waters and protect shorelines from erosion. Wetlands filter runoff and adjacent surface waters to protect the quality of our lakes, bays and rivers. Wet-



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Egret

lands also protect many of our sources of drinking water. And wetlands provide varied recreational opportunities throughout the country.

EPA knows that there is confusion about wetlands and programs that protect them.

This collection of fact sheets is designed to offer some basic information about wetlands and the programs that affect them. If you would like more information, please contact the sources identified within. And remember, the EPA WETLANDS HOTLINE\* is there for everyone at:

**1-800-832-7828**



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# **WETLANDS FACT SHEET # 2**

## **Values and Functions of Wetlands**

*In their natural condition, wetlands often provide many benefits, including food and habitat for fish and wildlife, flood protection, shoreline erosion control, natural products for human use, water quality improvement, and opportunities for recreation, education and research.*

### **Products**

Altogether, wetlands are among the most biologically productive natural ecosystems in the world, comparable to tropical rain forests and coral reefs in the number and diversity of species that they support. Wetlands produce great volumes of food as leaves and stems break down in the water to form detritus. This enriched material is the principal food for many aquatic invertebrates (including shellfish) and forage fish that are food for larger commercial and recreational fish species such as bluefish and striped bass.

*Wetlands are critical habitat to the survival of numerous threatened and endangered species*

Wetlands are critical to the survival of a wide variety of animals and plants, including numerous threatened and endangered species like the wood stork, Florida panther, whooping crane, and bald eagle. For many species such as the wood duck, muskrat and swamp rose, wetlands are primary habitats. For others, wetlands provide important seasonal habitats where food, water and cover are plentiful.

Wetlands produce a wealth of natural products, including fish and shellfish, wildlife, timber, wild rice, and furs. Much of the Nation's fishing and shellfishing industry harvests wetlands-dependent species. For example, in the Southeast, 96 percent of the commercial catch and over 50 percent of the recreational harvest are fish and shellfish that depend on the estuary-coastal wetlands system. Waterfowl hunters spend over \$300 million annually in pursuit of wetlands-dependent birds.

### **Services**

Wetlands often function like natural tubs, storing either floodwater that overflows riverbanks or surface water that collects in isolated depressions. By doing so, wetlands help protect adjacent and downstream property from flood damage. Trees and other wetland vegetation help slow the speed of floodwaters. This action, combined with water storage, can lower flood heights and reduce the water's erosive potential. In agricultural areas, wetlands can help reduce the likelihood of flood damage to crops. Wetlands within and upstream of urban areas are especially valuable for flood protection, since urban development increases the rate and volume of surface water runoff, thereby increasing the risk of flood damage. Some wetlands also help recharge ground water supplies and help maintain base stream flows during times of drought.

Often located between rivers and high ground, wetlands buffer shorelines against erosion. These wetlands bind soil, dampen wave action, and reduce current velocity through friction.

Wetlands can help maintain and improve water quality by intercepting surface water runoff before it reaches open water, removing or retaining nutrients, processing organic wastes, and reducing sediment loads to receiving waters. Such runoff represents the most prevalent cause of degradation of our nation's surface waters today (1990 Water Quality Inventory).

Wetlands provide endless opportunities for popular recreational activities such as hiking, bird watching, fishing and boating. An estimated 50 million people spend nearly \$10 billion each year observing and photographing wetlands-dependent birds.

**For more information, contact the EPA Wetlands Hotline at 1-800-832-7828 \***

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# WETLANDS FACT SHEET # 3

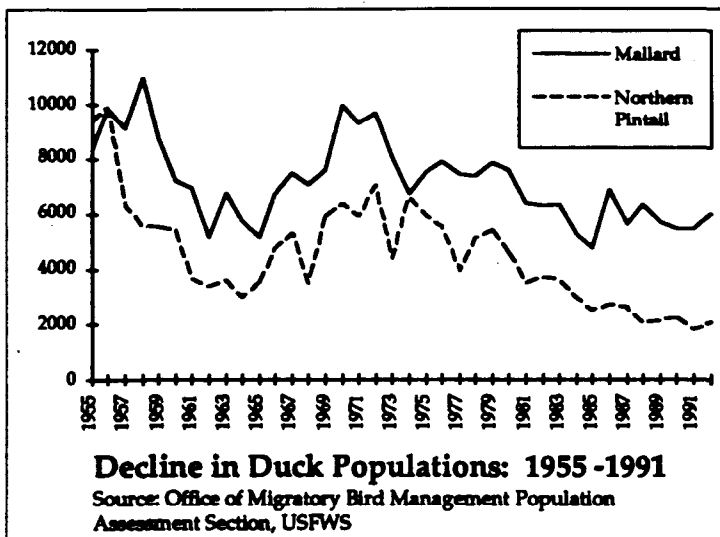
## Consequences of Wetland Loss and Degradation

*The loss or degradation of wetlands can lead to serious consequences, including increased flooding; species decline, extinction or deformity; and decline in water quality. The following are a few examples of the consequences of wetlands loss and degradation.*

### SPECIES DECLINE

Populations of mallard and northern pintail ducks in North America have declined since 1955 (see graph above). The loss and degradation of wetlands is one of the major causes for the decline in certain waterfowl populations. For example, in the U.S. prairies in 1990, mallard duck populations reached their lowest recorded number. The well-being of waterfowl populations is tied directly to the status and abundance of wetland habitats. Waterfowl populations have reached record lows in recent years. Simply said, as wetlands go, so go waterfowl.

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### SPECIES DEFORMITY

Wetlands in the Kesterson National Wildlife Refuge in California's Central Valley were degraded after being continuously flooded with agricultural irrigation return flow waters that contained high concentrations of selenium. Large-mouth and striped bass and catfish disappeared from Kesterson National Wildlife Refuge in 1982. In the spring of 1983, eggs from water birds at the site hatched less frequently and had more deformities in the embryos. Cost estimates for the refuge cleanup and restoration of its wetlands now exceed \$5 billion.

### FLOODING

Based on a study comparing parts of the Charles River in Massachusetts with and without wetlands, it was determined that the loss of 8,422 acres of wetlands within the Charles River Basin would have produced an annual flood damage of over \$17 million. For this reason, the US Army Corps of Engineers elected to preserve wetlands rather than construct extensive flood control facilities for this portion of the Charles River

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near Boston.

### WATER QUALITY

Forested riparian (streamside) wetlands play an important role in reducing nutrient loading into water bodies such as the Chesapeake Bay. In one study, a riparian forest in a predominantly agricultural watershed was shown to remove approximately 80% of the phosphorus and 89% of the nitrogen from the water before entering a tributary of the Chesapeake Bay. Destruction of wetlands that reduce the amount of nutrients entering the Bay would lead to an increase of undesirable weed growth and algae blooms. When these algal blooms decompose, large amounts of oxygen are used up, depriving fish and other aquatic organisms of the oxygen needed for survival. Algal blooms are a major cause of fish kills.

**For more information, contact the EPA Wetlands Hotline at 1-800-632-7828 \***

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# WETLANDS FACT SHEET # 4

## Economic Benefits of Wetlands

Wetlands contribute to the National economy through the resources/commodities they produce and the services they provide. In 1991, the dockside value of fish landed in the U.S. was **\$3.3 billion** which served as the basis of a **\$26.8 billion** fishery processing and sales industry which employs hundreds of thousands of people. It has been estimated that 71% of this value is derived from fish species that during their lifecycle depend directly or indirectly on coastal wetlands. Also, more than half of all U.S. adults (98 million Americans) hunt, fish, birdwatch or photograph wildlife. These activities which rely on wetlands added an estimated **\$59.5 billion** to the Nation's economy in 1991.

Due to the diversity of wetland types and their location, each wetland provides different products and services. This fact makes it extremely difficult to measure the total economic benefits all wetlands, or a particular type, provide for the entire nation. However, some site-specific studies have been completed that illustrate the economic benefits to society of preserving wetlands. It should be remembered that these studies usually measure only one or several of the many functions or values wetlands provide to society.

### Resources and Services

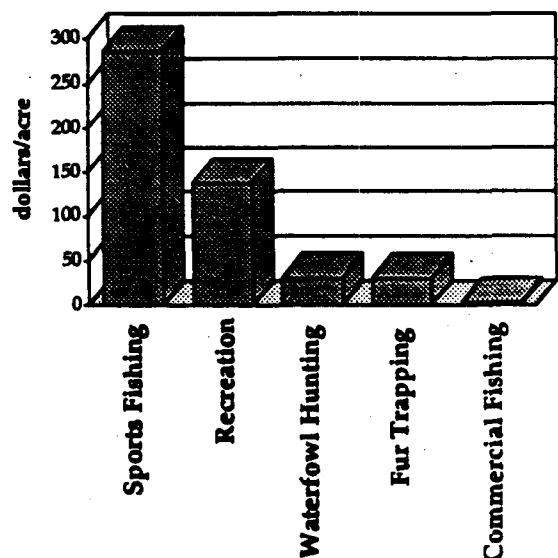
**Water quality service/ improvement**  
The wetlands of the Congaree Bottomland Hardwood Swamp in South Carolina provide valuable water quality functions such as sediment removal as well as toxicant and excess nutrient removal or filtration. The least cost substitute for the water quality services provided would be a water treatment plant costing **\$5 million** [1990\$].

**Flood control:** The Minnesota Department of Natural Resources has computed the cost to replace on average each acre-foot of flood water storage at **\$300**. In other other words, if development eliminates a one acre wetland that naturally holds 12 inches of water storage during a storm, it would cost the public **\$300** to replace that water storage. The cost to replace the 5,000 acres of wetlands lost annually in Minnesota would be **\$1.5 million** [1990\$].

**Fishing Industry:** Wetlands are important spawning and nursery areas and provide plant food for commercial and recreational fish and shellfish industries. Louisiana's marshes, for example, produce an annual commercial fish and shellfish harvest of 1.2 billion pounds worth **\$244 million** in 1991.

**Michigan:** A 1977 study estimated that Michigan's over-100,000 acres of coastal wetlands produced an economic value of **\$489.69 per acre** or an aggregate **\$51.8 million** [1977\$]. This figure measured the individual services provided by the wetlands (see chart below).

Economic value of wetland services in Michigan (1977)



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Wetlands Hotline\* at 1-800-832-7828

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# WETLANDS FACT SHEET # 5

## Facts About Wetlands

- Over half (53%) of the wetlands in the conterminous United States were lost between the late-1700's and mid-1970's. About 100 million acres of wetlands remain today.

Source: Dahl Status and Trends of Wetlands in the Conterminous United States USFWS, 1989

- Coastal wetlands make up only 5% of the wetland types in the continental United States; inland wetlands such as freshwater swamps, prairie potholes, bogs and fens make up the remaining 95% of wetland types.

Source: Office of Technology Assessment, 1984

- It has been estimated that up to forty-three percent (43%) of the threatened and endangered species listed in the United States by the U. S. Fish and Wildlife Service rely directly or indirectly on wetlands for their survival.

Source: USFWS

- A recent survey showed that when asked whether they felt wetlands protection efforts were adequate, 53% of respondents replied more effort was needed, 24% said current efforts struck the right balance, and 8% said it had gone too far.

Source: Times Mirror Magazines / Roper Survey as cited in *Popular Science* July 1992, p.52.

- From the mid-1970's to mid-1980's, wetlands were lost at an annual rate of 290,000 acres per year.

Source: Dahl and Johnson Status and Trends of Wetlands in the Conterminous United States, Mid-1970's to Mid-1980's USFWS, 1991.

- Nationally, 80% of America's breeding bird population require bottomland hardwoods for survival; bottomland hardwood (BLH) systems are wooded swamps found predominantly in the Southeastern United States.

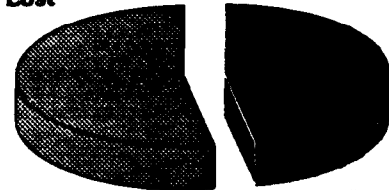
Source: Warton and Kitchens, 1982.

- In the United States, over-logging of mature bottomland hardwood (BLH) forests is believed to have caused the extinction of the Ivory-Billed Woodpecker, North America's largest woodpecker.

Source: Harris and Gosselink, Ecological Processes and Cumulative Impacts, p.308.

Amount of Wetlands in the  
Conterminous United States  
since the late 1700's

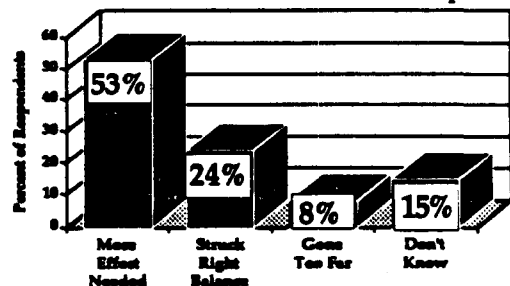
53% Lost



Source: Dahl, 1989

47% Remain

Is Current Wetlands Protection Adequate?



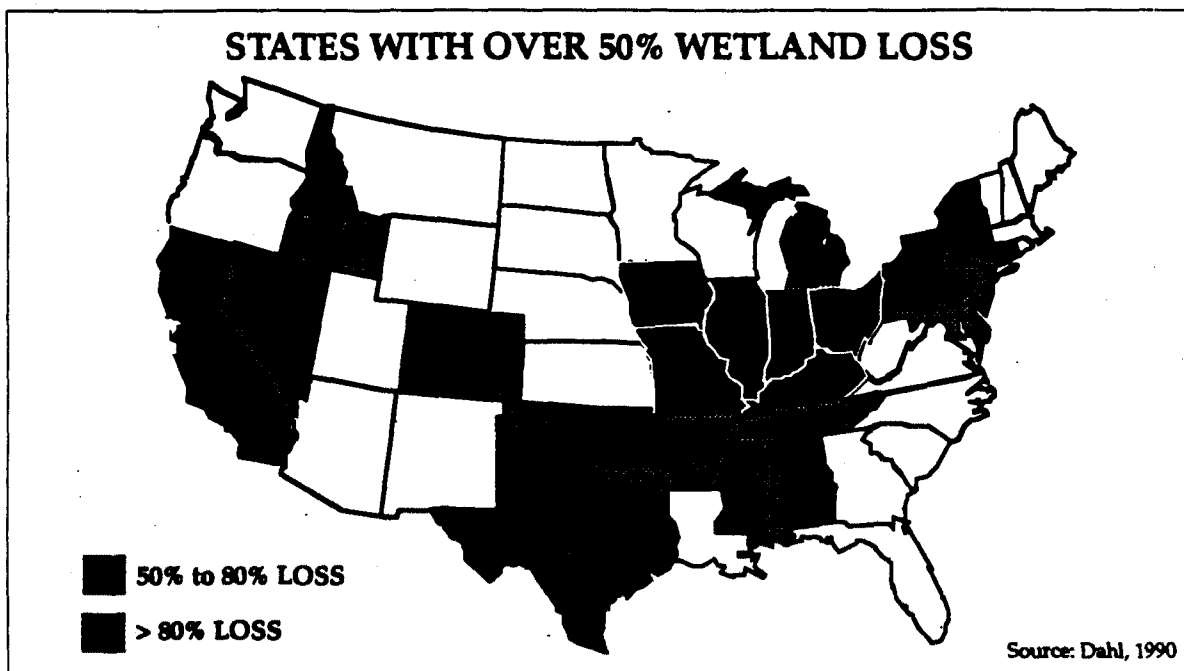
Ivory-Billed Woodpecker



## ... More Facts About Wetlands

- Twenty-three States have lost at least 50% of their original wetlands. Seven of those twenty-three States (California, Indiana, Illinois, Iowa, Missouri, Kentucky, and Ohio) have lost more than 80% of their original wetlands.

Source: Dahl, 1990



- In Fiscal Year 1992, the Army Corps of Engineers made decisions on over 16,000 individual permit applications, denying fewer than 400. It is estimated that at least 80,000 additional activities are authorized by Corps general permits yearly. In the 21-year history of the Section 404 program, EPA has vetoed only 11 permits.

Source: US Army Corps of Engineers, US EPA

- Approximately 92% of all permit evaluations (that is both general and individual permits) are completed in less than 60 days after a completed application has been received by the Army Corps of Engineers.

Source: US Army Corps of Engineers

**For more information contact the EPA Wetlands Hotline at 1-800-832-7828 \***

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## WETLANDS FACT SHEET # 6

### Wetland Quotes

3350 25<sup>th</sup> S.E.  
Vero Beach FL 32968  
January 12, 1993

U.S.E.P.A. Headquarters  
401 M Street  
S.W. Washington, D.C. 20640

Dear Environmentlist,

My name is Justin Green. I am in third grade a Beachland School. I'll make you a deal if you can save all of the existing wetlands I'll earn money to help you do it. And did you know more than  $\frac{1}{3}$  of the animals depend on the wetlands. So if you can save the wetlands, Please DO!

Your Friend,  
Justin Green



*Greater familiarity with marshes on the part of more people could give man a truer and more wholesome view of himself in relation to Nature. In marshes, Life's undercurrents and unknowns and evolutionary changes are exemplified with a high degree of independence from human dominance as long as the marshes remain in marshy condition. They have their own life-rich genuineness and reflect forces that are much older, much more permanent, and much mightier than man. - Paul L. Errington, Of Men and Marshes*

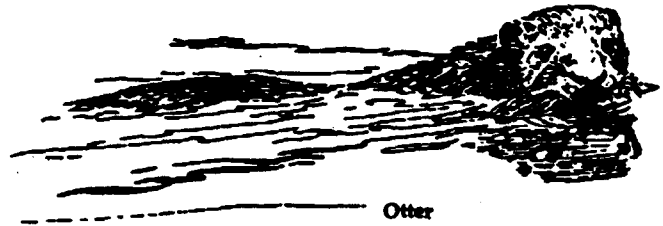


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## Wetland Quotes Continued...

In a green place lanced through  
With amber and gold and blue --  
A place of water and weeds,  
and roses pinker than dawn  
And ranks of lush young reeds  
And grasses straightly withdrawn  
From graven ripples of sands.  
The still blue heron stands.

- "The Blue Heron" by Theodore  
Goodridge Roberts



11/20 Rolfe, Ia.

A habitat is where it's at  
Keep them so the ducks can quack,  
The marshes filter the water's dirt,  
They're homes for many who we don't  
want hurt.

Save The Wetlands

A habitat is where it's at.  
Keep them so the ducks can quack,  
The marshes filter the water's dirt,  
They're homes for many who we don't  
want hurt.  
Save The Wetlands

Rolfe, IA.  
50581

From Dana 4th and Rolfe

A dawn wind stirs on the great marsh. With almost imperceptible slowness, it rolls a bank of fog across the wild morass. Like the white ghost of a glacier, the mists advance, riding over phalanxes of tamarack, sliding across bog meadows heavy with dew. A single silence hangs from horizon to horizon.

-Aldo Leopold, A Sand County Almanac

For More Information: contact the EPA Wetlands Hotline\* at 1-800-832-7828.

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# WETLANDS FACT SHEET #7

## Clean Water Act §404: Overview

Section 404 of the Clean Water Act establishes a program to regulate the discharge of dredged and fill material into waters of the United States, including wetlands. Activities in waters that are typically regulated under Section 404 include fills for development, water resource projects (e.g., dams and levees), infrastructure development (e.g., highways and airports), and conversion of wetlands to uplands for farming and forestry.

### BACKGROUND

Since its enactment by Congress in 1972, Section 404 of the Clean Water Act (33 U.S.C. § 1344) has evolved through a series of statutory amendments, regulatory changes and key court decisions into the primary Federal regulatory program providing protection for the Nation's remaining wetlands. EPA and the Army Corps of Engineers (Corps) jointly administer the Section 404 program. In addition, the U.S. Fish and

Wildlife Service, the National Marine Fisheries Service, and State resource agencies have important advisory roles.

### PROGRAM REQUIREMENTS

The basic premise of the Section 404 program is that no discharge of dredged or fill material can be permitted if there is a practicable alternative that is less damaging to the aquatic environment or if the discharge would result in significant degradation of our Nation's waters.

**An applicant must demonstrate that steps have been taken to avoid wetland impacts where it is practicable.**

In addition, applicants are required to minimize potential impacts to wetlands, and finally to provide compensation for any remaining unavoidable impacts through wetland restoration or creation activities.

For projects involving potentially significant impacts, authorization must usually be sought through an "individual permit" review process. However, for the great majority of discharges, i.e., those activities that will have only minimal adverse environmental effects, authorization is often granted up-front through "general permits." General permits may be issued by the Corps on a nationwide, regional or State basis for particular categories of activities (e.g., minor road crossings, utility line backfill, and bedding) as a means of expediting the permitting process. Moreover, Section 404(f) exempts other activities from regulation under Section 404, including many on-going farming, ranching and silviculture practices.

#### ARMY CORPS OF ENGINEERS:

- day-to-day program administration (e.g. including individual permit decisions and jurisdictional determinations)
- development of policy and guidance
- enforcement

#### ENVIRONMENTAL PROTECTION AGENCY

- develop and interpret the environmental criteria used in evaluating permit applications (i.e., the Section 404(b)(1) Guidelines)
- determine the scope of geographic jurisdiction
- approve and oversee State assumption of the program's administrative responsibilities
- identify activities that are exempt under §404(f)
- review and comment on individual permit applications
- §404(c) authority to veto Corps' permit decisions
- §404(q) case specific elevation
- enforcement

#### ADDITIONAL MATERIALS

- "Highlights of Section 404," EPA Office of Wetlands Protection, October, 1989.

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# WETLANDS FACT SHEET #8

## Clean Water Act §404: Permits

### THE §404 INDIVIDUAL PERMIT PROCESS

Permit required for discharges of dredged or fill material  
to wetlands and other waters of the United States  
Permit application filed with the U.S. Army Corps of Engineers

#### Corps Issues Public Notice

Within 15 days of receiving all permit information, the Corps will issue a public notice that gives a brief description of the proposed activity, its location, potential environmental impacts, a deadline for receiving written comments, and the address for the agency receiving those comments.

#### Comment Period

The application is reviewed by the Corps and other interested Federal and State agencies, organizations, and individuals. The comment period can take 15 to 30 days depending upon the nature of the activity. The necessity to gather information and prepare an Environmental Impact Statement (EIS) may further extend the comment period.

#### Public Hearing

Normally, the Corps does not hold a public hearing on a permit; however, citizens may request that one be held. The Corps will use the testimony presented at the hearing in its permit review.

#### Corps Evaluation

The Corps evaluates the permit application based on its regulations (the Public Interest Review), and the §404 (b)(1) Guidelines.

#### Environmental Assessment and Statement of Finding

For every permit decision, the Corps prepares a statement of finding that explains how the permit decision was made. This document is public information and can provide data to assist in monitoring permit compliance or re-evaluating a permit.

#### Permit Issued

#### Permit Denied

Modified from Kathleen Rude, "Conservation: You Can Make a Difference," *Ducks Unlimited*, September/October 1990, 26-28.

### TYPES OF §404 PERMITS

#### SECTION 404(a) INDIVIDUAL PERMITS Case-by-case review

■ Public interest review and compliance with the Section 404(b)(1) Guidelines, which are regulations issued by EPA, with the Corps.

Guidelines requirements include:

- Mitigation sequence
  - (1) avoidance of impacts through practicable alternatives,
  - (2) minimization of impacts, and
  - (3) compensation of unavoidable impacts through creation or restoration.
- No significant degradation.
- Compliance with other laws.

#### SECTION 404(e) GENERAL PERMITS

The Corps of Engineers has the authority to issue general permits for those categories of activities in wetlands and other aquatic areas that will have only minimal adverse environmental effects--individually or cumulatively.

- General permits are widely used and speed up the §404 permitting process because they do not require a detailed, case-specific review.
- General permits are issued on a nationwide, regional, and State basis.

If an activity falls under a nationwide permit, a discharger generally (but not always) can proceed with the activity without first applying for an individual permit. Individuals should contact their local Corps Districts for applicability of general permits.

FOR MORE INFORMATION: call the EPA Wetlands Hotline\* at 1-800-832-7828

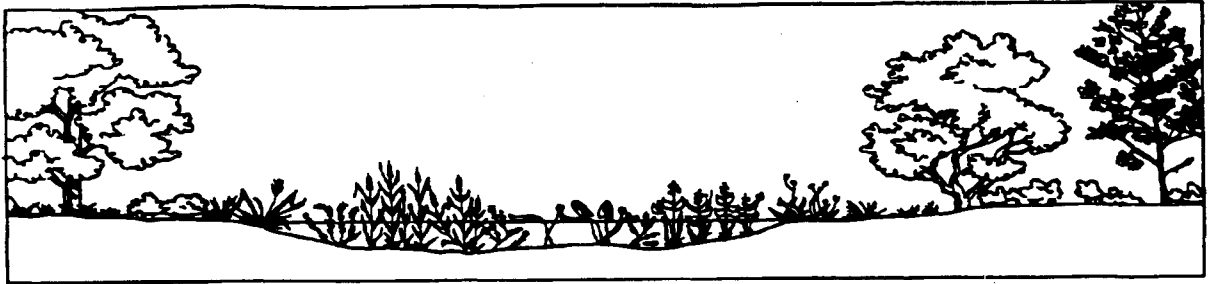
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# WETLANDS FACT SHEET # 9

## Definition and Delineation



### Definition

Since the 1970's, the U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA) have used the same definition of wetlands for regulatory purposes:

*Wetlands are areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.*

Basically, wetlands are areas where the frequent and prolonged presence of water at or near the soil surface drives the natural system - the kind of soils that form and the plants that grow, and the fish and/or wildlife communities that use the habitat. Swamps, marshes and bogs are well-recognized types of wetlands, but there are many important specific wetland types, such as vernal pools, playas and prairie potholes, that have drier or more variable water regimes than those well-recognized by the general public.

### Field Indicators

When the upper part of the soil is saturated with water at growing season temperatures, soil organisms consume the oxygen in the soil, and conditions unsuitable for most plants quickly develop. Such conditions also cause the development of soil characteristics (e.g., color and texture) that are diagnostic of so called "hydric soils". The plants that can grow in such conditions are called "hydrophytes" (e.g., marsh grasses). Together, hydric soils and hydrophytes

are useful field indicators of the presence of wetlands and are essential for field identification of wetlands.

The actual presence or absence of water itself (i.e., by ponding, flooding, or soil saturation), however, is a less reliable indicator of the presence of wetlands. Except for wetlands flooded by ocean tides, the hydrology of wetlands fluctuates as a result of rainfall patterns, snowmelt, dry seasons and droughts. Some of the most well-known wetlands, such as the Everglades and Mississippi bottomland hardwood swamps, are often dry. Conversely, many upland areas are very wet during and shortly after wet weather. Such natural fluctuations must be taken into account when identifying areas subject to federal wetlands jurisdiction. Similarly, the effects of upstream dams, drainage ditches, dikes, irrigation and other modifications must also be considered.

### Delineation Manual

EPA and the Corps are currently using the 1987 Corps of Engineers Wetlands Delineation Manual to delineate wetlands for the Clean Water Act Section 404 permit program. Section 404 requires a permit from the Corps or authorized State for the discharge of dredged or fill material into the waters of the United States, including wetlands. The 1987 Manual will remain in use pending review of public comments on the 1991 proposed Manual and the ongoing National Academy of Sciences study of wetlands delineation.

The 1987 manual organizes field indicators into three categories- soils, vegetation, and hydrology- and has evidence thresholds, or criteria, for each category. With this approach, an area that meets all three criteria is considered a wetland.

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Wetlands Hotline\* at 1-800-832-7828**

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## WETLANDS FACT SHEET #10

# Was the 404 Program Intended to Regulate Wetlands?

### The History

In 1972, Congress passed the Federal Water Pollution Control Act Amendments "to restore and maintain the chemical, physical, and biological integrity" of the Nation's waters. The Act defined "navigable waters" as "waters of the United States." The legislative history made plain that Congress intended the broadest possible Federal jurisdiction, expanding beyond traditionally navigable waters.

However, when the U.S. Army Corps of Engineers (Corps) issued regulations to implement the Section 404 program in 1974, it limited the program's jurisdiction to traditionally navigable waters, including adjacent wetlands, but excluding many small waterways and most wetlands. In 1975, a federal district court directed the Corps to revise and expand its regulations to be consistent with Congressional intent.

In response, the Corps issued interim final regulations to include waters that are not adjacent to navigable waters ("isolated waters") in the program's jurisdiction. In 1977, the Corps issued final regulations and explicitly included "isolated wetlands and lakes, intermittent streams, prairie potholes, and other waters that are not part of a tributary system to interstate waters or to navigable waters of the United States, the degradation or destruction of which could affect interstate commerce." The definition promulgated in 1977 is substantially the same as the one in effect today.

### What Has Congress Done?

When Congress amended the Act in 1977, it was aware of the Corps' recent assertion of jurisdiction over wetlands. This issue was in

EPA and the Corps of Engineers have identified examples of waters generally not considered waters of the United States. These examples include nontidal drainage and irrigation ditches excavated on dry land, artificially irrigated areas which would revert to upland if the irrigation ceased, and certain artificial lakes or ponds created on dry land.

fact extensively debated. In the end, Congress rejected attempts to narrow the scope of that jurisdiction, in large part because of concern that to do so would unduly hamper protection of wetlands. Other 1977 amendments, such as the Section 404(f) exemptions, general permitting authority, and the provision for State assumption of the 404 program in some waters, responded to concerns regarding this scope of jurisdiction. In providing for State assumption, Congress made specific reference to wetlands in the Act itself.

### What Has the Supreme Court Said?

Regarding the issue of jurisdiction for wetlands adjacent to rivers, lakes, streams, estuaries, etc., the Supreme Court has unanimously held that the Corps acted reasonably in interpreting the Act's geographic jurisdiction to extend to wetlands adjacent to other "waters of the U.S.," even if those wetlands are saturated only by ground water sources (as opposed to surface water flooding). However, the Supreme Court has not yet ruled on the issue of non-adjacent, isolated wetland jurisdiction.

**FOR MORE INFORMATION: Call the EPA Wetlands Hotline\* at 1-800-832-7828.**

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# WETLANDS FACT SHEET #11

## Clean Water Act §404(q): Case Specific Elevation

### THE §404 (q) PROCESS

Resolution of interagency disputes related to §404 permit issuance  
Based on the 1992 §404(q) Memorandum of Agreement (MOA)  
signed by EPA and the Department of the Army

#### EPA Objection

Formal determination that issuance of the §404 permit will result in unacceptable adverse effects to Aquatic Resources of National Importance (ARNI).

#### Notice of Intent to Proceed

Corps District Engineer must notify the EPA Regional Administrator if he intends to issue the permit over EPA objections. The Regional Administrator has 15 days to respond to the request.

#### Further Action Unwarranted

#### Case Elevation

The EPA Regional Administrator makes a recommendation to EPA's Assistant Administrator for Water to elevate the case. The Assistant Administrator reviews the recommendation and within 20 days makes a determination.

#### Decline Further Elevation

#### Review of Corps Decision

The Assistant Administrator seeks higher level review of the District permit decision by the Assistant Secretary of the Army (Civil Works).

#### Army Declines Elevation

#### Army Review

EPA Headquarters' case elevation is reviewed by the Assistant Secretary of the Army (Civil Works), who determines whether or not the decision will be made at a higher level than the Corps District Engineer or to issue case specific policy guidance.

Under §404 of the Clean Water Act, the U.S. Army Corps of Engineers (Corps) has the primary authority for determining whether or not a permit for the discharge of dredged or fill material should be issued. In making a permit decision, the Corps solicits and considers the views of the public as well as State and Federal resource agencies. Where the Corps finds that the particular project in question is likely to receive a §404 permit and EPA opposes issuance of the permit, administrative procedures are available to EPA to address unresolved issues.

The principal mechanism for resolution of interagency disputes related to §404 permit issuance is spelled out in the §404(q) Memorandum of Agreement (MOA) signed by EPA and the Department of the Army in August of 1992. Under the §404(q) MOA, EPA and Army have agreed to a framework under which EPA may formally elevate, for higher level review, interagency disputes on particular permit actions. In order to minimize duplication of effort, needless paperwork and delays in the issuance of §404 permits, a clear timeframe and process for elevated review of a Corps permit decision is established in the §404(q) MOA.

In addition to the case specific elevation authorities contained in the Section 404(q) MOA, issues related to general program policies and procedures may be formally raised by either the Corps or EPA. This type of elevation does not directly relate to permit specific circumstances and therefore does not delay issuance of pending permit applications.

Since the 1992 MOA was signed, one case has been elevated by EPA to the Department of the Army. Prior to that case, from October of 1985 until the August 1992 revisions to the MOA, EPA formally elevated 16 cases to Army Headquarters.

FOR MORE INFORMATION: call the EPA Wetlands Hotline\* at 1-800-832-7828

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# WETLANDS FACT SHEET #12

## Clean Water Act §404(c): Veto Authority

### THE §404 (c) PROCESS

Section 404(c) of the Clean Water Act gives EPA the authority to "veto" a permit if the discharge of dredged or fill material will have unacceptable adverse effects on the aquatic or wetland ecosystem.

#### Public Notice Intent to Issue

EPA Regional Administrator states his/her intention to issue a public notice of a Proposed Determination to withdraw, prohibit, deny, or restrict the specification of a defined area for the disposal of dredged or fill material.

#### Proposed Determination Publication of Notice

If within 15 days, it has not been demonstrated to the satisfaction of the Regional Administrator that no unacceptable adverse effects will occur, the Regional Administrator publishes notice of the Proposed Determination. The Proposed Determination does not represent a judgment that discharges of dredged or fill material will result in unacceptable adverse effects; it merely means that the Regional Administrator believes that the issue should be explored.

#### Public Comment Period

The public comment period for the Proposed Determination is longer than 30 days and less than 60 days, except under circumstances where a longer period is warranted. Generally, due to the degree of public interest in the EPA action, a public hearing is held. Within 30 days of the public hearing, or if no public hearing is held, within 15 days of the end of the comment period, the Regional Administrator takes action.

#### Recommended Determination Prepared

Recommendation to withdraw, prohibit, deny, or restrict the specification of a defined area for the disposal of dredged or fill material.

#### Recommended Determination Reviewed

The Regional Administrator forwards that document and the administrative record to the Administrator and the Assistant Administrator for Water of EPA for review. Within 30 days, EPA Headquarters initiates action.

#### Final Determination

Within 60 days of receipt of the recommendation and the administrative record, EPA Headquarters makes a Final Determination affirming, modifying, or rescinding the Recommended Determination. Notice of the final determination shall be published in the *Federal Register*.

Section 404(c) of the Clean Water Act authorizes EPA to restrict or prohibit the use of an area as a disposal site for dredged or fill material if the discharge will have *unacceptable adverse effects* on municipal water supplies, shellfish beds and fishery areas, wildlife or recreational areas. Because §404(c) actions have historically arisen in response to unresolved permit applications, the EPA action is frequently referred to as an EPA "veto" of the U.S. Army Corps of Engineers permit.

#### Unacceptable Adverse Effects

Impact on an aquatic or wetland ecosystem which is likely to result in significant degradation of municipal water supplies (including surface or groundwater) or significant loss of or damage to fisheries, shellfishing, or wildlife habitat, or recreation areas.

Under the current §404(c) regulations, EPA decisions regarding formal elevation of a project under Section 404(c) must be initiated by the Regional Administrator. Initiation of a Section 404(c) action is completely within the discretion of the Agency. If the Regional Administrator chooses to recommend actions pursuant to Section 404(c) of the Clean Water Act, EPA Headquarters then becomes formally involved. The authority for Final Determinations pursuant to §404(c) regarding site restriction or prohibition is currently delegated to

EPA's Assistant Administrator for Water, who is EPA's National §404 program manager.

To date, EPA has completed only 11 Section 404(c) actions out of an estimated 150,000 permit applications received since the Section 404(c) regulations went into effect in October 1979.

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# WETLANDS FACT SHEET #13

## Wetlands Enforcement

In addition to jointly implementing the Clean Water Act Section 404 program, EPA and the U.S. Army Corps of Engineers (Corps) share Section 404 enforcement authority. There are two broad categories of Section 404 violations:

- failure to comply with the terms or conditions of a Section 404 permit
- discharging dredged or fill material to waters of the U.S. without first obtaining a permit

In 1989, EPA and the Corps entered into a Memorandum of Agreement (MOA) on enforcement to ensure efficient and effective implementation of this shared authority. Under the MOA, the Corps, as the Federal permitting agency, has the lead on Corps-issued permit violation cases. For unpermitted discharge cases, EPA and the Corps determine the appropriate lead agency based on criteria in the MOA.

### ENFORCEMENT GOALS & TOOLS

The goals of EPA's Section 404 enforcement are three-fold: environmental protection; deterrence; and fair and equitable treatment of the regulated community. In addition to voluntary compliance, which plays an important role in the Section 404 enforcement program, Sections 309 and 404 of the Clean Water Act provide the agencies with several formal enforcement mechanisms to use in achieving these goals.

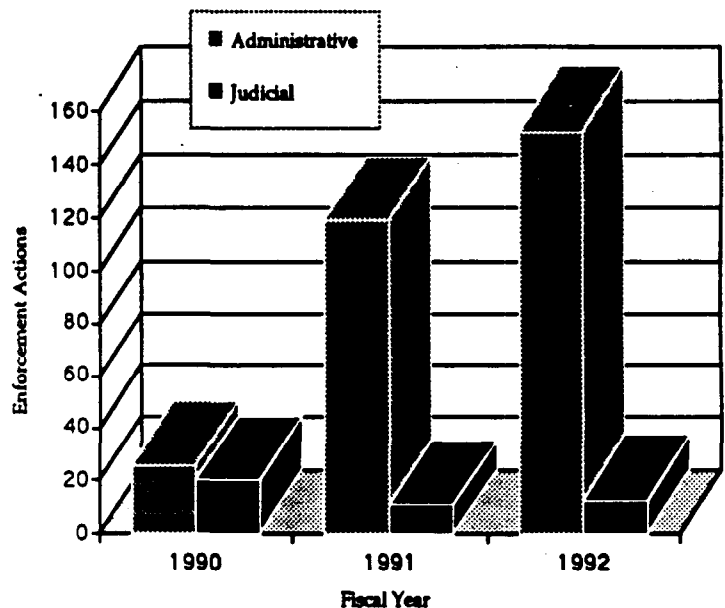
In the administrative arena, under Section 309(a), EPA can issue administrative compliance orders requiring a violator to stop any ongoing illegal discharge activity and, where appropriate, to remove the illegal discharge and otherwise restore the site. Section 309(g) authorizes EPA and the Corps to assess administrative civil penalties of no more than \$125,000 per violation.

Turning to judicial enforcement, Sections 309(b) and (d) and 404(s) give EPA and the Corps the authority to pursue civil judicial enforcement actions seeking restoration and other types of injunctive relief, as well as civil penalties. The agencies also have authority under Section 309(c) to bring criminal judicial enforcement actions for knowing or negligent violations of Section 404.

### CASE SELECTION

EPA and the Corps consider a wide variety of factors when deciding whether to exercise our enforcement discretion and, if so, what type of enforcement action to initiate. These factors include: the amount of fill; the size of the waterbody, including acres of wetlands filled and their environmental significance; the discharger's previous experience with Section 404 requirements and the discharger's compliance history.

In general, EPA and the Corps prefer to resolve Section 404 violations through voluntary compliance or administrative enforcement.



EPA Section 404 enforcement actions (initiated)

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# Wetlands Criminal Enforcement

Since enactment of the Clean Water Act, EPA and the Corps have taken fewer than 20 criminal enforcement actions in response to Section 404 violations. Moreover, of those found guilty of criminal Section 404 violations, fewer than 10 of these violators have actually been sentenced to jail time. As demonstrated by the following examples, EPA and the Corps reserve their criminal enforcement authority for only the most flagrant and egregious Section 404 violations.

## United States v. Pozsgai

In December 1989, a Philadelphia jury convicted John Pozsgai on 40 counts of knowingly filling wetlands in Bucks County, Pennsylvania, without a Section 404 permit. Mr. Pozsgai was sentenced to three years in jail, ordered to restore the site upon his release, and assessed a fine. His conviction and sentence have been affirmed by the U.S. Supreme Court.

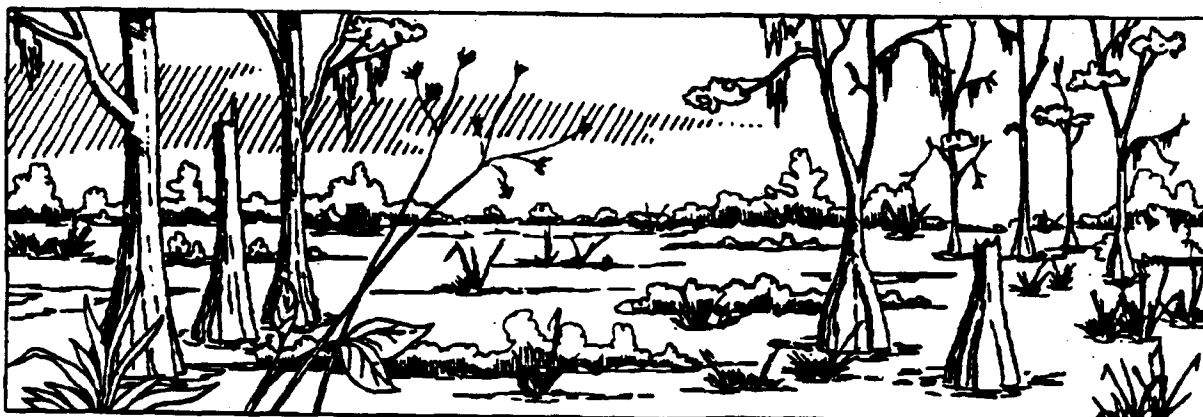
Even prior to purchasing the 14-acre tract in 1987, Mr. Pozsgai was told by private consultants that the site contained wetlands subject to the permitting requirements of Section 404. He purchased the property at a reduced price due to the presence of wetlands, and then proceeded to ignore no less than 10 warnings from EPA and Corps field staff to stop filling the wetlands without first getting a Section 404 permit. He also defied a temporary restraining order (TRO) issued by a Federal court judge. In fact, the

government documented violations of the TRO on videotape, thanks to the cooperation of neighbors whose homes were being flooded as a result of Mr. Pozsgai's filling in his wetlands.

## United States v. Ellen

In January 1991, William Ellen was found guilty by a Maryland jury of knowingly filling 86 acres of wetlands without a Section 404 permit. He was sentenced to six months in jail and one year supervised release. The U.S. Supreme Court denied review of the conviction and sentence.

Mr. Ellen is a consultant who was hired by Paul Tudor Jones to assist in the location and creation of a private hunting club and wildlife preserve on Maryland's Eastern Shore. With Mr. Ellen's assistance, Jones selected a 3,000-acre site in Dorchester County that bordered Chesapeake Bay tributaries and consisted largely of forested wetlands and tidal marshes. As project manager, Mr. Ellen was responsible for acquiring environmental permits and complying with all applicable environmental rules and regulations. His own consulting engineers repeatedly told him that a Section 404 permit would be required. Nevertheless, he supervised extensive excavation and construction work destroying wetlands at the site without first obtaining a Section 404 permit. Despite repeated warnings to Mr. Ellen from the Corps, this unpermitted activity did not stop until the Corps contacted the subcontractors directly.



For more information: contact the EPA Wetlands Hotline\* at 1-800-832-7828

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# WETLANDS FACT SHEET #14

## Wetlands Mitigation Banking

### BACKGROUND

Wetlands mitigation banking is the restoration, creation, enhancement, or in certain circumstances, preservation of wetlands expressly for the purpose of providing compensation in advance of proposed or future wetland impacts. A wetlands mitigation bank is created when a government agency, corporation or non-profit organization, under a formal agreement, acquires a long-term interest in a degraded wetland or an appropriate upland area and restores or creates the site into a functional wetland ecosystem. The value of a bank is determined by quantifying the wetland values restored or created in terms of "credits," which may later be utilized to compensate for wetland losses, or "debits," associated with a permitted discharge. Banking has the potential to play a significant role in the Section 404 regulatory program by reducing uncertainty and delays for qualified projects, especially when the project is associated with a comprehensive resource planning effort. Agencies have received comments noting both benefits and concerns about mitigation banking, some of which are noted below.

### BENEFITS

With mitigation banking, compensatory mitigation can be implemented and functioning in advance of project impacts, thereby assuring the success of compensation. In addition, it eliminates the temporal losses of aquatic functions and values that typically occur when the compensation is initiated during or after the time wetlands impacts occur.

In addition, consolidation of mitigation for impacts to numerous small, isolated or fragmented habitats into a single large parcel is often

more ecologically advantageous for maintaining the integrity of the aquatic ecosystem.

Development of a mitigation bank can also bring together financial resources, as well as planning and scientific expertise not generally practical for individual mitigation proposals, thereby increasing the likelihood of success.

### CONCERNS/ISSUES

A primary concern with the use of mitigation banking in the Section 404 regulatory program is that establishment of a bank may be wrongfully construed as direct or implied authorization of specific projects, regardless of the avoidability of wetland impacts associated with the proposed project. Implementation of a banking agreement involves substantial administrative and legal complexities. Moreover, the scientific and technical expertise for creation and restoration is limited for some wetland types.

### STATUS

The 1990 EPA/Army Memorandum of Agreement (MOA) on Mitigation identifies mitigation banking as "an acceptable form of compensatory mitigation under specific criteria designed to ensure an environmentally successful bank." Approximately 100 mitigation banks are in operation or are proposed for construction in 34 States across the country.



### ADDITIONAL MATERIAL:

- "Mitigation Banking," Fish and Wildlife Service Biological Report 88(41), July 1988.

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# WETLANDS FACT SHEET # 15

## Wetlands Categorization

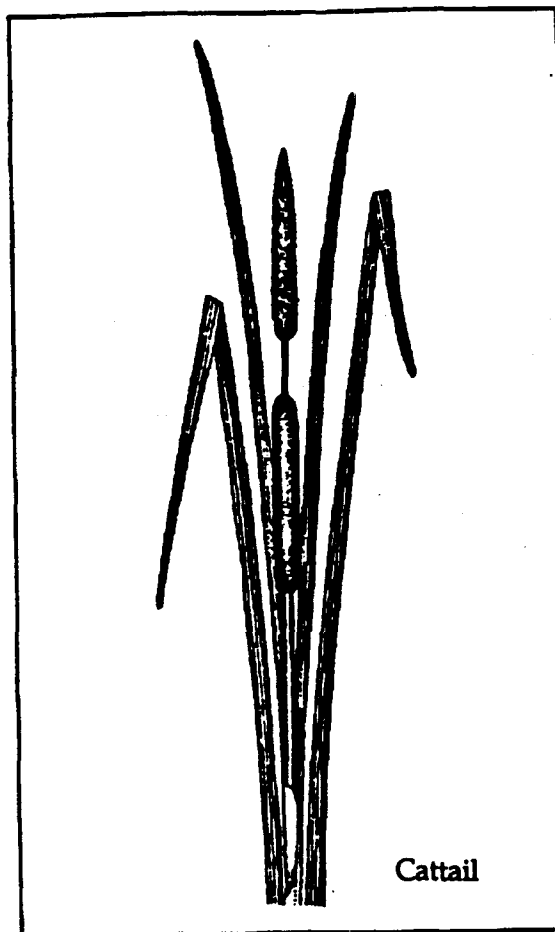
There has been interest over many years in revising the Section 404 regulatory program to base decisions more on the relative values of wetlands as determined in advance based on the type or condition of the wetland. In response, several approaches have been proposed to classify or "categorize" wetlands based on their relative value, with commensurate levels of regulatory protection assigned to each wetland category.

### Issues

Categorization proponents believe wetlands regulation would be improved by focusing agency resources on protection of the most valuable wetlands, by providing greater consistency and predictability in the permit review process, and by reducing regulatory burden for activities in lower value wetlands. However, some have raised concerns that a hierarchical approach to wetlands protection may result in "writing off" low value wetlands and increasing the potential for wetlands "takings" claims for high value wetlands. Additional concerns include the inadequacy of objective methods for identifying and evaluating wetland functions and values, and the increased reliance that some approaches place on mitigation techniques (i.e., wetland restoration and creation), which are still relatively new and unproven. State experience also indicates that categorization programs require substantial time and financial resources to implement.

### Current Status

Wetland values are currently assessed on a case-by-case basis in the Section 404 permit review process. The level of review an individual permit application receives is commensurate with the significance of the environmental impact, considering both the relative value of the wetland and the impacts of the proposed activity. For many in the regulated community, however, such an approach does not provide sufficient predictability and certainty. Efforts in the mid-1980's to categorize wetlands nation-



Cattail

ally were abandoned because of scientific uncertainties. A number of States (most notably, New York, Maine, Vermont, and Delaware) have applied or are considering a categorization approach within their wetlands protection programs. Alternatively, some states are establishing wetland categories as they incorporate wetlands into their Water Quality Standards program. Categorization has worked most effectively in the context of local or regional watershed planning initiatives where the relative value of wetlands within the context of a particular watershed can be more accurately assessed.

For more information: call the EPA  
Wetlands Hotline\* at 1-800-832-7828.

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# WETLANDS FACT SHEET # 16

## What About Takings?

***The Issue: When does a government action affecting private property amount to a "taking," and what are the takings implications of wetlands regulation?***

### Background

The Fifth Amendment prohibits the taking of private property by the government for a public use without payment of just compensation. A body of law has been established by the Supreme Court (and lower courts) that is used to determine when government actions affecting use of private property amount to a "taking" of that property by the government. When private property is "taken" by the government, the property owner must be fairly compensated.

#### ***The Fifth Amendment to the Constitution of the United States of America***

.....  
***No person shall...be deprived of...property  
without due process of law, nor shall  
private property be taken for public use,  
without just compensation.***

Initially, the courts recognized takings claims based on governmental action that resulted in a physical seizure or occupation of private property. The courts subsequently ruled that, in certain limited circumstances, government regulation affecting private property also may amount to a taking.

In reviewing these "regulatory" takings cases, the courts generally apply a balancing test, and examine the character of the government's action and its effect on the property's economic value. Government actions for the purpose of protecting public health and safety, including many types of actions for environmental protection, generally will not constitute takings. The courts also look at the extent to which the government's action interferes with the reasonable, investment-backed expectations of the property owner.

In the recent Lucas decision (Lucas v. South Carolina Coastal Council), the U. S. Su-

preme Court ruled that a State regulation that deprives a property owner of all economically beneficial use of that property can be a taking. However, even then a regulation will not result in a taking if the regulation is consistent with "restrictions that background principles of the

State's law of property and nuisance already place upon land ownership." Some commentators have stated that the Lucas ruling is not likely to have a significant effect on environmental regulation, because it is explicitly limited to those relatively rare situations where the government action de-

nie all economically beneficial use of the property.

### Current Status

The presence of wetlands does not mean that a property owner cannot undertake any activity on the property. In fact, wetlands regulation under Section 404 does not necessarily even result in a restriction on use of the site. For example, many activities are either not regulated at all, explicitly exempted from regulation, or authorized under general permits. Moreover, in situations where individual permits are required, the Federal agencies can work with permit applicants to design projects that meet the requirements of the law and protect the environment and public safety, while accomplishing the legitimate individual objectives and protecting the property rights of the applicant. Overall, more than 95 percent of all projects are authorized.

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# WETLANDS FACT SHEET # 17

## Wetland Acquisition and Restoration: Funding and Technical Assistance

Seventy-four percent of the remaining wetlands in the contiguous United States are located on private property. As stewards of the land, private property owners have a tremendous opportunity to safeguard the Nation's wetlands resources through wise land-use decisions. Many Federal, State, and local programs as well as private and non-profit organizations offer cost-sharing, technical, and often direct payment assistance to private landowners to protect, restore, and create wetlands. Much of the information and funding involves agricultural-related activities in wetlands, however, ample resources also exist for landowners who engage in other activities. Options for private landowners include land banks, transferrable development rights, deed restrictions, easements to conservation organizations—all of which can provide tax breaks—and leases of rights to hunt, fish, harvest timber, and trap fur-bearing animals on the property.

The EPA Wetlands Hotline, staffed by a contracting company, can provide you with more information about the agencies and program requirements discussed in this fact sheet, as well as publications and regional contacts in your area. In addition, your local Soil Conservation Service office or County Extension Agent may know of additional State and local programs.

### Governmental Assistance

The U. S. Department of Agriculture (USDA) supports many sources of assistance for wetland acquisition and restoration through several offices:

The Agricultural Stabilization and Conservation Service (ASCS) oversees programs such as the Agricultural Restoration Program (ARP), the Wetland Reserve Program (WRP), the Water Bank Program, and the Agricultural Conservation Program (ACP).

• Contact: USDA ASCS, Conservation and Environmental Protection Division, P. O. Box 2415, Washington, DC 20013.

The U. S. Forest Service (USFS) administers the Forestry Incentives Program (FIP), the Stewardship Incentives Program (SIP), and the Forest Legacy Program.

• Contact: USDA USFS, Cooperative Forestry Staff, Auditor's Building, 201 14th St., SW, Washington, DC 20250.

The Farmers Home Administration (FmHA) provides debt reduction assistance on FmHA loans in exchange for conservation easements.

• Contact: USDA FmHA, Room 5449, Washington, DC 20250-0700.

The U. S. Department of the Interior (USDOD) helps private landowners through the U. S. Fish and Wildlife Service (USFWS). These programs include Partners for Wildlife (Private Lands Assistance and Restoration Program), and the North American Waterfowl Management Plan (NAWMP) Joint Ventures.

• Contact: USDOD, USFWS, North American Waterfowl and Wetlands Office, 4401 N. Fairfax Dr., Arlington, VA 22203.

The U. S. Environmental Protection Agency (US EPA), through its Office of Wetlands, Oceans, and Watersheds, Wetlands Division and the contractor-operated Wetlands Hotline, offers information on current EPA wetland conservation, acquisition, and restoration initiatives.

• Contact: US EPA, OWOW, Wetlands Division (A-104 F), 401 M St., SW, Washington, DC 20460.

### Private/Non-Profit Assistance

In the private sector, Ducks Unlimited administers the MARSH (Matching Aid to Restore States Habitat) Program.

• Contact: MARSH Program Coordinator, 1155 Connecticut Ave, NW, #800, Washington, DC 20036.

The Nature Conservancy provides help through the Natural Areas Registry.

• Contact: 2 Wisconsin Ave., Chevy Chase, MD 20815.

The Izaak Walton League offers the Partners for Wetlands program.

• Contact: 1401 Wilson Blvd, Level B, Arlington, VA 22209.

Private Land Trusts assist landowners in acquiring and restoring wetlands using a master planning process to select a variety of programs based on the landowner's resource needs, goals, and opportunities.

• Trust for Public Lands 312 Massachusetts Ave., Washington, DC 20002

• Land Trust Alliance 900 17th St., NW, Washington, DC 20006

• American Farmland Trust 1920 N St., NW, Washington, DC 20036

**For more information contact the EPA Wetlands Hotline at 1-800-832-7828 \***

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# WETLANDS FACT SHEET #18

## Section 404 Regulatory Program: Issues and Examples

### ISSUES

In recent years, implementation of the Section 404 regulatory program has received considerable attention. In addition to coverage in the popular press, in late 1991 the Environmental Protection Subcommittee of the Senate Environment and Public Works Committee requested that EPA and the U.S. Army Corps of Engineers (Corps) review 108 cases submitted to the Subcommittee which allegedly illustrated problems in implementation of the Section 404 regulatory program. While it would be unmanageable to furnish the complete results of our review, it is useful to review the type of issues frequently raised. In general, it is important to note that these cases often reflected confusion, misunderstanding, or misinformation, rather than problems with the actual implementation of the program. In some cases, it appeared that commentators equated the regulation of wetland areas with advance denial of authorization for any discharge or activity or the loss of one's ability to use that property for any financial return. In its most extreme form, this perception prevented landowners from even applying for permits which they believed would never be granted. This is certainly the most unfortunate misperception revealed in the case examples and simply does not reflect actual implementation of the Section 404 regulatory program.

...cases often reflected confusion, misunderstanding, or misinformation, rather than problems with the actual implementation of the program...

jurisdictional wetlands for the purposes of the Clean Water Act.

### REGULATORY REQUIREMENTS

Certain cases reflected a lack of understanding about regulatory requirements for activities in wetlands because of different regulatory requirements from government agencies, including State and local requirements. This concern was particularly evident in those cases involving farmers potentially affected by the Swampbuster program under the Food Securities Act. Many cases reflected the fear that the mere presence of wetlands precluded any activity and rendered the land unusable to the landowner.

### TIMEFRAMES FOR THE §404 PERMIT PROCESS

Many of the case examples cited perceived delays in the Section 404 permitting process. It is true that some delays do occur in the Section 404 program. To address this problem, EPA and the Corps have been working to make the process more efficient, and to ensure adequate staffing. It is also the case that some delays involve regulatory requirements of other State or Federal laws. Additionally, in many cases the issues of concern were related to enforcement actions on the part of the Federal government for unauthorized discharges or requirements for processing of after-the-fact permit applications. Because these cases may involve illegal activities carried out without required Section 404 permits, resolution of the issues involved in these cases is, by the very nature of the circumstances, time consuming and controversial. These circumstances, however, do not represent normal processing requirements of the Section 404 regulatory program.

### ACCURACY OF WETLANDS DETERMINATIONS

Many case examples raised concerns about what were believed to be inaccurate determinations of the presence of wetlands on the property. In many of these cases, particularly in areas that may not be wet year-round, the subject property did not fit the landowners' particular perception of what constitutes a wetland. These important systems, nevertheless, are wetlands, and may be

# Section 404 Regulatory Program:

## EXAMPLES

### RANDY LONGBONS

In this case a farmer in Albion, Illinois, cleared 3 acres of brush on his farm and straightened a ditch (routine maintenance operations) to prevent water from ponding on his land. Mr. Longbons has stated that he received conflicting information regarding the regulation of his operations and that agencies have placed excessive demands on him by requiring mitigation for ditching activities. He is concerned about losing the right to continue normal farm management practices.

Mr. Longbons contacted the Soil Conservation Service to assure the work would be consistent with the Food Securities Act (Farm Bill). The SCS responded that the work was allowable, but that he should contact the Corps and EPA to assure compliance with the Clean Water Act. However, Mr. Longbons did not do so.

Staff from the Environmental Protection Agency, the Corps of Engineers, and Congressman Pouchard's office conducted an inspection of the site. The inspection showed that Mr. Longbons had cleared a ditch and 3 acres of bottomland hardwood forest, and dug a new lateral ditch, sidestepping the material into the wetlands. It should be noted that maintenance activities for existing drainage ditches are exempted from the Section 404 program. Mr. Longbons' clearing of the old drainage ditch, the major component of this project, was never regulated. However, clearing a bottomland hardwood forest, creating a new lateral ditch, and disposing of materials into wetlands are regulated activities. Therefore, Mr. Longbons' actions constituted a violation of Section 404 of the Clean Water Act. In light of the facts of this case, EPA Region 5 recommended to the Corps that an after-the-fact permit be issued with a mitigation condition for the loss of the 3 acres of bottomland hardwood forest. The lateral ditch has been stabilized with perennial grasses. Under the permit, Mr. Longbons is able to plant crops in the cleared area.

### ST. VINCENT DePAUL SOCIETY HOMELESS SHELTER PARKING LOT JUNEAU, ALASKA

This anecdote has appeared in several places, including the Wall Street Journal and Congressional testimony. In general, the account raises concerns regarding alleged delays in the evaluation of a Section 404 permit application for a homeless shelter in Juneau, Alaska.

The Section 404 permit application was, in fact, for construction of a parking lot. The public comment period ended on January 26, 1990, and after interagency discussions, the permit was issued on August 3, 1990.

In 1989, the EPA and the Corps of Engineers adopted an Advance Identification plan identifying wetland areas generally suitable or unsuitable for fill within the core service area of the City/Borough of Juneau, Alaska. The Advance Identification program is designed to provide information to the regulated public of the suitability of proposed discharges into designated wetland areas. The area targeted by the St. Vincent DePaul Society for future development was classified as "generally unsuitable" for the discharge of fill material.

The final Section 404 permit application was only for expansion of a parking lot adjacent to the shelter. The expansion was based upon local zoning restrictions requiring facilities of a designated size to have a requisite number of parking spaces. While the Society submitted the permit application, it was noted by the Society that a homeless shelter did not necessarily require the number of parking spaces required by the ordinance.

EPA and the U.S. Fish and Wildlife Service objected to the proposed project, expressing concerns regarding the size and design of the parking lot. In response, the applicant made modifications to minimize potential impacts of erosion to surrounding wetlands. As previously stated, the issues were mutually resolved and the permit was issued about six months after the application was submitted.

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# **WETLANDS FACT SHEET #19**

## **Agriculture and Wetlands:**

### **§ 404 and Swampbuster**

The two most important Federal wetlands programs that directly affect farmers are the Section 404 permitting program and the Swampbuster program. Section 404 of the Clean Water Act requires that individuals must obtain a U. S. Army Corps of Engineers (Corps) 404 permit before discharging dredged or fill material into waters of the United States, including most wetlands. The Swampbuster program of the Food Security Act, administered by the U. S. Department of Agriculture, is intended to discourage the alteration of wetlands by withholding certain Federal farm program benefits from farmers who convert or modify wetlands.

Section 404 permitting and Swampbuster provision requirements are complex and can be confusing. The Federal agencies involved are actively working together to improve program coordination, and to clarify the relationship between Section 404 and Swampbuster. For example, "prior converted croplands" have been excluded from regulation under Section 404 to be consistent with Swampbuster.

### **Section 404 Provisions**

Perhaps the most important information for farmers regarding Section 404 is that most routine, ongoing farming activities do not require individual Section 404 permits. Section 404 permitting requirements apply only to discharges of dredged or fill materials in wetlands, streams, rivers, and "other waters of the United States." In general, farming activities that occur in areas that are not wetlands or waters of the U. S. or that do not involve discharges of dredged and fill material do not require Section 404 permits.

Many normal farming, silviculture and ranching activities that involve discharges of dredged or fill materials into waters of the United States are exempted from Section 404, and do not require notification or submission of a permit application to the Corps. In order to be

exempt, the farming activity must be part of an ongoing farming operation and cannot be associated with bringing a wetland into agriculture production or converting an agricultural wetland to a non-wetland area.

### **Swampbuster Provisions**

The Swampbuster provision of the 1985 Food Security Act, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990, withholds Federal farm program benefits from any person who:

- plants an agricultural commodity on a converted wetland that was converted by drainage, dredging, leveling, or any other means after December 23, 1985; or
- converts a wetland for the purpose of or to make agricultural commodity production possible after November 28, 1990.

Farmers are asked to report on whether they plan to or have altered any "wet area" when they apply for their farm benefits (Form AD 1026). The Soil Conservation Service assists farmers in making wetland determinations with regard to the Swampbuster Program.

**To make sure farmers maintain their benefits under the USDA farm program, they should contact the Soil Conservation Service before clearing and stumping, draining, or manipulating any wet areas on their land.**

**They should also check with the local Corps district office if they are unsure whether ongoing or planned activities occurring in wetlands are regulated under Section 404.**

**For more information, contact the EPA Wetlands Hotline at 1-800-832-7828 \***  
\* contractor operated



# **WETLANDS FACT SHEET # 20**

## **Clean Water Act § 404(f) Exemptions**

Section 404 of the Clean Water Act (Act) requires permits for the discharge of dredged or fill material into waters of the United States, including wetlands.

### **Exemptions**

Section 404(f) of the Act generally exempts discharges of dredged or fill material associated with normal farming, ranching, and forestry activities such as plowing, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products or upland soil and water conservation practices. This exemption pertains to normal farming and harvesting activities that are part of an established, ongoing farming or forestry operation.

### **Activities Not Exempt**

If an activity involving a discharge of dredged or fill material represents a *new use* of the wetland, and the activity would result in a *reduction in reach or impairment of flow or circulation* of regulated waters, including wetlands, the activity is *not* exempt. Both conditions must be met in order for the activity to be considered non-exempt.

### **Examples**

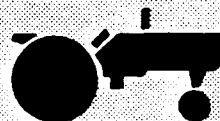
Activities that bring a wetland into farm production where that wetland has not previously been used for farming are not considered part of an established operation, and therefore are not exempt. In general, any discharge of dredged or fill material associated with an activity that converts a wetland to upland is not exempt, and requires a Section 404 permit.

However, introduction of a new cultivation technique such as disking between crop rows for weed control may be a new farming activity, but because the farm operation is ongoing, the activity is exempt from permit requirements under Section 404. Planting different crops as part of an established rotation, such as soybeans to rice, is exempt. Discharges associated with ongoing rotations of rice and crawfish

production are also exempt. To find out whether specific activities are exempt, contact the local Corps or EPA office.

### **Activities Exempt Under the Clean Water Act Section 404 (f)**

- **Established (ongoing) normal farming, ranching, and forestry activities:**
  - plowing
  - seeding
  - cultivating
  - harvesting food, fiber, and forest products
  - minor drainage
  - upland soil and water conservation practices
- **Maintenance (but not construction) of drainage ditches**
- **Construction and maintenance of irrigation ditches**
- **Construction and maintenance of farm or stock ponds**
- **Construction and maintenance of farm or forest roads, in accordance with best management practices**
- **Maintenance of structures, such as dams, dikes, and levees**



The publication "Agriculture and Wetlands: A Compilation of Factsheets" can be requested free of charge from the EPA Wetlands Hotline.



**For more information, contact the EPA Wetlands Hotline at 1-800-832-7828 \***

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# **WETLANDS FACT SHEET # 21**

## **State, Tribal, Local and Regional Roles in Wetlands Protection**

Many of the factors that are attributed to wetlands degradation and loss can be addressed at the State or local level. States, Indian Tribes, and local governments are becoming more interested and active in comprehensive wetlands protection through the authorities granted to them in the Clean Water Act and existing State legislation.

All levels of government must work together to determine how to best protect wetland resources and what the appropriate roles and programs are for Federal, State, and local governments. Thus, EPA is supporting the strengthening of State, Tribal, and local roles in wetlands protection.

### **Current Opportunities**

#### **Section 404 Program**

One of the ways States and Indian Tribes can strengthen their role in wetlands protection is by assuming permitting authority under the Clean Water Act Section 404 program. To date, only Michigan has assumed this program, which regulates the discharge of dredged and fill material in wetlands and other waters. Reasons cited for limited State interest in program assumption include:

- having to share jurisdiction with the Army Corps of Engineers;
- the lack of Federal funding;
- the degree of Federal oversight allowed;
- burdensome program requirements;
- the lack of inland wetland protection programs in all States; and
- the availability of other less controversial opportunities for States to be involved in

wetlands protection.

Florida, New Jersey, and Delaware are currently pursuing Section 404 assumption. EPA is working to assist these and other States interested in assumption.

#### **Other Programs**

Other strategies available to States and Indian Tribes to strengthen their role in wetlands protection include:

- undertaking comprehensive State Wetland Conservation Plans;
- obtaining State Program General Permits from the Corps for discharges of dredged and fill material in wetlands;
- promulgating wetland water quality standards;
- applying the Clean Water Act Section 401 Water Quality Certification program more specifically to wetlands; and
- incorporating wetlands protection into other State water programs.

Financial assistance is available from EPA to pursue many of these activities through EPA's State Wetlands Protection Development Grant Program. EPA also helps by providing information and program guidance and by sponsoring national forums on State program development.

Regional and local participation in wetland protection can also be strengthened through geographically-targeted comprehensive resource planning, such as multi-objective river corridor management, watershed protection approaches and advance identification of suitable and unsuitable sites for discharges.

**For further information, contact the EPA Wetlands Hotline: 1-800-832-7828 \***

\* contractor operated



# WETLANDS FACT SHEET # 22

## State Wetlands Grants Program

### Background

States have been interested and involved in wetlands protection for a long time. However, in many cases their efforts have been hampered by the lack of funds to support State wetlands protection programs.

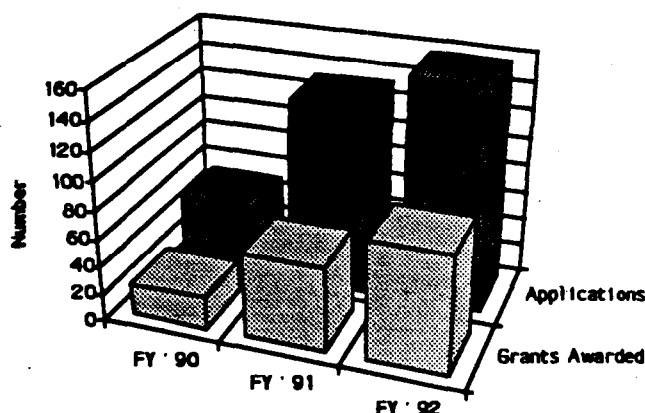
In FY90 Congress first appropriated funds for a grant program to support State wetlands protection efforts. This grant program has provided an important opportunity for the States to improve their wetland protection efforts.

### Current Program

These grant funds can be used to develop State wetland protection programs that enhance existing programs or develop new programs. However, grant funds cannot be used for operational support of State wetland protection programs. Lack of funds to support operation of State wetlands programs will continue to be a serious impediment to State involvement in wetlands protection.

The State Wetlands Protection Development Grant Program was initiated in FY90 with \$1 million appropriated to support the grant program. In FY93 \$10 million was appropriated by Congress to support the grant program. State interest in the grant program continues to grow. States usually request more than double the amount of grant funds available each year. During FY92, EPA received approximately 160 applications from 43 States, 29 Tribes and two Territories, and awarded 80 grants to 41 States, 9 Tribes and one Territory (see chart).

During the first three years of the grant program, EPA has awarded a total of \$14.5 million in grant funds to 48 States, 15 Tribes, and one Territory.



### Examples

Currently, the grant program is supporting:

- Section 404 assumption efforts in Florida, Louisiana, and North Dakota;
- development of State Wetland Conservation Plans for the Tribal lands of the Red Lake Band of Chippewa Tribe and in New York, Ohio, Delaware, New Jersey, Michigan, North Dakota, Montana, and other States;
- Watershed Protection Approach Demonstration Projects in Michigan (Grand Traverse Bay), Delaware (Nanticoke River), and Oregon (Willamette Valley);
- development of wetland water quality standards in Washington, Massachusetts, Minnesota, North Carolina, Ohio and other States;
- incorporation of wetlands into Section 401 Water Quality Certification programs in Arizona, Idaho, Indiana, Massachusetts, Nebraska, Texas, Utah, West Virginia, Minnesota, South Carolina and other States.

**For More Information:** Contact the EPA Wetlands Hotline\* at 1-800-832-7828 for copies of "Catalog of State Wetlands Protection Development Grants," available for Fiscal Years 1990, 1991, 1992.

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Yellow Perch

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# WETLANDS FACT SHEET # 23

## State Assumption of the § 404 Permit Program

*The Clean Water Act provides States and Tribes with the option of assuming the Federal Section 404 permit program in certain waters within the State or Tribal jurisdiction.*

### Why Assume § 404?

Over a dozen States are currently administering aquatic resources/wetlands protection programs similar to the Federal Section 404 program. State and Tribal regulators are, in many cases, located closer to the proposed activities and are often more familiar with local resources, issues, and needs than are Federal regulators. Formal assumption of the regulatory program eliminates unnecessary duplication between State or Tribal and Federal programs. After assumption, permit applicants will need only a State or Tribal permit for dredged or fill material discharges in certain waters.

### What Waters are Assumable?

States and Tribes can assume the Federal Section 404 program only in certain "non-navigable" waters. The Army Corps of Engineers retains jurisdiction in:

- tidal waters and their adjacent wetlands; and
- navigable waters and their adjacent wetlands.

In addition, the Corps continues to regulate navigable waters under Section 10 of the Rivers and Harbors Act of 1899.

### Requirements to Assume § 404

In order to assume the Section 404 program, States or Tribes need a wetlands

permit program that is similar to the Federal program. Even for States or Tribes with an existing wetlands regulatory program, this can require the passage of new legislation. In particular, the State's or Tribe's program must:

- have an equivalent scope of jurisdiction;
- regulate at least the same activities;
- provide for sufficient public participation;
- ensure compliance with the § 404 (b) (1) Guidelines, which provide environmental criteria for permit decisions; and
- have adequate enforcement authority.

### What Happens After Assumption?

After assumption, the Corps no longer processes Section 404 permits in those assumable waters under State or Tribal jurisdiction. Instead, the State or Tribe assumes responsibility for the program, including determining what areas and activities are regulated, processing the individual permits for specific proposed activities, and enforcement. EPA reviews the program annually, to ensure that the State or Tribe is operating its program in compliance with the requirements of the law and regulations. In addition, for a small subset of activities, generally larger discharges with potentially serious impacts, EPA and other Federal agencies review the permit application and comment to the State or Tribe; the State or Tribe cannot issue a permit over EPA's objection.



## Status of State § 404 Assumption

To date, Michigan is the only State that has assumed the Federal permit program. However, other States and some Tribes are working toward or investigating the possibility of assuming the permit program. New Jersey is seeking to assume the program in 1993. Florida, North Dakota, and Louisiana are investigating the feasibility of program assumption. Other States, such as Wisconsin, Delaware, and some Tribes have expressed interest in Section 404 assumption.

Several States have expressed a number of reasons why they have not more actively pursued assumption. These include:

- lack of available funding to run the program;
- limit on State/Tribal assumption to "non-navigable" waters;
- concerns regarding Federal requirements and oversight;
- the availability of alternative mechanisms for State/Tribal wetlands protection; and
- the controversial nature of regulation of wetlands and other aquatic resources.

## For More Information

If a State or Tribe is interested in investigating assumption of the Section 404 permit program, the appropriate EPA Regional Office should be contacted. See Wetlands Fact Sheet # 31, or call the EPA Wetlands Hotline\* for the appropriate contact person. EPA can provide technical assistance, and may also be able to provide some financial assistance, through the State Wetlands Grants Program, to help States and Tribes develop the authority, capability, and documentation needed to assume the Federal permit program.

For more information contact the EPA Wetlands Hotline at 1-800-832-7828 \*

\* contractor operated

## State 404 Assumption Process

EPA is responsible for reviewing and approving/denying a State's/Tribe's request to assume the Federal Permit Program within 120 days from receipt of the completed application.

### EPA Receives Complete State/Tribal Assumption Application

The Governor of the State or equivalent Tribal entity\* submits to EPA a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, the State submits a statement from the Attorney General that the laws provide adequate authority to carry out the described program.

### Distribution of Application for Public Comment

EPA distributes assumption application to other Federal Agencies (Corps, FWS, and NMFS).

### Public Hearing

EPA also makes the State's/Tribe's package available for public review and comment and holds a public hearing(s) in the State.

### EPA Decision

After reviewing the State's/Tribe's application and considering the Agencies' and public comments, EPA makes a decision on the request to assume the Federal permit program. EPA's decision is based on whether or not the State or Tribe meets the applicable statutory and regulatory requirements for an approvable program.

## Assumption Approved

## Assumption Denied

\* NOTE: Tribes are eligible to apply to assume the Federal Permit Program after they have met the requirements for "treatment as a State." See the February 11, 1993, Regulations listed below for more information.

## Publications of Interest:

- Clean Water Act, Section 404 Program Definition and Permit Exemptions; Section 404 State Program Regulations, June 6, 1988, *Federal Register*, 40 CFR Parts 232 and 233.
- Clean Water Act, Section 404 Tribal Regulations, February 11, 1993, *Federal Register*, 40 CFR Parts 232 and 233.



# WETLANDS FACT SHEET # 24

## 401 Certification and Wetlands

### Opportunity for States

Under Section 401 of the Clean Water Act (CWA), States and eligible Indian Tribes have the authority to review and approve, condition, or deny all Federal permits or licenses that might result in a discharge to State waters, including wetlands. The major Federal programs subject to §401 certification are: Section 404 and 402 permits (in non-delegated States); Federal Energy Regulatory Commission (FERC) hydropower licenses; and Rivers and Harbors Act Section 9 and 10 permits. States may choose to waive their §401 certification authority.

States make their decision to deny, certify or condition permits or licenses primarily by ensuring that the activity will comply with State water quality standards. In addition, States look at whether the activity will violate effluent limitations, new source performance standards, toxic pollutants and other water resource requirements of State law or regulation.

### EPA Assistance to States

#### Technical Guidance:

In 1988, the National Wetlands Policy Forum recommended that States "make more aggressive use of their certification authorities under Section 401 of the CWA to protect their wetlands from chemical and other types of alterations". In response, EPA issued guidance in 1989 to States on applying §401 certification to protect wetlands. A year later, EPA followed this up with guidance on developing water quality standards specifically for wetlands. Wetland water quality standards are important because they are the primary tool used in water quality certification decisions.

#### Financial Support:

Nineteen States and one Indian Tribe have been awarded State Wetlands Grants to support use of Section 401 Certification to pro-

**Does §401 certification add another layer of bureaucracy or cause delays? It shouldn't. Instead, 401 certification allows States to take a more active role in wetland decisions.** In most cases, 401 certification review is conducted at the same time as the Federal agency review. Many States have established joint permit processing to ensure this. In addition, the 401 review allows for better consideration of State-specific concerns.

tect wetlands. These grantees are: Arizona, California, Hawaii, Idaho, Indiana, Maryland, Massachusetts, Michigan, Mille Lacs Tribe, Minnesota, Missouri, Nebraska, North Carolina, Oregon, South Carolina, Texas, Utah, Virginia, West Virginia and Wyoming.

### State Progress

Over the past several years, States have made progress in applying §401 certification to wetlands. Some States rely on §401 certification as their primary mechanism to protect wetlands in the State. In addition, most States denied or conditioned §401 certification for some §404 nationwide general permits in order to reduce certain problematic losses in their State. In particular, many States denied certification of nationwide 26 because they believe that individual review of projects in isolated and headwater wetlands is critical to achieving CWA goals in their State.

EPA has asked States to develop or improve their wetland water quality standards by the end of September 1993. Wisconsin is using

*continued on back*

# 401 Certification and Wetlands...

its new standards in §401 certification decisions on wetlands. Other States are using their §401 authority to condition some of the more than 300 dams that are coming up for relicensing by FERC. §401 certification allows States to address associated chemical, physical and biological impacts such as: low dissolved oxygen levels, turbidity, inundation of habitat, stream volumes and fluctuations, filling of habitat, impacts on fish migration and loss of aquatic species due to habitat alterations.



Wood Stork

## How can water quality standards protect wetlands?

Water quality standards have three components: designated uses; criteria to protect those uses; and an antidegradation policy. States designate uses based on the functions and values of their wetlands. At a minimum these uses must meet the CWA goals to provide for the protection and propagation of fish, shellfish, and wildlife and for recreation in and on the water. States may also designate uses associated with unique functions and values of wetlands such as floodwater storage and groundwater recharge.

States adopt criteria to protect those uses. Criteria can be general narrative statements such as "maintain natural hydrologic conditions, including hydroperiod, hydrodynamics, and natural water temperature variations necessary to support vegetation which would be present naturally." Criteria may also include specific numeric values such as a dissolved oxygen concentration of 5.0 mg/l.

State antidegradation policies include provisions for full protection of existing uses

(functions), maintenance of water quality of high quality waters, and a prohibition against lowering water quality in outstanding resource waters. In addition, a State's antidegradation policy addresses fill activities in wetlands by ensuring that there is no significant degradation due to the fill activity.

Narrative criteria in conjunction with antidegradation policies, can provide the basis for addressing hydrologic and physical impacts to wetlands (not discerned through numeric criteria) caused by nonpoint source pollution, storm water discharges, groundwater pumping, filling and other sources of wetland degradation. When combined with a strong implementation policy, wetland water quality standards can provide the basis for such tools as best management practices, monitoring programs, and mitigation plans, as well as serve as the primary basis for §401 certification decisions.

**For more information:** contact the EPA Wetlands Hotline\* at 1-800-832-7828 for copies of: Wetlands and 401 Certification, 1989; Water Quality Standards for Wetlands, 1990; Statement of Martha G. Prothro May 1992.

\* Contractor operated





## WETLANDS FACT SHEET #25

### Wetlands and Runoff

Since wetlands are typically the lowest points on the landscape, they often receive runoff from surrounding land. Runoff can be collected, conveyed or discharged from conduits, pipes, animal feedlots, waste treatment plants or floating crafts. In addition, precipitation, atmospheric deposition, seepage, or hydrologic modifications can result in runoff that moves over and through the ground picking up natural or anthropogenic pollutants, which then become deposited directly into surface or groundwater. In either case, as runoff move across the land, water picks up and carries with it pollutants which ultimately end up in rivers, lakes, groundwater, and wetlands.

#### TO USE OR NOT TO USE?

Because wetlands have a natural water quality improvement function, there has been a tremendous amount of interest in using wetlands to treat runoff from urban areas, agricultural lands, and other pollutant sources. There are significant opportunities to protect and restore wetlands and riparian areas as one part of programs addressing runoff. However, the critical question is: "What can wetlands safely handle before they are contaminated or their functions degraded?" While wetlands do provide valuable water quality protection for downstream rivers, lakes, and estuaries, the quality of the wetlands, as waters of the United States, should also be protected. Decisions that route runoff into wetlands, either inadvertently or by design, should be carefully evaluated and adequate wetlands protection should be provided, including use of best management practices (BMPs) and monitoring how well they work.

#### EPA PROGRAMS

- **Clean Water Act §402(p)**  
Section 402(p) requires stormwater permits for four major classes of stormwater discharges: (1) a discharge with respect to which a permit has been issued under Section 402 before the date of the enactment of this subsection, (2) a discharge associated with industrial activity, (3) a discharge from a municipal separate stormwater sewer system serving an incorporated or unincorporated, urbanized population greater than 100,000, and (4) a discharge that contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. This program has issued guidance for preparation of permit applications for regulated municipal and industrial stormwater discharges. In addition, it stresses the use of best management practices (BMPs) to minimize or eliminate the contribution of pollutants to stormwater discharges to waters of the United States, including wetlands.
- **Clean Water Act §319**  
EPA supports a national program to control nonpoint sources of pollution. EPA stresses a watershed based approach to nonpoint source management which can include protection or restoration of wetlands and riparian areas to reduce nonpoint source pollution. EPA has funded a number of these projects under Section 319(h).
- **Coastal Zone Act Reauthorization Amendments (CZARA) of 1990 §6217**  
EPA and the National Oceanic and Atmospheric Administration have developed guidance specifying management measures for nonpoint source pollution affecting coastal waters. Included in the guidance (released January 1993) is a chapter on protection and restoration of wetlands and riparian areas, and use of vegetated treatment systems for nonpoint source control.

**FOR MORE INFORMATION: call the EPA Wetlands Hotline\* at 1-800-832-7828**

\*contractor operated



## UNTREATED RUNOFF: IMPACTS TO WETLANDS

Untreated runoff from agricultural land, urban areas, and other sources is a leading cause of water quality impairment. Siltation, excess nutrients, changes to water flows such as, more frequent inundation, and increased turbidity are responsible for most of the impacts to wetlands from runoff.

Impacts to wetlands have resulted in consequences such as changed species composition, increased pollutant loadings (e.g., heavy metals), and replacing complex wetland systems with less desired open water. Modifications of wetlands associated with some stormwater management practices have resulted in significant impacts to wetlands.

Some impacts have been particularly tragic, such as in Kesterson and Stillwater Wildlife Refuges, where untreated, contaminated run-

off resulted in mortality and deformities of wildlife populations, particularly fish and migratory birds.

## CURRENT STATUS

EPA is developing technical information that landowners can use to protect the many functions of wetlands, including water quality improvement. An issue paper highlighting the impacts of stormwater on wetlands entitled, *Natural Wetlands and Urban Stormwater: Potential Impacts and Management*, is available through the EPA Wetlands Hotline. A guide describing best management practices to pretreat stormwater runoff before it enters a natural wetland is also being developed. Additional materials on wetlands protection and restoration for nonpoint source benefits will be developed to assist in implementation of the wetlands and riparian areas chapter in the CZARA Management Measures Guidance. EPA will continue to work to address potential opportunities and conflicts regarding wetlands and programs addressing runoff.



### ADDITIONAL INFORMATION:

- For additional information regarding the Section 319 program or the CZARA guidance, contact the EPA Nonpoint Source Control Branch at (202) 260-7100.
- For additional information about the Section 402 stormwater program, contact the Stormwater Hotline at (703) 821-4823.

**FOR MORE INFORMATION: call the EPA Wetlands Hotline\* at 1-800-832-7828.**

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# **WETLANDS FACT SHEET #26**

## **Wetlands and Watersheds**

Water resource protection measures need to be better coordinated to reflect the interconnected nature of water resources and to make current efforts more efficient and more effective. Wetlands and traditional surface and ground water quality protection programs should be integrated with each other as well as with other resource management programs, such as flood control, water supply, protection of fish and wildlife, recreation, control of stormwater, and nonpoint source pollution.

### **Background**

The quality of the waters of the United States, including wetlands and other aquatic resources, is related to the quality of the environment adjacent to these waters. Current programs have historically been organized around separate goals. Given that the larger point

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*A watershed, also called a drainage basin, is the area in which all water, sediments, and dissolved materials flow or drain from the land into a common river, lake, ocean or other body of water*

---

sources of water pollution are now identified and controlled to some degree, remaining water quality problems require an approach which addresses the interconnections between water resources and the land, air, and water environment surrounding the resources. A watershed based approach to water and wetlands protection considers the whole system, including other resource management programs addressing land, air, and water, to successfully manage problems or solutions for a given aquatic resource. It should be noted that a watershed encompasses not only the water resource, but

also the surrounding land from which the water drains. This can be an area as large as the Mississippi River drainage basin, or as small as a backyard.

### **Current Activities**

EPA's Office of Wetlands, Oceans, and Watersheds (OWOW) is actively pursuing a Watershed Protection Approach within the Office of Water and with other Federal agencies. One of OWOW's activities was to convene a national conference in March, 1993, bringing watershed management experts from across the nation together to discuss methods and directions for watershed approaches. OWOW's Wetlands Division incorporates a watershed approach in much of its work with other agencies, States, and organizations. Current activities include integrating a watershed approach into Federal floodplain management activities, funding State watershed projects through State Wetland Protection Grants and Nonpoint Source Grants, and supporting a series of national and regional meetings on wetlands and regional watershed planning.

## **W A T E R S H E D**



• An Integrated, Holistic Approach •

**For more information, contact the EPA Wetlands Hotline at 1-800-832-7828 \***

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## WETLANDS FACT SHEET #27

# What is a State Wetland Conservation Plan?

A new tool that States are using to protect wetlands is the State Wetland Conservation Plan (SWCP). A State Wetland Conservation Plan is not meant to create a new level of bureaucracy. Instead, it improves government and private sector effectiveness and efficiency by identifying gaps in wetland protection programs and finding opportunities to make wetlands programs work even better.

*SWCP's are strategies for States to achieve no net loss and other wetland management goals by integrating both regulatory and cooperative approaches to protecting wetlands.*

## What are States doing?



Currently, nineteen States are at various stages of developing an SWCP and have received financial assistance from EPA.

## Advantages

A large number of land and water-based activities impact wetlands. These activities are not addressed by any single Federal, State or local agency program. While many public and private programs and activities protect wetlands, these programs are often limited in scope and not well coordinated. Neither do these programs address all of the problems affecting wetlands.

States are well positioned between Federal and local government to take the lead in integrating and expanding wetland protection and management programs. They are experienced in managing Federally mandated environmental programs under the Clean Water Act and the Coastal Zone Management Act. They are uniquely equipped to help resolve local and regional conflicts and identify the local economic and geographic factors that may influence wetlands protection.

- Michigan's SWCP will focus primarily on non-regulatory aspects of wetlands management to complement their regulatory programs. Initiatives will be developed for wetland water quality, reclamation of valuable wetland functions, coordination of existing wetland protection and management efforts, and wetland education and outreach.

- California plans through its SWCP to inventory its wetlands, identify crucial wetlands, develop a statewide strategy to plan wetlands protection and restoration, and take a crucial role in overall wetland regulation.

- New York will work towards a "no net loss/net gain" goal under its SWCP. Because one purpose of an SWCP is to integrate wetlands protection into other programs, wetland issues and references to the SWCP have been integrated into several State programs.

Other States working on SWCP's include: MO, TN, DE, NJ, ND, OH, OK, OR, TX, AL, AR, IL, MT, NE, VT, WA.

### FOR MORE INFORMATION:

- See the Statewide Wetlands Strategies guidebook, which is available from Island Press (1-800-828-1302).
- Call the EPA Wetlands Hotline\* at 1-800-832-7828.
- Ask for copies of the SWCP brochure "Why Develop a State Wetland Conservation Plan?" from the hotline\*.

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## WETLANDS FACT SHEET #28

### Advance Identification (ADID)

Advance Identification of disposal areas (ADID) is an advance planning process under which EPA, in cooperation with the Corps of Engineers and after consultation with the State, may identify wetlands and other waters which are either generally suitable or unsuitable for the discharge of dredged and fill material prior to the receipt of a Section 404 permit application. The ADID process generally involves collection and distribution of information on the values and functions of wetland areas. This information provides the local community with information on the values of wetland areas that may be affected by their activities as well as a preliminary indication of factors which are likely to be considered during review of a Section 404 permit application.

The ADID process is intended to add predictability to the wetlands permitting process as well as better account for the impacts of losses from multiple projects within a geographic area. The process also serves to inform the local population of the values and functions of wetlands in their area, and it generates environmental information valuable for other purposes.

While an ADID study generally classifies wetland areas as suitable or unsuitable for the discharge of dredged or fill material, the classification does not constitute either a permit approval or denial and should be used only as a guide by landowners and project proponents in the planning of future activities. The nature of the classification is strictly advisory.

As of December 1992, there were 35 completed ADID projects, and 36 are ongoing. ADID projects have ranged in size from less than 100 acres to greater than 4,000 square miles, and are located from Alaska to Florida. Advance Identification projects can be resource intensive activities, although some have been completed in as little as 6 months. Regional experience seems to indicate that the smaller or more local the ADID project boundaries, the more complete and effective the ADID analysis and results. EPA has seen an increase in interest in ADID, and expects more States, localities, and private organizations to become involved in providing funds and otherwise supporting ADID or other comprehensive planning efforts.

#### FACTS

■ Experience shows that local cooperation and support are vital to the success of the ADID project.

Recently, ADID's have been initiated by local entities in order to facilitate local planning efforts.

These efforts have proven to be the most successful way for generating support for wetlands protection.

■ Because they are usually based on watershed planning, ADID efforts are extremely compatible with geographic and ecosystem initiatives such as EPA's Watershed Protection Approach.

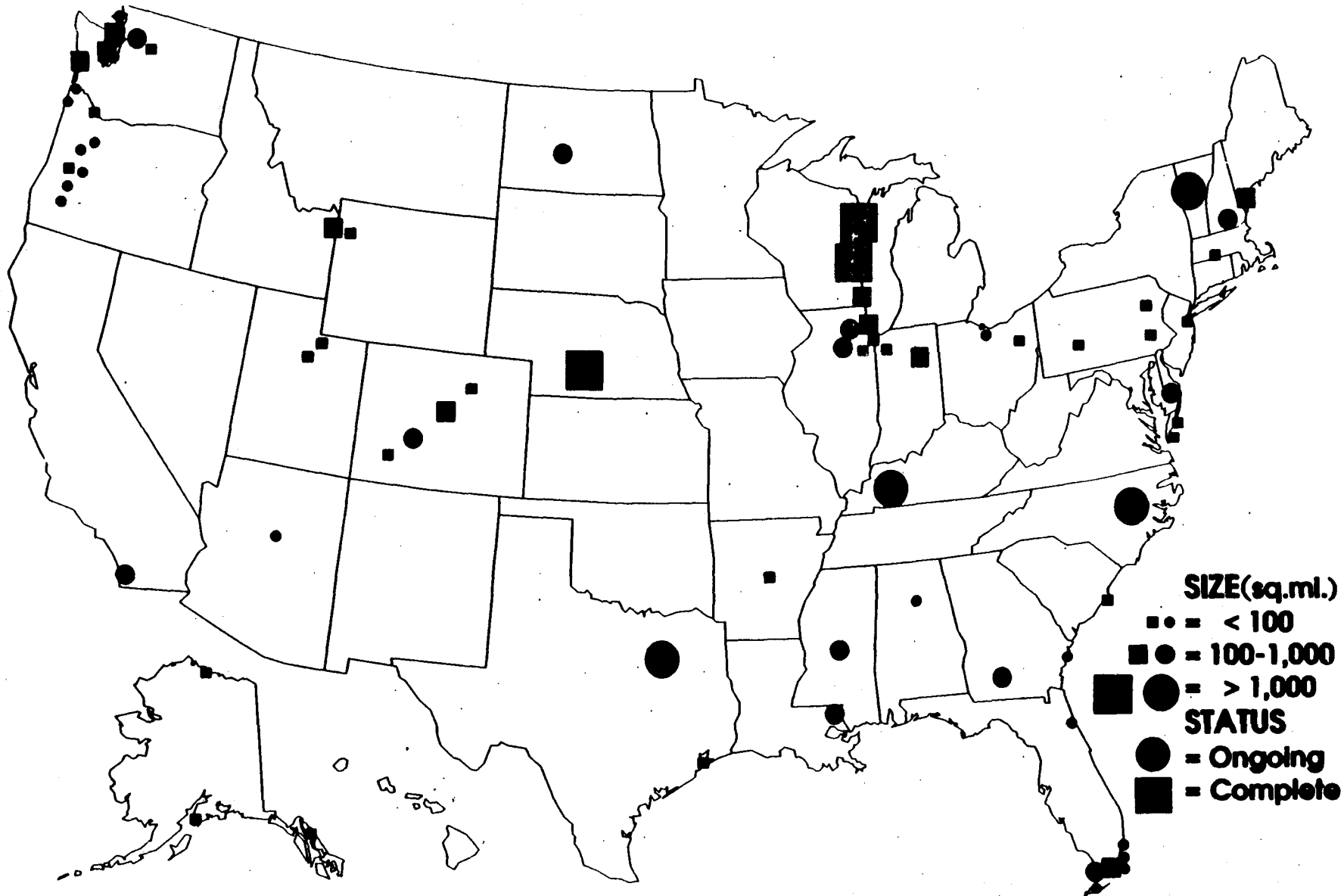
**CASE STUDY:** In the West Eugene Wetlands Special Area Study, local ADID efforts did lead to a Section 404 general permit. Because the ADID was incorporated into the City of Eugene's general comprehensive plan, and due to the fact that Oregon land use policies have the effect of local land use law, the ADID effort streamlined the regulatory process.

**FOR MORE INFORMATION:** call the EPA Wetlands Hotline\* at 1-800-832-7828

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## Status of EPA Wetlands Advance Identification Projects - February 1993



U.S. EPA, Office of Water, OWOW, Wetlands Division



# WETLANDS FACT SHEET # 29

## EPA's Outreach Efforts

EPA's Wetlands Division marshals a variety of tools to protect wetlands effectively. One of the primary tools is outreach, including fostering public and private partnerships, providing technical assistance, and educating the public. The Wetlands Division and EPA's Regional Offices are actively involved in outreach initiatives that include:

- creating partnerships with the agricultural community, private landowners, State and local governments, and other Federal agencies;
- educating the public, children, and adults; and
- providing technical assistance to State and local governments as well as private, and non-profit organizations.

### BACKGROUND

In order to increase long-term wetlands conservation and management, it is necessary to enhance public understanding of the value of wetlands as well as support innovative programs that encourage private, State and local actions to conserve wetlands.

### OUTREACH INITIATIVES

- **EPA Wetlands Protection Hotline:** (1-800- 832-7828): A toll free telephone service,



operated by a contractor to EPA, that is responsive to public interest, questions, and requests for information about wetlands.

In its first year of operation (March 1991-February 1992), the Hotline received and responded to over 14,100 calls, an average of more than 1,100 per month.

- **American Wetlands Month**—Across the country each May, Federal agencies, State and local governments, and private and non-profit organizations come together voluntarily to increase public awareness of the values and productivity of wetlands, encourage people to enjoy these resources, and to protect, recognize, enhance, commemorate, and restore our Nation's wetlands.

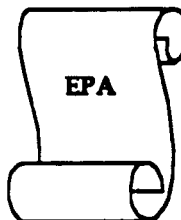


- **Audubon's America:** A program to protect, conserve, restore, enhance and interpret the natural and cultural resource values of the land and water areas in the 35 States where John James Audubon lived, traveled, wrote, painted, and observed. This will be accomplished by recognizing and establishing a system of connected public and privately owned natural areas in the mid-western and eastern United States.

- **Sponsorship of Workshops and Conferences:** 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.



- **Available Publications:** Private Landowner's Wetlands Assistance Guide; Agriculture and Wetlands: a Compilation of Factsheets; Beyond the Estuary: The Importance of Upstream Wetlands in Estuarine Processes; and America's Wetlands: Our Vital Link Between Land and Water.



**For more information, contact the EPA Wetlands Hotline at 1-800-832-7828 \***

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## WETLANDS FACT SHEET #30

### Partnerships with Landowners

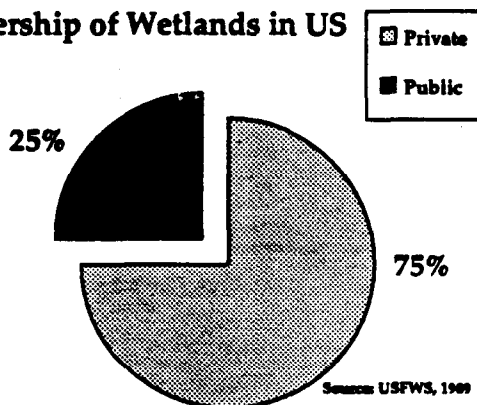
*All ethics so far evolved rest upon a single premise: that the individual is a member of a community of interdependent parts. His instincts prompt him to compete for his place in the community, but his ethics prompt him also to co-operate (perhaps in order that there may be a place to compete for). The land ethic simply enlarges the boundaries of the community to include soils, waters, plants, animals, or collectively, the land.*

- Aldo Leopold, A Sand County Almanac

There is a real and increasingly popular opportunity to strengthen wetlands protection by fostering innovative public/private partnerships and promoting landowner participation in voluntary wetlands stewardship programs.

These programs address individual and community economic and quality of life issues. Wetlands conservation has positive, long term impacts on the environment, commerce, and quality of life. In contrast, continued wetland loss has negative impacts on water quality, biodiversity, the economy, and human health and safety.

#### Ownership of Wetlands in US



Approximately 75% of the remaining wetlands in the lower 48 States are privately owned. Recently, much of the national focus on wetlands protection has been on regulatory pro-

grams. However, regulatory programs only provide partial protection. In contrast, there are numerous voluntary programs in the public and private sector that provide educational, technical, and financial assistance to private landowners.

Private landowner assistance and partnership programs among government, non-profit and private interest groups are areas of growing national interest. The potential for voluntary programs to protect wetland resources is being recognized by Federal, State, and local governments. EPA has actively promoted landowner assistance and partnership programs through activities such as American Wetlands Month, Audubon's America, the EPA Wetlands Hotline\*, and a multiagency pilot project promoting voluntary wetlands programs in the State of Maryland.

Other States and regions have indicated a strong interest in initiating a program similar to the Maryland program, including EPA Region VI, and the States of Arizona and Oregon. EPA is also participating in the initiation of an interagency wetlands marketing initiative by the USDA Soil Conservation Service. EPA is developing a strategy to publicize and coordinate programs that assist private landowners in conserving and managing wetlands nationwide.

**FOR MORE INFORMATION:** • Private Landowner's Wetlands Assistance Guide: Voluntary Options for Wetlands Stewardship in Maryland available from the EPA Wetlands Hotline\* at 1-800-832-7828



# WETLANDS FACT SHEET #31

## Environmental Protection Agency: Directory

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Jeanne Melanson, Chief

Wetlands Strategies and Initiatives  
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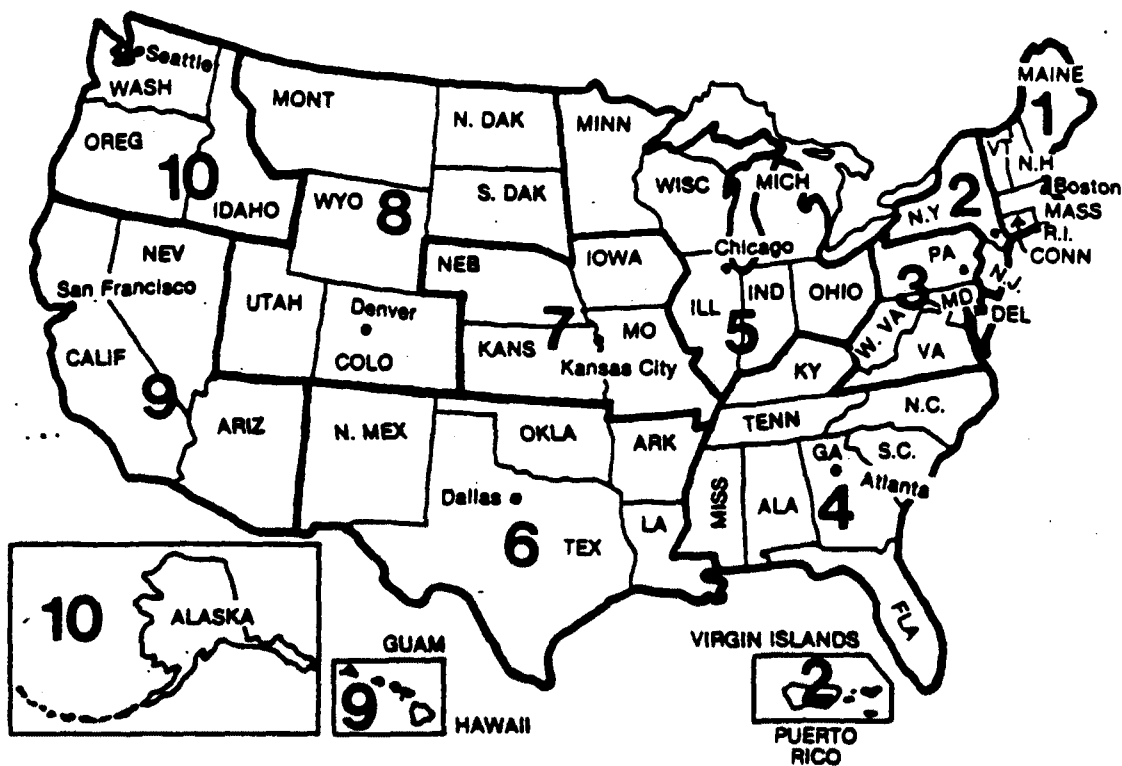
FOR MORE INFORMATION: call the EPA Wetlands Hotline\* at 1-800-832-7828

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# WETLANDS FACT SHEET #32

## Corps of Engineers Regulatory Program Directory

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