



Questions And Answers On The Proposed Revised Federal Manual For Wetlands Delineation

PROPOSED REVISED FEDERAL WETLANDS DELINEATION MANUAL QUESTIONS AND ANSWERS

BACKGROUND

What is the Section 404 program?

The Section 404 permit program regulates the discharge of dredged or fill material into waters of the United States, a term which includes most of the Nation's wetlands. This program is jointly implemented by the Environment Protection Agency (EPA) and the Army Corps of Engineers (Corps), with advice from the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS). The Corps of Engineers handles the day-to-day administration of the program, including jurisdictional determinations, evaluating permit applications and deciding whether to issue or deny the permit, and enforcement. EPA has also several significant statutory responsibilities in the program including development, with the Corps, of the program's environmental standards (the Section 404(b)(1) Guidelines); restricting or prohibiting discharges that have unacceptable adverse effects (Section 404(c)); determining the scope of geographic jurisdiction; enforcement (EPA and the Corps both have enforcement authority); approval and oversight of State program assumption; and determining the applicability of permit exemptions for many agricultural and silvicultural activities under Section 404(f).

Statistics on Section 404 permit reviews and activities

Permit Activities -- The Clean Water Act Section 404 program regulates the discharge of dredged or fill material into waters of the United States. In general, the Corps receives approximately 15,000 individual permit applications annually (this number includes both Section 404 and Section 10 applications). Of these 15,000 permit applications:

- approximately 10,000 permits (67%) are issued;
- approximately 500 permit applications (3%) are denied;
- approximately 4,500 permit applications (30%) are withdrawn by the applicant or qualify for a general permit.

In addition, approximately 75,000 minor activities are authorized each year through regional and nationwide general permits. General permits authorize activities in wetlands and other waters without the need for an individual permit review as long as these activities cause only minimal adverse environmental effects. Nationwide permit #26, in particular, authorizes activities involving discharges of dredged or fill material into 10 acres or less of isolated waters or headwaters streams (non-tidal streams where the average annual flow is 5 cubic feet per second or less). For activities that affect

between 1 and 10 acres of such waters, the applicant is required to notify the Corps of Engineers prior to proceeding with any discharge. In some States, general permits authorize activities covered by a State wetlands regulatory program.

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

Individual permit applications that involve complex projects or sensitive environmental issues usually require more than 60 days to reach a decision. After a completed individual permit application has been received by the Corps:

- over 50% are processed in less than 60 days;
- approximately 25% percent are processed in 61 to 120 days;
- approximately 20% require 121 days to a year to process; and
- less than 5% require more than one year to process.

In addition, the Administration announced on August 9, 1991, a comprehensive plan for improving the protection of the Nation's wetlands, including a provision that permits will be deemed approved within six months unless the deadline is extended for good cause (see attached Fact Sheet on "Protecting America's Wetlands"). EPA and the Corps will provide further guidance as we move in this direction.

Statistics on Section 404(q) and Section 404(c) actions

Section 404(c) Actions -- Section 404(c) of the Clean Water Act authorizes the Administrator of EPA to prohibit or restrict discharges of dredged or fill material into waters of the United States when such discharges would have unacceptable adverse effects on municipal water supplies, shellfish beds and fishery areas, wildlife or recreational areas. To date, EPA has completed only eleven Section 404(c) actions, out of an estimated 150,000 permit applications received since the Section 404(c) regulations went into effect in late 1979.

Section 404(q) Actions -- Pursuant to Section 404(q), the Corps and EPA have developed a process through a Memorandum of Agreement (MOA) to resolve any differences over permit decisions within a clear timeframe to minimize delays in the permit process. Since 1980 when the Section 404(q) MOA was first agreed to, EPA has requested Headquarters level review of a permit decision only 28 times out of an estimated 150,000 permit applications received throughout this period.

Further clarifying the section 404 program: Are all uses of a wetland either regulated or prohibited?

Much of the public is laboring under the misunderstanding that if an area is identified as a wetland, any activity that takes place in the wetland is either regulated or prohibited. This is not true.

First, not all activities in wetlands require a Section 404 permit. Section 404 only regulates the discharge of dredged or fill material into waters of the U.S., a term which includes most of the Nation's wetlands. Not all activities in wetlands involve a discharge of dredged or fill material, and therefore do not require a Section 404 permit. There are several development activities that cause wetland conversion or damage, but do not involve discharge of dredged or fill material. Under certain circumstances, these may include: lowering of groundwater levels, flooding of wetlands, drainage of wetlands, and excavation of wetlands where the dredged material is disposed of on an upland site.

Activities which are under the scope of the Section 404 program are not necessarily prohibited. Most of the activities subject to Section 404 requirements are either exempt from the program (such as ongoing farming and silviculture activities) or are authorized by one of the Corps' general permits.

Activities which are subject to Section 404 are authorized either through a general or individual permit. Activities in wetlands that cause only minimal adverse environmental effects are authorized under general permits. General permits do not require case-specific permit review and are designed to expedite permitting process. Approximately 75,000 activities, out of over 85,000 authorized activities every year, are authorized through general permits which are issued on a State, regional and nationwide basis. There are currently 26 nationwide general permits, and numerous state and regional general permits.

In addition, the Clean Water Act, under Section 404(f), generally exempts discharges 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.

THE FEDERAL MANUAL

What is the 1989 Federal Manual?

In January 1989, EPA, the Corps, FWS and Department of Agriculture Soil Conservation Service (SCS) agreed to use one approach for delineating areas under the jurisdiction of Section 404 and Swampbuster. The four agencies adopted a single manual, referred to as the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" (the 1989 Federal Manual), which established a national standard for identifying and delineating vegetated wetlands. The purpose of the 1989 Federal Manual is to establish standard Federal technical criteria for identifying and delineating vegetated wetlands under Section 404 of the Clean Water Act and the "Swampbuster" provisions of the Food Security Act of 1985, as amended. The 1989 Federal Manual uses three categories of evidence (three parameters) to determine whether or not the technical criteria are met. These are: wetland hydrology, hydric soil characteristics, and hydrophytic vegetation.

The 1989 Federal Manual provides guidance on how to collect and use field indicators (such as free water, silt marks, wetland dependent plant species and organic soils) of these parameters to accurately identify and delineate wetlands.

Should the Federal Manual be solely relied on to identify and delineate jurisdictional wetlands?

No. The Federal Manual provides mandatory technical criteria for the identification and delineation of wetlands, and will be used to identify wetlands that are potentially subject to the jurisdiction of Section 404 of the Clean Water Act or the "Swampbuster" provisions of the Food Security Act of 1985, as amended. However, wetland jurisdictional determinations for regulatory purposes are based on other legal and policy criteria in addition to the Federal Manual's technical criteria (e.g., regulatory guidance on normal circumstances as it pertains to prior converted croplands). Therefore, the appropriate agency policy should be consulted in conjunction with the Federal Manual when identifying and delineating jurisdictional wetlands.

THE 1989 FEDERAL MANUAL REVISION PROCESS

Why is the 1989 Federal Manual being revised? What was the goal of the Federal Manual revision process?

The goal of revising the 1989 Federal Manual is to improve the Federal Manual's ability to properly identify wetlands and to minimize the potential for erroneous wetlands determinations. When the 1989 Federal Manual was adopted, it was

anticipated by EPA, the Corps, FWS and SCS that some additional guidance or clarification may be needed. After about a year of implementation of the Federal Manual, the four agencies agreed that specific technical changes would be appropriate to make the Federal Manual more effective and understandable.

The proposed revisions tighten the evidence requirements for the three parameters -- hydrology, hydric soils, and hydrophytic vegetation -- in the definition of wetlands. This approach to wetland delineation will make it easier for Federal or State agency staff to explain to landowners how wetlands are being delineated. The proposed revisions are intended to reduce the potential for erroneous wetland determinations -- that is, identifying an upland as a wetland or conversely, identifying a wetland as upland. The proposed revisions are intended to be consistent with the definition of wetlands used by EPA and the Corps in implementing the Section 404 program or by SCS in implementing the Swampbuster program.

The proposed revisions incorporate technical knowledge derived from its use in the past two years and from improvements in the state of science. The revisions address many of the issues raised during the public meetings and public comment period (the summer of 1990).

What was the revision process of the 1989 Federal Manual? What was the role of the public in the revision process?

After over a year of implementation of the 1989 Federal Manual, the four agencies agreed that the Federal Manual needed additional clarification and changes. Because of the strong public interest in the Federal Manual, the four agencies provided the public several opportunities to provide technical comments as part of the revision process. Four public hearings were held in spring and summer 1990 -- in Baton Rouge, LA; Sacramento, CA; St. Paul, MN; and, Baltimore, MD. In addition, written comments on the 1989 Federal Manual were also accepted subsequent to the meetings. More than 500 letters were received and reviewed. We believe that this process has provided substantial and meaningful information. Results of formal field testing conducted by EPA to evaluate the sampling protocols of the 1989 Federal Manual and reviews by field staff of the four signatory agencies using the Federal Manual were also reviewed and considered in developing recommended revisions.

What was the role of the technical committee?

The Federal Interagency Committee for Wetland Delineation is a technical committee composed of technical staff from the four agencies that developed the 1989 Federal Manual: Environmental Protection Agency, Corps of Engineers, Soil Conservation

Service, and Fish and Wildlife Service. The role of the technical committee in the revision process was to recommend technical revisions to the 1989 Federal Manual based on field experience and technical comments from the public during the public meetings and public comment period scheduled in 1990. The technical committee completed their revisions in the spring of 1991.

Have the four agencies agreed to the proposed revised Federal Manual?

The four agencies, the Environmental Protection Agency, Department of Defense, Department of Agriculture, and Department of Interior have agreed to the Federal Register Notice of the proposed revised Federal Manual and agreed that the Federal Manual is ready for public comment.

To what extent does policy affect the proposed revisions to the Federal Manual?

The purpose of the Federal Manual is to establish standard Federal technical criteria for identifying and delineating vegetated wetlands. Therefore, the Federal Manual primarily deals with the technical criteria consistent with the regulatory definitions of wetlands. However, the Federal Manual is not solely a technical document. There are policy issues addressed in the proposed revised Federal Manual. A key policy consideration is, for example, the determination of "normal circumstances" under the regulatory definition of wetlands. Another is the extent of evidence necessary for each of the three criteria in order to make a positive wetland determination.

Do the agencies plan to field test the revised Federal Manual before it is finalized and implemented ?

Yes. The four agencies are planning to fully field test the revised Federal Manual before finalizing it. The intent of the field testing, which we expect to occur while the Federal Manual is under public review, is to verify its technical validity in delineating wetlands, assure its ease of implementation and reveal any unanticipated effects. We are also interested in evaluating the applicability of the Federal Manual to all regions of the country. The Corps will coordinate field testing among the four agencies at the field level.

An independent expert panel will also field test the revised Federal Manual. Upon completion of field testing, the expert panel as well as the regions and district offices of the four agencies will provide recommendations to the agencies to assist in developing necessary final revisions to the Federal Manual. We also encourage other interested parties to conduct field tests of the proposed revised Federal Manual and provide recommendations during the public comment period.

PUBLIC INPUT IN THE REVISION PROCESS

Will the public have an opportunity to comment on the proposed revised Federal Manual?

Yes. The proposed revised Federal Manual was published on August 14, 1991, in the Federal Register for public comment. The public is invited to review and provide technical comments on the proposed revisions. Written comments must be submitted on or before October 15, 1991. Copies of the proposed revised Federal Manual are also available through the Wetlands Hotline at (800) 832-7828.

The revisions will be implemented only after the public comments have been reviewed and considered, and a final Federal Manual has been issued. We encourage interested parties to conduct field tests of the proposed revised Federal Manual and provide recommendations during the public comment period. In addition, an independent panel of experts will field test the proposed revised Federal Manual. The expert panel will provide recommendations to the agencies to assist in developing necessary revisions to the Federal Manual.

Will there be public hearings held on the proposed revised Federal Manual?

There are no public hearings scheduled. Specific detailed questions about the proposed revised Federal Manual can be referred to individuals identified in the Preamble of the Federal Register notice.

Will the proposed revised Federal Manual undergo public comment in accordance with the Administrative Procedure Act (APA)?

The position that this Federal Manual is a technical guidance document which is not required by law to go through Administrative Procedure Act (APA) legislative rulemaking procedures has been upheld in court with respect to the 1989 wetlands delineation Manual. However, the Federal Manual was published on August 14, 1991, in the Federal Register, with a 60-day period for public review and comment.

Will the Federal Manual be issued as a regulation?

The agencies believe that it would be appropriate and in the public interest to include parts of the final Federal Manual in the Code of Federal Regulations. When the agencies determine what portions of the Federal Manual should be issued as a regulation, they will provide notice of specific proposed regulatory language in the Federal Register at least 30 days prior to the end of the public comment period. The regulatory language will be subject to the Administrative Procedure Act rulemaking process.

KEY CHANGES TO THE FEDERAL MANUAL

What are the major revisions to the 1989 Federal Manual?

The major revisions and other major issues identified in the Preamble to the Manual include the following:

1) The Three Criteria:

- Clarify that, except in limited specified circumstances, demonstration of all three parameters (wetland hydrology, hydrophytic vegetation and hydric soils) is required for delineating vegetated wetlands.

2) Limited Specified Exceptions to the Three Criteria:

- Clarify that independent indicators of all three parameters are required **UNLESS** the area is a disturbed wetland or the area is specifically listed in the proposed Federal Manual as an exception.
- Specifically identify exceptions (i.e., playa lake, prairie pothole, vernal pool, pocosin, and other special wetlands that fail the hydrophytic vegetation criterion such as Tamarack Bogs, White Pine Bogs and Hemlock Swamps). Exceptions are widely recognized valuable wetland types that may fail to meet one or more of the 3 criteria during all or some part of the year.
- Request public comment on the listed exceptions as well as potential additions to the list, and on recommendations for identifying appropriate indicators for each wetland type listed as an exception.

3) Wetland Hydrology Criterion:

- Require inundation for 15 or more consecutive days, or saturation to the surface for 21 or more consecutive days during the growing season.
- Require saturation at the soil surface.
- Narrow the wetland hydrology indicators to exclude Hydric Soils and Wetland Vegetation as hydrology indicators.

- Separate the list of wetland hydrology indicators into primary and secondary indicators. Primary indicators are more reliable and can be used alone to meet hydrology criterion. Secondary indicators are weaker and can only be used with corroborative information.
- Remove water stained leaves, trunks, and stems as wetland hydrology indicators; public comments are requested in the Preamble regarding their reliability as indicators of hydrology during the growing season and whether they should be primary or secondary indicators.
- Incorporate localized differences in the growing season; the Preamble solicits comments on the definition of the growing season.
- Request public comments on three alternatives to identifying and delineating seasonally harder to identify wetland types that are NOT exceptions to the criteria, but may not demonstrate indicators of one or more of the 3 criteria during certain (e.g., dry) times of the year.

4) Hydric Soils Criterion:

- Specifically state that hydric soils must be field-verified; hydric soils maps alone are not sufficient evidence of hydric soils.
- Clarify that the three wetland criteria are mandatory except in specified circumstances, and therefore the presence of mapped hydric soils alone cannot be used to delineate an area as a wetland.
- Incorporate localized differences for certain hydric soil phases.

5) Wetland Vegetation Criterion:

- Propose the prevalence index approach -- that is, an area meets this criterion if , under normal circumstances, a frequency analysis of all species within the community yields a prevalence index value of less than 3.0 (where OBL = 1.0, FACW = 2.0, FAC = 3.0, FACU = 4.0, and UPL = 5.0).
- Request public comments on including the Facultative Neutral test as part of the hydrophytic vegetation criterion in addition to the proposed prevalence index approach. Under this proposed approach the criterion would be met if after discounting all

dominant facultative (FAC) plants, the number of dominant obligate wetland (OBL) and facultative wetland (FACW) species exceeds the number of dominant facultative upland (FACU) and obligate upland (UPL) species. (Note: a number of options are presented describing circumstances under which the prevalence index procedure would be used.)

Do the proposed revisions address concerns raised by the public?

The 1990 public comment period and public meetings resulted in a substantial and useful record of concerns and recommendations that were considered in developing the proposed revisions to the Federal Manual. The 1990 public record focused the agencies' review on key issues, including: the wetland hydrology criterion; concern that wetlands determinations were based on less than all three of the basis parameters (hydrology, vegetation, and soils), and in some cases on only one parameter; concern that areas are dry at the surface (potentially all year round) are considered wetlands based on the presence of water as deep as 18 inches below the surface; the definition of the growing season; the assumption that facultative vegetation can indicate wetland hydrology, which provided opportunities for misuse. The proposed revisions address these and other concerns raised by the public.

Do the proposed revisions change the definition of wetlands?

No, the proposed revisions do NOT change the regulatory definition of wetlands used by EPA and the Corps in implementing the Section 404 program or SCS in implementing the Swampbuster program. They are intended to be consistent with the regulatory definitions of wetlands in these programs. However, the agencies are committed to including parts of the final Federal Manual in the Code of Federal Regulations to clarify the criteria by which the definition of wetlands is interpreted.

Is the proposed revised Federal Manual a three-parameter approach?

Yes. Independent indicators of all three parameters are required unless the area is a disturbed wetland or an area is a specifically described exception (i.e., playa lake, prairie pothole, vernal pool, pocosin, or other special wetlands that fail the hydrophytic vegetation criterion). Exceptions are widely recognized valuable wetland types that may fail to meet one or more of the three criteria during all or some part of the year. Disturbed wetland areas include situations where field indicators of one or more of the three wetland identification criteria are obliterated or not present due to recent change such as removal of vegetation.

How is the growing season defined in the proposed revised Federal Manual?

The growing season in the proposed revised Federal Manual is the interval between three weeks before the average date of the last killing frost in the spring to three weeks after the average date of the first killing frost in the fall, with exceptions for wetland areas experiencing freezing temperatures throughout the year (e.g., montane, tundra and boreal areas) that nevertheless support hydrophytic vegetation. This growing season for a particular area can be determined by consulting local weather data.

EFFECTS OF THE REVISIONS TO THE FEDERAL MANUAL

Will the revisions make it harder to get a Section 404 permit?

No, the revisions will not affect the Section 404 permit process for those areas identified as jurisdictional wetlands. When a revised Federal Manual is implemented, it, like the 1989 Federal Manual, will only identify whether or not an area is a jurisdictional wetland. It will not change the permit evaluation process.

However, EPA and the Corps continue to respond to concerns raised over the complexity and time consumed by the permit application process by making other administrative changes. These include working on joint permitting procedures with interested states, proposing new nationwide and regional permits for activities in wetlands that have minimal environmental impacts, developing joint guidance to clarify existing policies, encouraging coordination between permit applicants and Federal agencies prior to permit application, and providing more accessible information about wetlands through the EPA Wetlands Hotline at (800) 832-7828.

In addition, the Administration announced on August 9, 1991, a comprehensive plan for improving the protection of the nation's wetlands, including measures to improve the Section 404 regulatory program (see attached Fact Sheet on "Protecting America's Wetlands"). EPA and the Corps will provide further guidance as we move in this direction.

What is the effect of the revisions to the scope of jurisdiction?

The extent of potential changes in jurisdiction will be identified during the field testing. The proposed revisions are intended to reduce the potential for erroneous wetland determinations -- that is identifying an area as a wetland that is not a wetland or conversely, identifying a wetland as upland.

One of the goals of the proposed revision process is to clarify to the public what areas are wetlands. Over the past two years much of the controversy over the scope of

jurisdiction resulted from the widespread misunderstanding that the presence of a mapped hydric soil alone identified a wetland, without any supporting evidence of wetland hydrology or hydrophytic vegetation. This is not true. To reinforce this point, stronger indicators of wetland hydrology are required in the proposed revisions independent of indicators used to demonstrate the presence of hydric soils or hydrophytic plant communities.

Proposed revisions have been made to a number of different sections of the Federal Manual making it difficult to precisely predict the effect of the proposed revisions to the scope of jurisdiction without field testing by qualified personnel. We expect that the field testing of the proposed revised Federal Manual that will be conducted during the public review period will more specifically identify the effects of proposed revisions and help us to respond to any unanticipated impacts.

Has the proposed revised Federal Manual changed the way wetlands are identified or delineated in disturbed areas such as cropland?

The revised Federal Manual provides two important clarifications in the procedures for identifying wetlands in disturbed areas. First, the Federal Manual recognizes that there are Federal agency policies under the Clean Water Act Section 404 regulatory program and under the Swampbuster program of the Food Security Act of 1985, as amended, which should be consulted when interpreting the effect of disturbances such as cropping on the jurisdictional status of an area (e.g., regulatory guidance on normal circumstances as it pertains to prior converted croplands). Second, the disturbed areas section of the Federal Manual states clearly that the mere presence of soils meeting the hydric soil criterion is not sufficient to determine that wetlands are present. When the hydrology of an area has been significantly altered, soil characteristics resulting from wetland hydrology cannot by themselves verify wetland hydrology since they persist after wetland hydrology has been eliminated.

OTHER ONGOING ADMINISTRATIVE ACTIONS

What coordination occurs among EPA Regional staff, Corps District personnel and permit applicants to facilitate the Section 404 permit review process?

Permit applicants are encouraged to initiate pre-application meetings with regional staff from the Corps, EPA and other commenting agencies to discuss concerns that these agencies might have with a proposed activity and to resolve differences prior to an application being submitted. In so doing, the actual permit review period may be significantly reduced. In order to facilitate these discussions, numerous Corps Districts hold regularly-scheduled (e.g., quarterly, monthly) meetings for applicants and other

agencies including EPA. This early coordination is especially important for controversial projects involving significant environmental impacts.

In addition, EPA and Corps staff are encouraged to work together to resolve differences regarding individual permit applications (e.g., project alternatives, mitigation requirements, specific permit conditions) early in the review process.

Coordination among agencies on the development of regional and general permits under the Section 404 regulatory program creates additional opportunities to expedite the permit process for projects with minor environmental impact. Guidance from EPA and Corps Headquarters (e.g., Memoranda of Agreement, Corps Regulatory Guidance Letters) reduces or eliminates confusion and controversy sometimes associated with implementation of the Section 404 regulatory program that might otherwise lead to delays during permit review.

Finally, the Administration announced on August 9, 1991, a comprehensive plan for improving the Section 404 regulatory program, including measures for effective coordination among the agencies (see attached Fact Sheet on "Protecting America's Wetlands"). EPA and the Corps will provide further guidance as we move in this direction.

What administrative steps other than the Federal Manual are EPA and the Corps taking to respond to concerns being raised about the Section 404 program?

The Administration announced on August 9, 1991, a comprehensive plan for improving the protection of the nation's wetlands, including measures to improve the Section 404 regulatory program (see attached Fact Sheet on "Protecting America's Wetlands"). EPA and the Corps will provide further guidance as we move in this direction.

In addition, in response to specific regional and State concerns about timeliness and complexity of the Section 404 regulatory program, EPA and the Corps have employed a variety of administrative tools to respond to specific concerns without reducing our ability to protect wetlands.

Joint Policy Guidance - EPA and Corps Headquarters have issued policy guidance (e.g., Memoranda of Agreement, Corps Regulatory Guidance Letters) intended to reduce or eliminate confusion and controversy sometimes associated with implementation of the Section 404 regulatory program. Such guidance has helped reduce delays during permit review and clarified which activities or areas are subject to the Section 404 program. For example, in response to concerns raised regarding activities in areas subject to agriculture, the Corps issued Regulatory Guidance Letter 90-7 which clarified that prior converted cropland (estimated up to 60 million acres) are NOT subject to Section 404

Section 404 jurisdiction. This made the Section 404 program more consistent with the Swampbuster provisions of the Farm Bill, thereby increasing consistency between Federal wetlands programs.

General Permits - General permits may be issued on a state, regional or nationwide basis. The general permits are designed to expedite the permitting process as long as authorized activities do not result in more than minimal environmental harm. At this time, there are 26 nationwide permits in effect, and the Corps is currently proposing additional nationwide permits. In addition, EPA and the Corps have been working with the States of Maryland, Georgia and Mississippi to develop State and regional program general permits.

Joint Federal/State Processing - EPA and the Corps have also developed Memoranda of Agreement with States to set up systems to increase consistency in joint Federal/State permit processing. For example, EPA Region 9 and Corps South Pacific Division have developed a Memorandum of Agreement with the California Department of Transportation to provide clear guidance on mitigation requirements.

Early Coordination - EPA and Corps staff work together to resolve differences regarding individual permit applications (e.g., project alternatives, mitigation requirements, specific permit conditions) early in the review process. Permit applicants are encouraged to initiate pre-application meetings with regional staff from the Corps, EPA and other commenting agencies to discuss concerns that these agencies might have with a proposed activity and to resolve differences prior to an application being submitted. In so doing, the actual permit review period may be significantly reduced. In order to facilitate these discussions, numerous Corps Districts hold regularly-scheduled (e.g., quarterly, monthly) meetings for applicants and the other agencies including EPA.

Fostering Partnerships with State and Local Programs - Over the last two years, EPA has increased its work with States on wetlands protection through the State Wetlands Protection Grants Program. Thirty-eight States are receiving EPA funding, eleven of which are developing State Wetlands Conservation Plans. These plans include developing comprehensive statewide strategies for strengthening and coordinating the many programs that affect wetlands in a State, and can lead to additional administrative reforms in certain geographic areas, more effective communication between government agencies and the regulated sector and conflict avoidance between wetlands protection and development proposals.

Additional States and Indian tribes are using grants to develop classification systems; inventory wetlands; develop restoration, creation and enhancement programs; assess the effects of site-specific mitigation requirements and design "wetland banks" to account for wetlands losses and gains.

EPA and the Corps have assisted local governments such as Eugene, OR, Bellevue, WA, Boulder, CO and Union City, CA in preparing local wetlands management plans as a portion of the city's general plan. EPA and the Corps also continue to assist in the preparation of state and local government Advance Identification (ADID) plans and special wetland area management plans.

Classification - EPA has also been investigating whether classification of wetlands into a few broad groups based on their functional value and consequently, whether developing an explicit set of corresponding regulatory responses, is an appropriate approach in the Section 404 regulatory program. In addition, as part of a comprehensive plan to improve the Section 404 program, the Administration will establish an interagency technical committee to define a limited number of wetland categories.

Providing Accurate Information - To increase awareness about the requirements of the Section 404 program and to provide easy, rapid access to accurate information on the Section 404 program and other federal wetland protection efforts, EPA has established a "Wetlands Hotline." This toll free service (800-832-7828) provides information on wetland protection efforts.

In addition, documents such as a brochure distributed to the farm community on "Agricultural Activities in Wetlands that are Exempt from the Section 404 Permit Process of the Clean Water Act," have been prepared to help clarify activities which are not regulated under Section 404.

For additional information regarding these ongoing administrative actions by EPA, contact J. Glenn Eugster, Wetlands Division, Washington, D.C., at (202) 382-5043.

OBTAINING COPIES OF THE REVISED FEDERAL MANUAL

Copies of the proposed revised Federal Manual can be obtained from the EPA Wetlands Hotline at (800) 832-7828. Hotline representatives can also provide referrals for answers to questions regarding the revised Federal Manual.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

August 9, 1991

FACT SHEET

PROTECTING AMERICA'S WETLANDS

The President announced today a comprehensive plan for improving the protection of the nation's wetlands. Wetlands serve an important role in flood control; they help filter wastes from water; they provide an important habitat and breeding ground for fish, birds and animals; and they are an important recreational resource.

Three quarters of the remaining wetlands are privately owned, and the pressure to serve other valid human needs often comes in conflict with conservation. A coordinated wetlands policy requires balancing all these interests.

The President believes we must look beyond regulation to encourage wetlands protection. We must enhance public understanding of the value of wetlands as well as support non-regulatory programs that encourage private, state and local actions to conserve wetlands.

The Administration has a three-part plan to slow and eventually stop the net loss of wetlands, taking a significant step toward the President's goal of no net loss of wetlands:

1. Strengthen wetlands acquisition programs and other efforts to protect wetlands;
2. Revise the interagency manual defining wetlands to ensure that it is workable; and
3. Improve and streamline the current regulatory system.

Wetlands Expansion Measures

Since taking office, the Bush Administration has proposed:

The purchase of approximately 450,000 acres, at a cost of over \$200 million, of critical wetlands habitat;

- A 48 percent overall funding increase for wetlands protection efforts in the FY 1992 budget to \$709 million;
- A nearly three-fold increase, from \$16 million in FY 1989 to \$45 million in FY 1992, for wetlands R&D programs;
- The establishment, under the provisions of the 1990 Farm Bill, of a 600,000 acre wetlands reserve.

To ensure further progress towards the no net loss goal, the Administration today proposed several new initiatives to enhance wetlands protection on Federal and private lands. These include:

- Fully funding the Wetlands Reserve Program in the 1990 Farm Bill. The 1990 Farm Bill authorized the purchase of up to 1 million acres of wetlands. The Administration will work for this amount in FY 1993 and future budgets.
- Initiating an Administration-wide wetlands restoration and creation program on Federal lands. Many agencies, including Interior, EPA, Defense, Commerce, and Energy, have the potential to engage in restoration and creation programs. These activities will be strengthened and coordinated through a standing interagency task force that will develop an overall policy for the most effective use of new and existing Federal resources.
- Continuing to make wetlands a priority in the allocation of Land and Water Conservation Funds (LWCF). The Administration will seek to maintain or increase funding for this program. Moreover, it will target a portion of State LWCF funds to wetlands.
- Continuing and expanding the existing satellite monitoring program to periodically assess national wetland trends. Satellite imagery provides up-to-date information on the status and trends of wetlands, and can help in conducting periodic change analysis of high-value wetland areas. The Administration is accelerating and improving our national inventory of wetlands, with more geographically targeted reporting, and monitoring of the ecological health of our wetlands.
- Expanding research on wetlands. Several agencies independently conduct research on wetlands. The Administration is establishing a process to coordinate, consolidate and establish priorities for wetlands research.

- Focusing public outreach and education programs on informing the regulated community about Federal wetlands regulations.
- Revising the existing Executive Order on wetlands to emphasize wetlands stewardship on Federal lands and the acquisition of valuable wetlands. The Administration will revise the Executive Order to include a commitment to the no net loss goal.

Delineation Manual

On January 10, 1989, the Environmental Protection Agency, the Army Corps of Engineers, the Fish and Wildlife Service, and the Soil Conservation Service issued a joint Federal Manual for the Identification and Delineation of Wetlands to address inconsistencies in practice among the agencies. The Manual established the technical criteria and procedures used to define a wetland.

In response to public comments and field hearings, the Administration is sending to the Federal Register today a revised Manual that will incorporate changes to clarify the scope and application of the Manual. The revised Manual will be issued as a proposal and as guidance to the agencies; the public will be invited to comment on the Manual before it is made final.

Streamlining Wetlands Regulations and Adding Flexibility

Under section 404 of the Clean Water Act a landowner must receive a permit from the Corps of Engineers before adding dredged or fill material to a wetland. The Administration will take the following actions to improve the workability of the 404 regulatory program.

A. Streamline the Permitting Process

To streamline the regulatory process, the Administration proposes a number of reforms to ensure more timely decisions and effective coordination among agencies. These include requirements to:

- Issue a regulatory guidance letter providing that meetings and other interactions between the public, applicant and Federal government will be coordinated through a single agency, the Army Corps of Engineers. The Corps would serve as the project manager, and will be responsible for all consultations with other agencies on the permit applications and for determining the final permit condition;

- Encourage attendance by all interested agencies at the pre-application meetings with the permittee and early consultation on the types and location of mitigation that will be required if wetland losses occur;
- Initiate a wetlands delineation training program for private consultants and better train agency field staff on wetlands functions, values and delineation, using cross-agency training programs to the extent appropriate;
- Deem permits approved within six months if an agency does not extend the deadline for good cause as determined by the Corps of Engineers;
- Require consulting agencies to provide site specific information when commenting on individual permits;
- Replace consulting agency appeals of individual permits with appeals based on resources or issues of national significance; and
- Expand the use of general permits.

B. Wetlands Categorization

The Administration will establish an interagency technical committee to define a limited number of major wetland categories based on function, value, and the relative scarcity or abundance of different wetlands. The technical committee will complete its work within 18 months and will consult with outside experts in defining the categories.

C. Mitigation Banking

The technical committee will also refine the details of a market-oriented mitigation banking system based on the categories it defines. The mitigation banking system will be designed to provide adequate incentives for the private restoration or creation of wetlands that can be used to mitigate the effects of developed wetlands. The mitigation banking system will:

- Allow permit applicants to satisfy compensatory mitigation requirements through the use of "mitigation credits;"
- Presume satisfaction of permit conditions if the mitigation credits are from the same or from a higher wetland category; and

- Replace the preference for on-site mitigation for all wetlands except those in the highest wetland category with a preference for mitigation within States or within major hydrological units which may cross State lines.

D. Permit Conditions for Wetlands

The Administration proposes to maintain the process known as sequencing for the high-value wetland category. Permit applicants involving wetlands in the remaining categories will be required to offset wetland losses through compensatory mitigation. States with less than a 1 percent historic rate of wetlands development will be able to satisfy permit requirements through minimization. The Administration will also establish general permits for low-value wetlands.

E. Increasing State Role

To increase the role of States in the wetlands permitting process, the Administration will issue guidance to encourage greater use of Regional and State General Permit Programs. States which assume delegation of the 404 program will be given flexibility, to the extent allowed by current law, to tailor the wetland categories based on State resources. State programs would be approved as long as the program achieves on balance the same environmental benefits as the Federal program.

The Administration also supports legislation to allow permitting of wetlands near navigable waters by States that assume responsibility for the permit program.

F. Modifying the Coverage of the Program

The Administration supports legislation to expand the scope of the 404 program to include other activities which may destroy wetlands besides the addition of fill material. The Administration will also take steps to exempt man-made wetlands which are not used for purposes of mitigation and whose creation was not subsidized by the Federal government. The Administration will also clarify that normal farming, ranching and silvicultural activities generally are exempt from the 404 program, and that lands exempted from the Swampbuster program are similarly not covered.