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1ST SESSION

H. R. 3465

To amend the Federal Water Pollution Control Act to improve the protection of wetlands and thereby restore and maintain the physical, chemical, and biological integrity of the Nation's waters, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 8, 1993

Mr. STUDDS (for himself and Mr. DE LA GARZA) introduced the following bill; which was referred jointly to the Committees on Merchant Marine and Fisheries, Agriculture, and Public Works and Transportation

A BILL

To amend the Federal Water Pollution Control Act to improve the protection of wetlands and thereby restore and maintain the physical, chemical, and biological integrity of the Nation's waters, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Wetlands Protection
5 and Management Act".

6 **SEC. 2. REFERENCES.**

7 Except as otherwise expressly provided, whenever in
8 this Act an amendment or repeal is expressed in terms

1 of an amendment to, or repeal of, a section or other provi-
2 sion, the reference shall be considered to be made to a
3 section or other provision of the Federal Water Pollution
4 Control Act.

5 **SEC. 3. POLICY AND FINDINGS.**

6 (a) WETLAND POLICY.—Subsection (a) of section
7 101 (33 U.S.C. 1251) is amended—

8 (1) by striking “and” at the end of paragraph
9 (6);

10 (2) by striking the period at the end of para-
11 graph (7) and inserting “; and”; and

12 (3) by adding at the end the following new
13 paragraph:

14 “(8) it is the national policy to protect the
15 quantity and quality of the Nation’s remaining wet-
16 land base and restore wetlands that have been de-
17 graded.”.

18 (b) FINDINGS.—Section 101 is further amended by
19 adding at the end the following new subsection:

20 “(h) WETLANDS.—Congress finds the following:

21 “(1) Wetlands perform a number of valuable
22 functions needed to restore and maintain the chemi-
23 cal, physical, and biological integrity of the Nation’s
24 waters.

1 “(2) Wetlands serve important ecological and
2 natural resource functions, such as providing an es-
3 sential nesting and feeding habitat for waterfowl and
4 other wildlife (including many rare and endangered
5 species), providing fisheries habitat, enhancing water
6 quality, and providing natural flood control.

7 “(3) Wetlands are highly sensitive to changes in
8 water regimes and are, therefore, susceptible to deg-
9 radation by fills, drainage, grading, water extrac-
10 tions, excavations, and other activities within their
11 watersheds which affect the quantity, quality, and
12 flow of surface and ground waters. Protection and
13 management of wetlands, therefore, should be inte-
14 grated with management of hydrologic systems.

15 “(4) Wetland systems are difficult to evaluate,
16 map, plan, and restore. Efforts to protect and re-
17 store wetlands should be coordinated to make effi-
18 cient use of scarce Federal, State, and local re-
19 sources. States and local governments should be en-
20 couraged to undertake advanced planning for wet-
21 lands. This planning should help to integrate wet-
22 land protection and management with other water
23 resource management programs on a watershed
24 basis such as flood loss reduction, stormwater man-
25 agement, water supply, protection of fish and wild-

1 life habitat, and control of point and nonpoint
2 sources of pollution.

3 “(5) The discharge of dredged or fill material
4 into wetlands can adversely affect interstate com-
5 merce because such discharges can destroy or dimin-
6 ish the utility of a wetland for purposes such as
7 flood control, water purification, recharging ground-
8 water, erosion control, and providing habitat and
9 food supply for fish and wildlife.

10 “(6) Wetland functions have tremendous finan-
11 cial value to the United States economy both be-
12 cause of the natural ecological protection that wet-
13 lands afford and because of the importance of wet-
14 lands to economically important activities, such as
15 flood control, tourism, and commercial and rec-
16 reational fishing.”.

17 **SEC. 4. DELINEATION OF WETLANDS.**

18 (a) GENERAL RULE.—

19 (1) LIMITATION ON REVISIONS TO CORPS MAN-
20 UAL.—After the date of the enactment of this Act,
21 the 1987 Corps of Engineers Wetlands Delineation
22 Manual may not be revised, except as provided by
23 this section, before the date on which the Committee
24 on Wetlands Characterization of the National Re-

1 search Council publishes its report pursuant to Pub-
2 lic Law 102-389.

3 (2) REQUIREMENTS FOR REVISION OF CORPS
4 MANUAL.—After the date of publication of the re-
5 port referred to in paragraph (1), the 1987 Corps of
6 Engineers Wetlands Delineation Manual may be re-
7 vised if—

8 (A) such revisions take into account the
9 findings and recommendations contained in
10 such report; and

11 (B) such revisions are made after field
12 testing and notice and opportunity for public
13 comment.

14 (3) REQUIRED USE OF CORPS MANUAL.—Until
15 the 1987 Corps of Engineers Wetlands Delineation
16 Manual is revised in accordance with this subsection
17 (and other than under subsection (c)), identification
18 and delineation of wetlands for purposes of section
19 404 of the Federal Water Pollution Control Act
20 shall be carried out through the use of such manual.

21 (b) DELINEATION OF WETLANDS ON AGRICULTURAL
22 LANDS.—

23 (1) MEMORANDUM OF AGREEMENT.—

24 (A) ISSUANCE.—Not later than 180 days
25 after the date of the enactment of this Act, and

1 after notice and opportunity for public com-
2 ment, the Chief of the Soil Conservation Serv-
3 ice, the Administrator of the Environmental
4 Protection Agency, the Secretary of the Army,
5 and the Secretary of the Interior shall jointly
6 issue a memorandum of agreement which sets
7 forth procedures for identifying and delineating
8 wetlands on agricultural lands for purposes of
9 section 404(a) of the Federal Water Pollution
10 Control Act.

11 (B) REQUIREMENTS.—The agreement to
12 be issued under subparagraph (A) shall ensure
13 that—

14 (i) agency and field staff of the Soil
15 Conservation Service are properly trained
16 by the Secretary of the Army;

17 (ii) standard wetland delineation
18 methods are utilized by the Soil Conserva-
19 tion Service; and

20 (iii) appropriate programmatic level
21 review is conducted by the Administrator
22 of the Environmental Protection Agency
23 and the Secretary of the Army.

24 (C) PROCEDURES.—Procedures set forth
25 in the agreement to be issued under subpara-

1 graph (A) shall provide for the use of the 1987
2 Corps of Engineers Wetlands Delineation Man-
3 ual in conjunction with the National Food Se-
4 curity Act Manual of the Soil Conservation
5 Service until such date as the 1987 Corps of
6 Engineers manual is revised in accordance with
7 this section.

8 (2) ROLE OF SOIL CONSERVATION SERVICE.—
9 After the date of issuance of the memorandum of
10 agreement under paragraph (1), and in accordance
11 with the procedures set forth in such memorandum,
12 the Chief of the Soil Conservation Service, in con-
13 sultation with the Director of the United States Fish
14 and Wildlife Service, shall carry out identification
15 and delineation of wetlands on agricultural lands for
16 purposes of section 404(a) of the Federal Water Pol-
17 lution Control Act.

18 (3) ADDITIONAL RESPONSIBILITIES.—The Ad-
19 ministrator of the Environmental Protection Agency,
20 in consultation with the Secretary of the Army, the
21 Chief of the Soil Conservation Service, and the Di-
22 rector of the United States Fish and Wildlife Serv-
23 ice, shall issue regulations to authorize the Chief of
24 the Soil Conservation Service to carry out, for the
25 purposes of section 404(a) of the Federal Water Pol-

1 lution Control Act, identification and delineation of
2 wetlands on non-agricultural lands which are contig-
3 uous to or contained within agricultural lands in
4 order to simplify and streamline the permitting proc-
5 ess.

6 (4) LIMITATION ON STATUTORY CONSTRUC-
7 TION.—Nothing in this subsection shall be construed
8 to limit the authority of the Administrator of the
9 Environmental Protection Agency to prohibit the
10 specification of any defined area as a disposal site
11 pursuant to section 404(c) of the Federal Water
12 Pollution Control Act.

13 (5) AGRICULTURAL LANDS DEFINED.—For the
14 purposes of this subsection, the term “agricultural
15 lands” means cropland, pastureland, haylands,
16 rangelands, orchards, vineyards, production nurs-
17 eries, and any other land that is intensively used or
18 managed for agricultural purposes such that the
19 natural vegetation cannot be relied on for delineation
20 purposes.

21 (c) REGIONAL WETLAND VARIATIONS.—The Admin-
22 istrator of the Environmental Protection Agency, in co-
23 operation with the Secretary of the Army, the Chief of
24 the Soil Conservation Service, the Director of the United
25 States Fish and Wildlife Service, and the States, is au-

1 thORIZED to issue rules to make such revisions to the 1987
2 Corps of Engineers Wetlands Delineation Manual as may
3 be necessary to address regional variations in plants and
4 soils and technical procedures pertaining to wetland hy-
5 drology, soils, and vegetation. Notwithstanding paragraph
6 (1), such revisions may be made and instituted before the
7 Committee on Wetlands Characterization of the National
8 Research Council publishes its report pursuant to Public
9 Law 102-389. Such revisions shall not be considered to
10 be part of any other manual unless specifically incor-
11 porated into the manual.

12 **SEC. 5. WETLANDS CONSERVATION, MANAGEMENT, AND**
13 **RESTORATION.**

14 (a) **FUNDING FOR STATE WETLANDS CONSERVATION**
15 **PLANS.**—Paragraph (3) of section 104(b) (33 U.S.C.
16 1254(b)) is amended by inserting before the semicolon
17 “and for the development and implementation of State
18 wetlands conservation plans under section 321”.

19 (b) **WETLANDS CONSERVATION, MANAGEMENT AND**
20 **RESTORATION.**—Title III (33 U.S.C. 1311 et seq.) is
21 amended by adding at the end the following new section:

22 **“SEC. 321. STATE WETLANDS CONSERVATION PLANS.**

23 “(a) **DEVELOPMENT AND IMPLEMENTATION ASSIST-**
24 **ANCE.**—Subject to the requirements of this section, the
25 Administrator is authorized to make grants to States to

1 assist in the development and implementation of State
2 wetlands conservation plans.

3 “(b) CONTENTS OF PLANS.—To qualify for assist-
4 ance under subsection (a), a State wetlands conservation
5 plan shall generally include—

6 “(1) management strategies and policies for
7 achieving within the State the goal under section
8 101(a)(8);

9 “(2) an inventory of wetlands resources in the
10 State;

11 “(3) a description of the major causes of wet-
12 lands loss and degradation in the State, including an
13 estimate of historical wetlands losses;

14 “(4) a description of State and local govern-
15 ment programs applying to wetlands resources in the
16 State;

17 “(5) identification of sites in the State with
18 wetlands restoration potential;

19 “(6) identification of riparian areas in the State
20 with restoration potential;

21 “(7) a schedule for implementing the elements
22 of the plan;

23 “(8) a mechanism for monitoring achievement
24 of the stated goals of the plan; and

1 “(9) involvement of local public and private
2 agencies and organizations which have expertise in
3 wetlands conservation or land use planning or devel-
4 opment.”.

5 **SEC. 6. PERMITTING REQUIREMENTS.**

6 Subsection (d) of section 404 (33 U.S.C. 1344) is
7 amended to read as follows:

8 “(d) PERMITTING REQUIREMENTS.—

9 “(1) NO NET LOSS OF WETLAND FUNCTIONS
10 AND VALUES.—In issuing each permit under this
11 section, the Secretary shall ensure, to the maximum
12 extent practicable, that there is no net loss of the
13 acreage, functions, and values of wetlands.

14 “(2) MITIGATION REQUIREMENTS.—All condi-
15 tions contained in permits issued pursuant to this
16 section shall be enforceable. Conditions requiring the
17 mitigation of wetland losses shall be monitored in
18 order to ensure compliance and determine effective-
19 ness.

20 “(3) DEADLINE FOR ISSUANCE OF PERMITS TO
21 ASSIST SMALL LANDOWNERS.—

22 “(A) IN GENERAL.—On or before the 60th
23 day following the date on which the Secretary
24 publishes notice of a completed application
25 under paragraph (1) for a permit for a minor

1 discharge into wetlands, the Secretary shall
2 make a determination on whether to issue or
3 deny such permit and transmit to the applicant
4 written notice of such determination. Except as
5 provided by subparagraph (B), if the Secretary
6 does not transmit such written notice on or be-
7 fore such 60th day such application shall be
8 deemed approved and the Secretary shall trans-
9 mit to the applicant written notice of such ap-
10 proval.

11 “(B) EXCEPTIONS.—The Secretary may
12 make a determination on whether to issue or
13 deny a permit for a minor discharge into wet-
14 lands after the 60th day referred to in subpara-
15 graph (A) only if on or before such 60th day—

16 “(i) the Secretary provides to the ap-
17 plicant written notice that the application
18 is subject to further review because the
19 Secretary has determined based on avail-
20 able information that issuance of the per-
21 mit may pose a significant risk to the envi-
22 ronment;

23 “(ii) the Secretary provides to the ap-
24 plicant, based upon a determination by the
25 Secretary or upon request of the Secretary

1 of the Interior, the Secretary of Commerce,
2 or the Administrator, written notice that
3 additional time is needed to process the ap-
4 plication in order to provide for compliance
5 with other Federal laws; or

6 “(iii) the applicant transmits to the
7 Secretary a written request for additional
8 time.

9 “(C) MINOR DISCHARGE INTO WETLANDS
10 DEFINED.—For the purposes of this paragraph,
11 the term ‘minor discharge into wetlands’ means
12 a discharge of dredged or fill material into wet-
13 lands which—

14 “(i) does not affect more than 1 acre
15 of wetlands;

16 “(ii) is performed by a private individ-
17 ual; and

18 “(iii) is not part of a plan, proposal,
19 or project to affect additional wetlands.

20 “(D) REGULATIONS.—Not later than 6
21 months after the date of the enactment of this
22 paragraph, and after notice and opportunity for
23 public comment, the Secretary shall issue regu-
24 lations to carry out this paragraph.

25 “(4) PROCESSING FEES.—

1 “(A) IN GENERAL.—The Secretary shall
2 establish and collect fees for processing permit
3 applications under this section.

4 “(B) AMOUNTS.—In establishing fees
5 under subparagraph (A), the Secretary shall
6 seek to collect a total of \$10,000,000 per fiscal
7 year from such fees. No fee for an application
8 for an individual permit to conduct a non-com-
9 mercial activity shall exceed \$20.00.

10 “(C) SMALL LANDOWNERS ASSISTANCE AC-
11 COUNT.—There is established in the Treasury
12 of the United States an account to be known as
13 the ‘Small Landowners Assistance Account’.
14 The amounts from fees collected pursuant to
15 this paragraph shall be deposited into such ac-
16 count and shall be available to the Secretary
17 without further appropriation for providing
18 technical assistance to private landowners with
19 inadequate financial resources in complying
20 with the requirements of this section. Such
21 technical assistance may include identification
22 and delineation of wetlands, preparation of per-
23 mit applications, and guidance on methods to
24 avoid and mitigate against adverse impacts to
25 wetlands.”.

1 **SEC. 7. GENERAL PERMITS.**

2 Subsection (e) of section 404 (33 U.S.C. 1344) is
3 amended to read as follows:

4 “(e) GENERAL PERMITS.—

5 “(1) ISSUANCE.—

6 “(A) IN GENERAL.—In carrying out the
7 functions of the Secretary under this section re-
8 lating to the discharge of dredged or fill mate-
9 rial, the Secretary may, after notice and oppor-
10 tunity for public hearing, issue general permits.

11 “(B) CATEGORIES OF ACTIVITIES.—The
12 Secretary may issue general permits under this
13 subsection on a State or nationwide basis for
14 any specifically defined category of activities in-
15 volving discharges of dredged or fill material if
16 the Secretary determines that the activities in
17 such category are similar in nature, will cause
18 only minimal adverse environmental effects
19 when performed separately, and will have only
20 a minimal cumulative adverse effect on the en-
21 vironment.

22 “(C) CATEGORIES OF WATERS.—The Sec-
23 retary may issue general permits under this
24 subsection on a State or nationwide basis for
25 discharges of dredged or fill material into any
26 specifically defined category of waters if the

1 Secretary determines that the waters in such
2 category are similar in nature and that dis-
3 charges into such waters will cause only mini-
4 mal adverse environmental effects when per-
5 formed separately and will have only a minimal
6 cumulative adverse effect on the environment.

7 “(D) REQUIREMENTS AND STANDARDS.—

8 Any general permit issued under this subsection
9 shall—

10 “(i) be based on guidelines established
11 pursuant to subsection (b)(1);

12 “(ii) set forth requirements and
13 standards to minimize individual and cu-
14 mulative impacts resulting from activities
15 authorized by the general permit; and

16 “(iii) include measures to enable the
17 Secretary to be apprised of and to monitor
18 activities conducted under the general per-
19 mit.

20 “(2) PROGRAMMATIC PERMITS.—In order to
21 avoid unnecessary duplication of Federal and State
22 requirements, a general permit may be issued under
23 this subsection for an existing State regulatory pro-
24 gram if the general permit—

1 “(A) requires the State agency administer-
2 ing the regulatory program to have jurisdiction
3 over the activities and waters within the scope
4 of the general permit;

5 “(B) provides adequate safeguards to en-
6 sure that the activities permitted under the reg-
7 ulatory program will have no more than a mini-
8 mal cumulative adverse effect on the environ-
9 ment and that the regulatory program will pro-
10 vide at least the same degree of protection for
11 the navigable waters as the protection provided
12 by this section;

13 “(C) provides at least the same oppor-
14 tunity for public review, comment, and hearings
15 as provided by this section;

16 “(D) includes provisions to provide an op-
17 portunity for the Secretary, the Administrator,
18 the Secretary of the Interior (acting through
19 the Director of the United States Fish and
20 Wildlife Service), and the Secretary of Com-
21 merce (acting through the Administrator of the
22 National Oceanic and Atmospheric Administra-
23 tion) to review permit applications submitted to
24 and decisions made by the State agency to en-
25 sure that the requirements of this subsection

1 are met and to ensure that individual permits
2 are required under subsection (a) for discharges
3 that may have more than a minimal individual
4 or cumulative impact on the environment; and

5 “(E) is expressly made subject to all other
6 Federal environmental laws.

7 “(3) TERM.—No general permit issued under
8 this subsection shall be for a period of more than 5
9 years after the date of its issuance and such general
10 permit shall be revoked or modified by the Secretary
11 if, after notice and opportunity for public hearing,
12 the Secretary determines that—

13 “(A) the activities authorized by the gen-
14 eral permit have more than a minimal adverse
15 impact on the environment;

16 “(B) such activities are more appropriately
17 authorized by individual permits; or

18 “(C) a State government has failed to
19 monitor and control the individual and cumu-
20 lative adverse effects of activities conducted
21 under State general permits.

22 “(4) NOTICE FOR ACTIVITIES REQUIRING
23 PREDISCHARGE NOTIFICATION.—Any activity for
24 which a general permit issued under this subsection
25 requires predischARGE notification shall not be con-

1 sidered to be authorized by the general permit before
2 the Secretary provides notice and 30 days oppor-
3 tunity for comment to the Administrator, the Sec-
4 retary of the Interior, the Secretary of Commerce,
5 and State agencies responsible for water quality,
6 coastal zone management, and fish and wildlife re-
7 sources which may be affected by the activity, and
8 to the public.

9 “(5) REVIEW.—The Secretary shall conduct a
10 review of each general permit issued pursuant to
11 this subsection for which a report issued under sub-
12 section (u) contains information indicating more
13 than a minimal adverse cumulative effect on the en-
14 vironment. Any such general permit shall, after no-
15 tice and opportunity for public hearing, be revoked
16 or modified by the Secretary as necessary to avoid
17 or minimize such cumulative adverse effects.

18 “(6) STATE REGULATORY PROGRAM DE-
19 FINED.—For the purposes of this subsection, the
20 term ‘State regulatory program’ shall include the
21 regulatory program of an Indian tribe.”.

22 **SEC. 8. EXEMPTIONS FROM PERMITTING REQUIREMENTS.**

23 (a) EXEMPTION OF DISCHARGES.—

24 (1) NORMAL FARMING, SILVICULTURE, AND
25 RANCHING ACTIVITIES.—Subparagraph (A) of sec-

1 tion 404(f)(1) (33 U.S.C. 1344(f)(1)) is amended to
2 read as follows:

3 “(A) from normal farming, silviculture, and
4 ranching activities, such as haying, grazing, plowing,
5 seeding, cultivating, minor drainage, maintenance,
6 fence building and maintenance, water management
7 activities associated with cranberry farming, includ-
8 ing those which periodically change the hydrologic
9 regime of the navigable waters, harvesting for the
10 production of food, fiber, and forest products, or up-
11 land soils and water conservation practices;”.

12 (2) MAINTENANCE OF WASTEWATER RETEN-
13 TION FACILITIES.—Subparagraph (C) of section
14 404(f)(1) is amended by inserting after “irrigation
15 ditches,” the following: “the maintenance, including
16 diking and berming, of wastewater retention facili-
17 ties that are used by concentrated animal feeding
18 operations,”.

19 (b) EXEMPTION OF AREAS.—Subsection (f) of sec-
20 tion 404 is amended by adding at the end the following
21 new paragraphs:

22 “(3) EXEMPTION OF AREAS FROM PERMITTING
23 REQUIREMENTS.—For the purposes of this section,
24 the following shall not be considered to be navigable
25 waters:

1 “(A) Irrigation ditches excavated in non-
2 waters.

3 “(B) Artificially irrigated areas which
4 would revert to non-waters if the irrigation
5 ceased.

6 “(C) Artificial lakes or ponds which are
7 created by excavating or diking non-waters to
8 collect and retain water and which are used ex-
9 clusively for stock watering, irrigation, or rice
10 growing.

11 “(D) Artificial reflecting or swimming
12 pools or other small ornamental bodies of water
13 created by excavating or diking non-waters to
14 retain water for primarily aesthetic reasons.

15 “(E) Temporary, water-filled depressions
16 created in non-waters incidental to construction
17 activity.

18 “(F) Pits excavated in non-waters for the
19 purpose of obtaining fill, sand, gravel, aggre-
20 gates, or minerals, unless and until the con-
21 struction or excavation operation is abandoned
22 and the resulting body of water meets the defi-
23 nition of navigable waters.

1 “(G) Artificial stormwater detention areas
2 and artificial sewage treatment areas that are
3 not modifications of navigable waters.

4 “(H) Prior converted cropland unless and
5 until such cropland is abandoned, as deter-
6 mined by the Chief of the Soil Conservation
7 Service pursuant to paragraph (4).

8 “(I) Confined dredged material disposal
9 sites constructed in non-waters.

10 “(4) ABANDONMENT OF PRIOR CONVERTED
11 CROPLAND.—For the purposes of paragraph (3)(H),
12 abandonment of prior converted cropland means the
13 cessation of cropping, management, or maintenance
14 operations of agricultural commodities on such land.
15 Where the cessation of such cropping, management,
16 or maintenance operations has occurred, prior con-
17 verted cropland is considered to be abandoned unless
18 it is shown that there was no intent to abandon; pro-
19 vided, however, that at the end of 5 successive years
20 during which there was no crop production, such
21 land shall be determined to be abandoned if the land
22 meets the wetland criteria of section 12.31 of title
23 7, Code of Federal Regulations, as in effect on the
24 date of the enactment of this paragraph. Participa-
25 tion in a set-aside, diverted acres, or similar pro-

1 “(C) estimates of the acreage, functions,
2 and values of navigable waters adversely af-
3 fected by each general permit issued under sub-
4 section (e), in order to determine whether the
5 individual and cumulative adverse environ-
6 mental effects of activities authorized by the
7 general permit are minimal;

8 “(D) estimates of the acreage of navigable
9 waters preserved or restored through mitigation
10 of permitted activities, the rate of compliance
11 with such mitigation requirements, the monitor-
12 ing of such compliance, and estimates of suc-
13 cess and failure rates of mitigation projects;

14 “(E) estimates of the acreage of navigable
15 waters restored through activities other than
16 compensatory mitigation; and

17 “(F) a summary of information contained
18 in the national data base established under this
19 subsection.

20 “(3) CONSULTATION.—Each report transmitted
21 under this subsection shall be prepared in consulta-
22 tion with the Administrator, the Secretary of the In-
23 terior, the Chief of the Soil Conservation Service,
24 State officials administering regulatory programs for
25 which general permits have been issued under sec-

1 tion 404(e), and State officials administering indi-
2 vidual and general permit programs approved under
3 section 404(h).

4 “(4) NOTICE AND COMMENT.—Before transmit-
5 ting any report under this subsection, the Secretary
6 shall provide notice and opportunity for public com-
7 ment.

8 “(5) NATIONAL DATA BASE.—The Secretary
9 shall establish a national data base containing infor-
10 mation on wetland location, functions, values, and
11 acreage, including information on mitigation and
12 restoration projects. Such information shall be made
13 available to the National Biological Survey of the
14 Department of the Interior and other interested per-
15 sons.”.

16 (b) NEEDS ANALYSIS.—

17 (1) IN GENERAL.—Not later than 180 days
18 after the date of the enactment of this Act, the
19 Comptroller General shall transmit to Congress an
20 analysis of the needs of the Department of the
21 Army, the Environmental Protection Agency, the
22 United States Fish and Wildlife Service, the Soil
23 Conservation Service, and the National Marine Fish-
24 eries Service for additional personnel, administrative
25 resources, and funding to improve implementation of

1 section 404 of the Federal Water Pollution Control
2 Act and to carry out the provisions of this Act.

3 (2) CONTENTS.—The analysis submitted under
4 this subsection shall—

5 (A) give particular emphasis to the needs
6 of the agencies identified in paragraph (1) with
7 respect to improving and expediting wetlands
8 delineation and permitting under section 404 of
9 the Federal Water Pollution Control Act, in-
10 cluding advance planning and early consulta-
11 tion;

12 (B) include specific recommendations re-
13 garding additional appropriations and staffing
14 necessary for such improvement and expedition;
15 and

16 (C) include specific recommendations con-
17 cerning allocation of additional appropriations
18 and staffing to the regional, district, and field
19 offices of the agencies identified in paragraph
20 (1) according to the workload of those offices.

21 **SEC. 10. ADMINISTRATIVE APPEALS.**

22 Section 404 (33 U.S.C. 1344(d)) is further amended
23 by adding at the end the following new subsection:

24 “(v) ADMINISTRATIVE APPEALS.—

1 “(1) PROCEDURES.—The Secretary shall, after
2 notice and opportunity for public comment, issue
3 rules to establish procedures to provide for adminis-
4 trative appeal of each of the following actions under
5 this section:

6 “(A) A determination of regulatory juris-
7 diction over a particular parcel of property.

8 “(B) The issuance or denial of a permit.

9 “(C) The imposition of an administrative
10 penalty.

11 “(2) PERSONS WHO MAY INITIATE APPEALS.—
12 Rules issued under paragraph (1) shall provide that
13 any person who is adversely affected by an action
14 described in paragraph (1) and, in the case of the
15 issuance or denial of a permit, any person who has
16 participated in the public comment process concern-
17 ing the permit may initiate an administrative appeal.

18 “(3) HEARING OF APPEALS.—Rules issued
19 under paragraph (1) shall provide that any adminis-
20 trative appeal of an action described in paragraph
21 (1) will be heard and decided by an official other
22 than the official who took the action and will be con-
23 ducted at a location which is in the vicinity of the
24 parcel of property involved in the action.”.

1 **SEC. 11. WETLANDS MITIGATION.**

2 Section 404 (33 U.S.C. 1344) is further amended by
3 adding at the end the following new subsection:

4 “(w) WETLANDS COMPENSATORY MITIGATION
5 GUIDELINES.—

6 “(1) ESTABLISHMENT OF GUIDELINES.—The
7 Administrator, in cooperation with the Secretary,
8 and after notice and opportunity for public com-
9 ment, shall establish technical guidelines for the res-
10 toration, enhancement, and creation of wetlands
11 under this section. Such guidelines shall comply
12 with, and follow the scientific guidelines of, guide-
13 lines established pursuant to section 404(b)(1).

14 “(2) PERMIT REQUIREMENTS.—After the date
15 of issuance of guidelines under paragraph (1), condi-
16 tions contained in permits issued pursuant to this
17 section requiring mitigation of wetland losses shall
18 be established through the application of such guide-
19 lines.

20 “(3) PERFORMANCE BOND.—Guidelines issued
21 under paragraph (1) shall provide that any permit
22 issued pursuant to this section which imposes a re-
23 quirement on the permittee to carry out a project to
24 mitigate for wetlands losses will also impose a re-
25 quirement that the permittee issue a performance

1 bond to ensure completion and protect against the
2 failure of such mitigation project unless—

3 “(A) such mitigation project is for the res-
4 toration or enhancement of less than 5 acres of
5 wetlands and is not part of a larger mitigation
6 project; or

7 “(B) such mitigation project is for the res-
8 toration or enhancement of any amount of
9 lands identified by the Soil Conservation Serv-
10 ice as prior converted cropland.

11 “(4) PRIOR CONVERTED CROPLAND.—Guide-
12 lines issued pursuant to paragraph (1) shall estab-
13 lish a rebuttable presumption that restoration of
14 lands identified by the Soil Conservation Service as
15 prior converted cropland, if proposed as mitigation
16 for the loss of a wetland with similar characteristics
17 and within close proximity to the permitted activity,
18 will result in 1:1 replacement of similar acreage,
19 functions, and values lost as a result of the per-
20 mitted activity.

21 “(5) MONITORING AND EVALUATION.—Guide-
22 lines issued pursuant to paragraph (1) shall estab-
23 lish standards and protocols for the monitoring and
24 evaluation of mitigation projects.

1 “(6) PREFERENCE.—Guidelines issued pursu-
2 ant to paragraph (1) shall provide that in imposing
3 wetland mitigation requirements under permits is-
4 sued pursuant to this section preference will be
5 given, in order of priority, to—

6 “(A) in-kind restoration carried out on the
7 site of the permitted activity;

8 “(B) in-kind restoration carried out on the
9 same water body as, and in close proximity to,
10 the site of the permitted activity; and

11 “(C) in-kind restoration carried out within
12 the same watershed as, and in close proximity
13 to, the site of the permitted activity;

14 unless the applicant can demonstrate that other
15 compensatory mitigation, including participation in
16 mitigation banks, would provide greater restoration
17 of the functions and values lost as a result of the
18 permitted activity.”.

19 **SEC. 12. MITIGATION BANKS.**

20 Section 404 (33 U.S.C. 1344) is further amended by
21 adding at the end the following new subsection:

22 “(x) MITIGATION BANKS.—

23 “(1) ESTABLISHMENT.—

24 “(A) IN GENERAL.—Not later than 180
25 days after the date of the enactment of this

1 Act, the Secretary of the Interior (acting
2 through the Director of the United States Fish
3 and Wildlife Service), in consultation with the
4 Administrator, shall issue regulations, after no-
5 tice and opportunity for public review and com-
6 ment, for the establishment, operation, monitor-
7 ing, and enforcement of mitigation banks.

8 “(B) REQUIREMENTS.—Regulations issued
9 under subparagraph (A) shall ensure that miti-
10 gation banks—

11 “(i) comply with the guidelines estab-
12 lished pursuant to subsection (b)(1);

13 “(ii) comply with the guidelines issued
14 under subsection (w);

15 “(iii) to the extent practicable and en-
16 vironmentally desirable, provide for full re-
17 placement of the acreage, functions, and
18 values of lost wetlands and be at sites lo-
19 cated in close proximity to the impacted
20 wetlands;

21 “(iv) employ consistent and scientif-
22 ically sound methods to determine debits
23 by evaluating wetlands functions and
24 project impacts at the sites of proposed
25 permits for discharges of dredged or fill

1 material pursuant to this section and to
2 determine credits based upon wetlands
3 acreage, functions, and values at the sites
4 of mitigation banks;

5 “(v) award credits only for wetlands
6 which are successfully restored or en-
7 hanced in advance of awarding credit;

8 “(vi) base fee charges for participa-
9 tion in the mitigation bank on the full
10 costs of replacing the acreage, functions,
11 and values of lost wetlands, including the
12 costs of land acquisition, wetlands estab-
13 lishment, management measures, long-term
14 maintenance, monitoring, and protection,
15 potential remediation of project failure,
16 and other relevant factors;

17 “(vii) are established only in conjunc-
18 tion with a State restoration strategy that
19 is developed, after notice and opportunity
20 for public comment, on a statewide, re-
21 gional, or watershed basis;

22 “(viii) be operated by an entity which
23 has the financial capability to meet the re-
24 quirements of this section, including the
25 deposit of a performance bond or other ap-

1 appropriate demonstration of financial re-
2 sponsibility to support the long-term main-
3 tenance of the bank;

4 “(ix) specify responsibilities for long-
5 term monitoring, maintenance, and protec-
6 tion; and

7 “(x) provide opportunity for public re-
8 view of proposals for the establishment,
9 siting, and operation of mitigation banks
10 through 1 or more opportunities for public
11 notice and comment.

12 “(2) MITIGATION BANK DEFINED.—For the
13 purposes of this subsection, the term ‘mitigation
14 bank’ means wetlands restoration or enhancement
15 projects undertaken by one or more parties, includ-
16 ing private and public entities, expressly for the pur-
17 pose of providing advance mitigation to fully offset
18 reasonably foreseeable wetlands losses from future
19 discharges of dredged or fill material into the navi-
20 gable waters, where adverse impacts to wetlands
21 cannot be avoided or minimized and compensatory
22 mitigation at the project site is not practicable or
23 mitigation off the project site would provide greater
24 replacement of the wetland functions and values lost
25 as a result of such discharges.

1 “(3) NONAPPLICABILITY OF OTHER LAWS.—
2 Notwithstanding any other provision of law, mitiga-
3 tion banks may be established for the purposes of
4 this section only in accordance with rules issued
5 under this subsection.”.

6 **SEC. 13. WETLANDS DELINEATION CERTIFICATION PRO-**
7 **GRAM AND PROGRAMS TO PROVIDE TECH-**
8 **NICAL ASSISTANCE.**

9 Section 404 (33 U.S.C. 1344) is further amended by
10 adding at the end the following new subsection:

11 “(y) WETLANDS DELINEATION CERTIFICATION PRO-
12 GRAM.—

13 “(1) IN GENERAL.—The Secretary shall estab-
14 lish a program for training and certification of indi-
15 viduals as wetlands delineators. Such program shall
16 supplement, as necessary, any program established
17 pursuant to section 307(e) of the Water Resources
18 Development Act of 1990 (104 Stat. 4627).

19 “(2) TRAINING.—As part of the program to be
20 established under paragraph (1), the Secretary
21 shall—

22 “(A) develop courses for certification of
23 wetlands delineators;

24 “(B) develop courses on wetlands delinea-
25 tion, utilization of wetlands in pollution control,

1 restoration, planning, evaluation, mitigation
2 banking, and other appropriate wetland tech-
3 nologies; and

4 “(C) provide for the participation of State,
5 tribal, and local governments and individuals in
6 such courses.

7 “(3) FEES.—The Secretary shall collect fees for
8 services provided under the program to offset the
9 costs of administering the program.”.

10 **SEC. 14. EDUCATION AND OUTREACH PROGRAM.**

11 Section 404 (33 U.S.C. 1344) is further amended by
12 adding at the end the following new subsection:

13 “(z) EDUCATION AND OUTREACH PROGRAM.—

14 “(1) IN GENERAL.—The Secretary, the Admin-
15 istrator, and the Chief of the Soil Conservation Serv-
16 ice shall jointly establish a program and prepare ma-
17 terials—

18 “(A) to improve existing outreach and edu-
19 cation activities of the Corps of Engineers, the
20 Department of Agriculture, and the Environ-
21 mental Protection Agency;

22 “(B) to assist private individuals in com-
23 plying with the requirements of this section;
24 and

1 “(C) to inform the public of the value in
2 preserving wetlands.

3 “(2) MATERIALS.—As part of the program to
4 be established under paragraph (1), the Secretary
5 shall provide private landowners with technical mate-
6 rials to assist with wetlands identification, evalua-
7 tion, and mitigation and with the development of
8 restoration plans.”.

9 **SEC. 15. SECTION 404 DEFINITIONS.**

10 Section 404 (33 U.S.C. 1344) is further amended by
11 adding at the end the following new subsection:

12 “(a) DEFINITIONS.—As used in this section, the
13 following definitions apply:

14 “(1) DISCHARGE OF DREDGED OR FILL MATE-
15 RIAL.—The term ‘discharge of dredged or fill mate-
16 rial’ means—

17 “(A) any addition or redeposit of dredged
18 or fill material into the navigable waters which
19 is incidental to any activity, including draining,
20 dredging, excavating, channelizing, flooding,
21 pumping, driving of pilings or placement of
22 other obstructions, mechanized land clearing,
23 ditching, and diversion of water; and

24 “(B) any activity specifically referred to in
25 subparagraph (A) conducted in or near the nav-

1 igable waters which, without adding or redepos-
2 iting dredged or fill material into the navigable
3 waters, otherwise impairs the flow, reach, or
4 circulation of surface water or results in a sig-
5 nificant change in the hydrologic regime, bot-
6 tom contour, or configuration of such waters or
7 in the type, distribution, or diversity of vegeta-
8 tion, fish, and wildlife that depend on such wa-
9 ters.

10 “(2) PRIOR CONVERTED CROPLAND.—The term
11 ‘prior converted cropland’ means wetlands that were
12 drained, dredged, filled, leveled, or otherwise manip-
13 ulated before December 23, 1985, for the purpose
14 of, or to have the effect of, making the production
15 of an agricultural commodity possible, and that no
16 longer meet the definition of the term ‘wetlands’
17 contained in section 1201(a) of the Food Security
18 Act of 1985.

19 “(3) SECRETARY.—The term ‘Secretary’ means
20 the Secretary of the Army, acting through the Chief
21 of Engineers.”.

22 **SEC. 16. GENERAL DEFINITIONS.**

23 (a) NAVIGABLE WATERS.—Paragraph (7) of section
24 502 (33 U.S.C. 1362) is amended by inserting “and wet-
25 lands” before the period.

1 (b) WETLANDS.—Section 502 is further amended by
2 adding at the end the following new paragraph:

3 “(21) The term ‘wetlands’ means those areas that are
4 inundated or saturated by surface water or ground water
5 at a frequency and duration sufficient to support, and that
6 under normal circumstances do support, a prevalence of
7 vegetation typically adapted to life in saturated soil condi-
8 tions. Wetlands include, but are not limited to, bogs,
9 marshes, fens, pocosins, playa lakes, prairie potholes,
10 swamps, and vernal pools.”.

11 **SEC. 17. SENSE OF CONGRESS CONCERNING WETLANDS RE-**
12 **SERVE PROGRAM.**

13 It is the sense of Congress that the Wetlands Reserve
14 Program authorized by the Food, Agriculture, Conserva-
15 tion, and Trade Act of 1990 is an effective wetlands con-
16 servation and restoration program which has the potential
17 to benefit agriculturists, rural communities, and the Na-
18 tion’s wetlands resource base. Further, it is the sense of
19 Congress that the Wetlands Reserve Program should be
20 fully funded to achieve its acreage enrollment goals, and
21 should be actively promoted by the Department of Agri-
22 culture to achieve full subscription.

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