

104TH CONGRESS
1ST SESSION

H. R. 1268

To amend the Federal Water Pollution Control Act to establish a comprehensive program for conserving and managing wetlands in the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 21, 1995

Mr. ENGLISH of Pennsylvania introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To amend the Federal Water Pollution Control Act to establish a comprehensive program for conserving and managing wetlands in the United States, 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 “Comprehensive Wet-
5 lands Conservation and Management Act of 1995”.

6 **SEC. 2. FINDINGS AND STATEMENT OF PURPOSE.**

7 (a) FINDINGS.—Congress finds that—

1 (1) wetlands play an integral role in maintain-
2 ing the quality of life through material contributions
3 to our national economy, food supply, water supply
4 and quality, flood control, and fish, wildlife, and
5 plant resources, and thus to the health, safety,
6 recreation and economic well-being of citizens
7 throughout the Nation;

8 (2) wetlands serve important ecological and nat-
9 ural resource functions, such as providing essential
10 nesting and feeding habitat for waterfowl, other
11 wildlife, and many rare and endangered species, fish-
12 eries habitat, the enhancement of water quality, and
13 natural flood control;

14 (3) much of the Nation's resource has sustained
15 significant degradation, resulting in the need for ef-
16 fective programs to limit the loss of ecologically sig-
17 nificant wetlands and to provide for long-term res-
18 toration and enhancement of the wetlands resource
19 base;

20 (4) most of the loss of wetlands in coastal Lou-
21 isiana is not attributable to human activity;

22 (5) because 75 percent of the Nation's wetlands
23 in the lower 48 States are privately owned and be-
24 cause the majority of the Nation's population lives
25 in or near wetlands areas, an effective wetlands con-

1 servation and management program must reflect a
2 balanced approach that conserves and enhances im-
3 portant wetlands values and functions while observ-
4 ing private property rights, recognizing the need for
5 essential public infrastructure, such as highways,
6 ports, airports, sewer system, and public water sup-
7 ply systems and providing the opportunity for sus-
8 tained economic growth;

9 (6) while wetlands provide many varied eco-
10 nomic and environmental benefits, they also present
11 health risks in some instances where they act as
12 breeder grounds for insects that are carriers of
13 human and animal diseases; and

14 (7) the Federal permit program established
15 under section 404 of the Federal Water Pollution
16 Control Act was not originally conceived as a wet-
17 lands regulatory program and is insufficient to en-
18 sure that the Nation's wetlands resource base will be
19 conserved and managed in a fair and environ-
20 mentally sound manner.

21 (b) PURPOSE.—The purpose of this Act is to estab-
22 lish a new Federal wetlands regulatory program to—

23 (1) assert Federal regulatory jurisdiction over a
24 broad category of specifically identified activities
25 that result in the degradation or loss of wetlands;

1 (2) account for variations in wetlands values or
2 functions in determining the character and extent of
3 regulation of activities occurring in wetlands areas;

4 (3) provide sufficient regulatory incentives for
5 conservation, restoration, or enhancement activities;

6 (4) encourage conservation of resources on an
7 ecosystem basis to the fullest extent practicable; and

8 (5) balance public and private interests in de-
9 termining the conditions under which activity in wet-
10 lands areas may occur.

11 **SEC. 3. WETLANDS CONSERVATION AND MANAGEMENT.**

12 Title IV of the Federal Water Pollution Control Act
13 (33 U.S.C. 1341 et seq.) is amended by striking section
14 404 and inserting the following new section:

15 **“SEC 404. PERMITS FOR ACTIVITIES IN WETLANDS OR WA-**
16 **TERS OF THE UNITED STATES.**

17 “(a) PROHIBITED ACTIVITIES.—(1) No person shall
18 undertake an activity in wetlands or waters of the United
19 States as described in paragraph (2) of this subsection un-
20 less such activity is undertaken pursuant to a permit is-
21 sued by the Secretary or is otherwise authorized under
22 this section.

23 “(2) For purposes of this section, the term ‘activity
24 in wetlands or waters of the United States’ means—

1 “(A) the discharge of dredged or fill material
2 into waters of the United States, including wetlands
3 at a specific disposal site; or

4 “(B) the draining, channelization, excavation,
5 or flooding of wetlands, construction of structures in
6 and diversion of water from wetlands or the conduct
7 of any other activity which adversely effects wet-
8 lands.

9 “(3) For purposes of this section, the term—

10 “(A) ‘wetlands’ means those lands that meet
11 the criteria for delineation of lands as wetlands set
12 forth in paragraph (2) of subsection (g);

13 “(B) ‘Secretary’ means the Secretary of the
14 Army; and

15 “(C) ‘Director’ means the Director of the Unit-
16 ed States Fish and Wildlife Service.

17 “(b) AUTHORIZED ACTIVITIES.—(1) The Secretary is
18 authorized to issue permits authorizing activities described
19 in subsection (a)(2) of this section in accordance with the
20 requirements of this section.

21 “(2) Activities described in paragraph (2) of sub-
22 section (a) may be undertaken without a permit from the
23 Secretary if those activities are authorized under sub-
24 sections (e)(5) or (6) or are exempt from the requirements

1 of this section under subsection (f) or other provisions of
2 this section.

3 “(c) WETLANDS CLASSIFICATION.—(1) Any person
4 seeking to undertake activities in wetlands for which a per-
5 mit is required under subsection (b) shall make application
6 to the Secretary identifying the site of such activity and
7 requesting that the Secretary determine, in accordance
8 with paragraph (3) of this subsection, the classification
9 of the wetlands in which such activity is proposed to occur.
10 The applicant may also provide such additional informa-
11 tion regarding such proposed activity as may be necessary
12 or appropriate for purposes of determining the classifica-
13 tion of such wetlands or whether and under what condi-
14 tions the proposed activity may be permitted to occur.

15 “(2)(A) Except as provided in subparagraph (B) of
16 this paragraph, within 90 days following the receipt of an
17 application under paragraph (1), the Secretary shall pro-
18 vide notice to the applicant of the classification of the wet-
19 lands that are the subject of such application and shall
20 state in writing the basis for such classification. The clas-
21 sification of the wetlands that are the subject of the appli-
22 cation shall be determined by the Secretary in accordance
23 with the requirements for classification of wetlands
24 under paragraphs (3) and (5).

1 “(B) In the case of an application proposing activities
2 located in wetlands that are the subject of an advance clas-
3 sification under subsection (h), the Secretary shall provide
4 notice to the applicant of such classification within thirty
5 days following the receipt of such application, and shall
6 provide an opportunity for review of such classification
7 under paragraphs (4) and (5) of this subsection.

8 “(3) Upon application under this subsection, the Sec-
9 retary shall—

10 “(A) classify as type A wetlands those wetlands
11 that are of critical significance to the long-term con-
12 servation of the ecosystem of which such wetlands
13 are a part and which meet the following require-
14 ments:

15 “(i) such wetlands serve critical wetlands
16 functions, including the provision of critical
17 habitat for a concentration of avian, aquatic, or
18 wetland dependent wildlife;

19 “(ii) such wetlands have an inlet or outlet
20 for relief of water flow; except that this require-
21 ment shall not operate to preclude the classi-
22 fication as type A wetlands lands containing
23 prairie pothole features, playa lakes, vernal
24 pools, bogs, tidal marshes, or permafrost tundra
25 lakes if such lands otherwise meet the require-

1 ments for type A classification under this para-
2 graph;

3 “(iii) there exists a scarcity within the wa-
4 tershed or aquatic ecosystem of identified eco-
5 logical functions served by such wetlands such
6 that the use of such wetlands for activities de-
7 scribed in subsection (a) would seriously jeop-
8 ardize the availability of these identified wet-
9 lands functions;

10 “(iv) there is no emergency which requires
11 the use of such wetlands for purposes other
12 than conservation;

13 “(v) the nature and scope of wetlands
14 functions are such that minimization and com-
15 pensation are not feasible means for conserving
16 wetlands values and functions;

17 “(B) classify as type B wetlands those wetlands
18 that provide habitat for a significant population of
19 avian, aquatic or wetland dependent wildlife, or pro-
20 vide other significant wetlands functions including
21 significant enhancement or protection of water qual-
22 ity, or significant natural flood control; and

23 “(C) classify as type C wetlands all wetlands
24 that—

25 “(i) serve limited wetlands functions;

1 “(ii) serve marginal wetlands functions but
2 which exist in such abundance that regulation
3 of activities in such wetlands is not necessary
4 for conserving important wetlands values and
5 functions;

6 “(iii) are fastlands; or

7 “(iv) are wetlands within industrial com-
8 plexes or other intensely developed areas that
9 do not serve significant wetlands functions as a
10 result of such location.

11 “(4) Within 30 days of receipt of notice of an advance
12 classification by the Secretary under paragraph (2)(B) of
13 this subsection, an applicant may request the Secretary
14 to make a de novo determination of the classification of
15 wetlands that are the subject of such notice. Such de novo
16 determination shall be made by the Secretary in consulta-
17 tion with the Director. The Secretary may sustain an ad-
18 vance classification made by the Director or may modify
19 such classification if the Secretary determines, upon exam-
20 ination of all relevant information submitted by the appli-
21 cant or otherwise available to the Secretary (including, if
22 appropriate, an on-the-ground-examination), that—

23 “(A) the lands involved do not meet the stand-
24 ards and criteria for delineating wetlands set forth
25 in paragraph (2) of subsection (g);

1 “(B) the weight of relevant information does
2 not support the determination of the advance classi-
3 fication with respect to the specific wetlands in-
4 volved;

5 “(C) the factual basis for such advance classi-
6 fication is no longer valid; except that such change
7 in factual circumstances has not been caused by ac-
8 tivities undertaken without authorization by the Sec-
9 retary as may have been required under this section;
10 or

11 “(D) the limitations on uses of the specific wet-
12 lands involved that would be imposed by the Sec-
13 retary under the requirements of this section would
14 effectively preclude reasonable economic use of the
15 wetlands.

16 “(5) In the event that the Secretary delegates author-
17 ity to determine the classification of wetlands under para-
18 graphs (3) and (4), the Secretary shall, by rule, provide
19 for a right of appeal to the Secretary or his designee of
20 the classification of wetlands under paragraph (3) or the
21 de novo determination of a classification under paragraph
22 (4).

23 “(d) COMPENSATION FOR LANDOWNERS.—(1) Any
24 person (including a State or political subdivision thereof)
25 who owns an interest in lands that have been classified

1 as type A wetlands by the Secretary under subsection (c)
2 or by the Director under subsection (h) may, within 2
3 years of receipt of actual notice of such classification (or
4 within 2 years following a de novo determination of such
5 classification), notify the Secretary and the Director that
6 such person is electing to seek compensation for the fair
7 market value of such interests in lands at the time of such
8 classification, in accordance with the requirements of this
9 section. Fair market value may include reasonable attor-
10 neys fees and shall be calculated without regard to any
11 diminution in value resulting from the applicability of this
12 section.

13 “(2) Immediately upon receipt by the Secretary and
14 the Director of notification of election to seek compensa-
15 tion under paragraph (1), the Director shall enter into
16 good faith negotiations with the owner for purposes of de-
17 termining the value of the interests in lands that have
18 been classified as type A wetlands. Within three months
19 after receipt of the notice of election by the landowner
20 under paragraph (1), the Director shall make an offer of
21 reasonable compensation to the owner.

22 “(3) Within 6 years of the date an offer for com-
23 pensation is made under paragraph (2), the owner shall,
24 in his or her discretion—

25 “(A) accept such offer of compensation;

1 “(B) file a claim for determination of value of
2 compensation with the United States Court of Fed-
3 eral Claims; or

4 “(C) advise the Director and the Secretary that
5 he elects to retain title to such wetlands and elects
6 not to receive compensation for the taking of land
7 under this subsection.

8 Failure to provide notice in accordance with this para-
9 graph shall be deemed an election not to receive compensa-
10 tion under this subsection.

11 “(4) Upon acceptance of an offer for compensation
12 or the filing of a claim for compensation under paragraph
13 (3), the classification as type A wetlands of the wetlands
14 that are the subject of such offer or claim shall be binding
15 upon the owner and any successor in interest, and the title
16 to such lands shall pass to the United States. The classi-
17 fication of such lands as type A wetlands under this para-
18 graph shall constitute a taking by the United States of
19 the owner’s interests in such lands and shall be compen-
20 sable under the provisions of this subsection.

21 “(5) A taking under this subsection shall be deemed
22 to be a taking of surface interests in lands only or water
23 rights allocated under State law; except that (A) if the
24 Secretary determines that the exploration for or develop-
25 ment of oil and gas or mineral interests is not compatible

1 with conservation of the surface interests in lands that
2 have been classified as type A wetlands located above such
3 oil and gas or mineral interests (or located adjacent to
4 such oil and gas or mineral interests where such adjacent
5 lands are necessary to provide reasonable access to such
6 interests), the Secretary may classify such oil and gas or
7 mineral interests as type A wetlands and notify the owner
8 of such interests that the owner may elect to receive com-
9 pensation for such interests under paragraph (1), and (B)
10 the failure to provide reasonable access to oil and gas or
11 mineral interests located beneath or adjacent to surface
12 interests of type A wetlands shall be deemed a taking of
13 such oil and gas or mineral interests.

14 “(6) The United States Court of Federal Claims shall
15 have jurisdiction—

16 “(A) to determine the value of interests taken
17 and the fair compensation required under this sub-
18 section and the Constitution of the United States;

19 “(B) in case of oil and gas or mineral interests,
20 to require the United States to provide reasonable
21 access in, across, or through lands that may be the
22 subject of a taking under this subsection solely for
23 the purpose of undertaking activity necessary to de-
24 termine the value of the interests taken; and

1 “(C) to provide other equitable remedies
2 deemed appropriate.

3 “(7) Any judgment rendered under paragraph (6)
4 may be executed, at the election of the landowner, no later
5 than two years after the date such judgment is rendered.
6 The landowner may, prior to the execution of such judg-
7 ment, enter into an agreement with the United States for
8 satisfaction of such judgment through a crediting of tax
9 benefits, acquisition of interests in oil and gas or minerals,
10 an exchange of interests in lands with the United States
11 or other means of compensation.

12 “(8)(A) The remedies for taking of interests in lands
13 under this subsection shall not be construed to preempt,
14 alter, or limit the availability of other remedies for the
15 taking of interests in lands under the Constitution of the
16 United States or State law, including the taking of rights
17 to the use of water allocated under State law or the taking
18 of interest in lands by denial of a permit under this sec-
19 tion.

20 “(B) Any award of compensation for the taking of
21 interest in lands by denial of a permit under this section
22 shall be based upon the fair market value of such interests
23 in lands at the time of such taking. Fair market value
24 may include reasonable attorneys fees and shall be cal-

1 culated without regard to any diminution in value result-
2 ing from the applicability of this section.

3 “(9) Interests in lands acquired by the United States
4 under this subsection shall be managed by the United
5 States Fish and Wildlife Service as a part of the National
6 Wildlife Refuge System unless otherwise provided by the
7 Director or by Act of Congress.

8 “(10) No action taken under this subsection shall be
9 construed to alter or supersede requirements governing
10 use of water applicable under State law.

11 “(e) REQUIREMENTS APPLICABLE TO PERMITTED
12 ACTIVITY.—(1) Following the determination of wetlands
13 classification pursuant to subsection (c), and after compli-
14 ance with the requirements of subsection (d) if applicable,
15 the Secretary may issue or deny permits for authorization
16 to undertake activities in wetlands, in accordance with the
17 requirements of this subsection.

18 “(2) The Secretary shall deny a permit authorizing
19 activities in type A wetlands unless the Secretary deter-
20 mines that—

21 “(A) such an activity can be undertaken with
22 minimal alteration or surface disturbance;

23 “(B) there are overriding public interest con-
24 cerns that require use of the lands for purposes
25 other than conservation, including—

1 “(i) the likelihood that efforts to mitigate
2 adverse impacts through avoidance and mini-
3 mization will protect, enhance, or increase criti-
4 cal wetlands values and functions; or

5 “(ii) the lack of practical and feasible
6 means for accomplishing the project purpose at
7 an alternative location; or

8 “(C) the proposed use of the land, taking into
9 account all proposed mitigation, will result in overall
10 environmental benefits, including the prevention of
11 wetlands loss.

12 Any permit issued authorizing activities in type A wet-
13 lands may contain such terms and conditions concerning
14 mitigation (including those applicable under paragraph (3)
15 for type B wetlands) that the Secretary deems appropriate
16 to prevent the unacceptable loss or degradation of type
17 A wetlands.

18 “(3)(A) The Secretary may issue a permit authoriz-
19 ing activities in type B wetlands subject to such terms and
20 conditions as the Secretary finds are necessary to ensure
21 that the watershed or aquatic ecosystem of which such
22 wetlands are a part does not suffer significant loss or deg-
23 radation of wetlands values and functions. In determining
24 whether or not specific terms and conditions are necessary

1 to avoid a significant loss of wetlands values and func-
2 tions, the Secretary shall consider the following:

3 “(i) The quality and quantity of ecologically sig-
4 nificant functions served by the areas to be affected.

5 “(ii) The opportunities to reduce impacts
6 through cost effective design to avoid or minimize
7 use of wetlands areas.

8 “(iii) The costs of mitigation requirements and
9 the social, recreational, and economic benefits associ-
10 ated with the proposed activity, including local, re-
11 gional, or national needs for improved or expanded
12 infrastructure.

13 “(iv) The ability of the permittee to mitigate
14 wetlands loss or degradation as measured by wet-
15 lands functions.

16 “(v) The environmental benefit, measured by
17 wetlands functions, that may occur through mitiga-
18 tion efforts, including restoring, preserving, enhanc-
19 ing, or creating wetlands values and functions.

20 “(vi) The marginal impact of the proposed ac-
21 tivity on the watershed of which such wetlands are
22 a part.

23 “(B) In considering an application for activities on
24 type B wetlands, the Secretary may require alternative
25 site analyses for individual permit applications involving

1 the alteration or permanent surface disturbance of 10 or
2 more contiguous acres of wetlands. There shall be a rebut-
3 table presumption that the project purpose as defined by
4 the applicant shall be binding upon the Secretary. The def-
5 inition of project purpose for projects sponsored by public
6 agencies shall be binding upon the Secretary, subject to
7 the authority of the Secretary to impose mitigation re-
8 quirements to minimize impacts on wetlands values and
9 functions, including cost effective redesign of projects to
10 avoid wetlands areas.

11 “(C) Except as otherwise provided in this section, re-
12 quirements for mitigation shall be imposed when the Sec-
13 retary finds that activities undertaken under this section
14 will result in the loss or degradation of type B wetlands
15 functions and values where such loss or degradation is not
16 a temporary or incidental impact. When determining miti-
17 gation requirements in any specific case, the Secretary
18 shall take into consideration the type of wetlands affected,
19 the character of the impact on ecological functions, wheth-
20 er any adverse effects on wetlands are of a permanent or
21 temporary nature, and the cost effectiveness of such miti-
22 gation and shall seek to minimize the costs of such mitiga-
23 tion.

1 “(D) In accordance with subsection (i), the Secretary
2 shall issue rules governing requirements for mitigation for
3 activities occurring in type B wetlands that allow for—

4 “(i) minimization of impacts through project
5 design, including avoidance of specific wetlands im-
6 pacts where economically practicable and consistent
7 with the project’s purpose, provisions for compen-
8 satory mitigation, if any, and other terms and condi-
9 tions necessary and appropriate in the public inter-
10 est;

11 “(ii) preservation or donation of type A wet-
12 lands or type B wetlands (where title has not been
13 acquired by the United States and no compensation
14 for the taking of such wetlands has been provided)
15 as mitigation for activities that alter or degrade wet-
16 lands;

17 “(iii) enhancement or restoration of degraded
18 wetlands as compensation for wetlands lost or de-
19 graded through permitted activity;

20 “(iv) compensation through contribution to a
21 mitigation banking program established for a State
22 pursuant to subparagraph (F);

23 “(v) offsite compensatory mitigation if such
24 mitigation contributes to the restoration, enhance-
25 ment or creation of significant wetlands values on a

1 watershed or ecosystem-wide basis and is balanced
2 with the affects that the proposed activity will have
3 on the specific site; except that offsite compensatory
4 mitigation, if any, shall be required only within the
5 State within which the proposed activity is to occur,
6 and shall, to the extent practicable, be within the
7 watershed within which the proposed activity is to
8 occur, unless otherwise consistent with a State wet-
9 lands management plan;

10 “(vi) contribution of in-kind value acceptable to
11 the Secretary and otherwise authorized by law;

12 “(vii) in areas subject to wetlands loss, the con-
13 struction of coastal protection and enhancement
14 projects;

15 “(viii) contribution of resources of more than
16 one permittee toward a single mitigation project;
17 and

18 “(ix) other mitigation measures determined by
19 the Secretary to be appropriate in the public interest
20 and consistent with the requirements and purposes
21 of this Act.

22 “(E) Notwithstanding the provisions of subparagraph
23 (C), the Secretary may determine not to impose require-
24 ments for compensatory mitigation if the Secretary finds
25 that—

1 “(i) the adverse impacts of a permitted activity
2 are limited;

3 “(ii) the failure to impose compensatory mitiga-
4 tion requirements is compatible with maintaining
5 wetlands functions and values and no practicable
6 and reasonable means of mitigation is available;

7 “(iii) there is an abundance of similar signifi-
8 cant wetlands functions and values in or near the
9 area in which the proposed activity is to occur that
10 will continue to serve the functions lost or degraded
11 as a result of such activity, taking into account the
12 impacts of such proposed activity and the cumulative
13 impacts of similar activity in the area; or

14 “(iv) the temporary character of the impacts
15 and the use of minimization techniques make com-
16 pensatory mitigation unnecessary to protect signifi-
17 cant wetlands values.

18 “(F) The Secretary, in consultation with the Direc-
19 tor, shall establish a mitigation banking program in each
20 State. Such mitigation banking program shall be devel-
21 oped in consultation with the Director and the Governor
22 of the State in which the wetlands covered by such mitiga-
23 tion banking program is located and, after approval by
24 the Secretary, will be available to the Secretary as a means
25 for ensuring compensation for loss and degradation of wet-

1 lands functions and values in such State in accordance
2 with the requirements of this paragraph. The primary ob-
3 jective of such programs shall be to provide for the res-
4 toration, enhancement, or, where feasible, creation of eco-
5 logically significant wetlands on an ecosystem basis. Such
6 programs shall—

7 “(i) provide a preference for larger scale
8 projects, unless the Secretary (or the Governor of a
9 State that is administering its own permit program
10 under subsection (1)) determines that a smaller
11 project will contribute substantially to the conserva-
12 tion, enhancement or restoration of ecologically sig-
13 nificant wetlands values and functions or that the
14 restoration of indigenous wetlands resources cannot
15 be accomplished through large-scale projects;

16 “(ii) authorize mitigation banks sponsored ei-
17 ther by private entities or public entities;

18 “(iii) provide for crediting of contributions to
19 the mitigation bank in land, cash, or in-kind con-
20 tributions so that persons unable to sponsor specific
21 mitigation projects can contribute to a State or pri-
22 vately maintained mitigation bank;

23 “(iv) have sufficient requirements to ensure
24 completion, maintenance and supervision for at least

1 a 25-year period, including requirements for bonds
2 or other evidence of financial responsibility;

3 “(v) authorize the imposition of bonding re-
4 quirements on private entities operating such banks;

5 “(vi) limit activities in or on wetlands that are
6 part of a mitigation bank to uses that are consistent
7 with maintaining or gaining significant wetlands val-
8 ues and functions; and

9 “(vii) authorize a credit to be provided on an
10 acre-for-acre or value-for-value basis for type A and
11 B wetlands that are permanently protected in na-
12 tional conservation units in States that have con-
13 verted less than 10 percent of their State’s historic
14 wetlands base.

15 “(4)(A) In the case of any application for authoriza-
16 tion to undertake activities in wetlands that are not eligi-
17 ble for treatment on an expedited basis pursuant to para-
18 graph (5) of this subsection, final action by the Secretary
19 shall occur within 6 months following the date such appli-
20 cation is filed, unless—

21 “(i) the Secretary and the applicant agree that
22 such final action shall occur within a shorter or
23 longer period of time;

24 “(ii) the Secretary determines that an addi-
25 tional, specified period of time is necessary to permit

1 the Secretary to comply with other applicable Fed-
2 eral law; or

3 “(iii) the Secretary, within 15 days from the
4 date such application is received, notifies the appli-
5 cant that such application does not contain all infor-
6 mation necessary to allow the Secretary to consider
7 such application and identifies any necessary addi-
8 tional information, in which case, the provisions of
9 subparagraph (B) shall apply.

10 “(B) Upon the receipt of a request for additional in-
11 formation under subparagraph (A)(iii), the applicant shall
12 supply such additional information and shall advise the
13 Secretary that the application contains all requested infor-
14 mation and is therefore complete. The Secretary may—

15 “(i) within 30 days of the receipt of notice of
16 the applicant that the application is complete, deter-
17 mine that the application does not contain all re-
18 quested additional information and, on that basis,
19 deny the application without prejudice to resubmis-
20 sion; or

21 “(ii) within 6 months from the date that the
22 applicant provides notification to the Secretary that
23 the application is complete, review the application
24 and take final action.

1 “(C) If the Secretary fails to take final action on an
2 application under this paragraph within 6 months from
3 the date that the applicant provides notification to the
4 Secretary that such application is complete, a permit shall
5 be presumed to be granted authorizing the activities pro-
6 posed in such application under such terms and conditions
7 as are stated in such completed application.

8 “(D) Within 60 days from the date of decision of the
9 Secretary denying an application under this paragraph,
10 the applicant may appeal such decision to the Secretary
11 of Defense or his designee. Upon such an appeal, the Sec-
12 retary must prove by clear and convincing evidence that
13 granting the permit requested in such application would
14 be inconsistent with the provisions of this section.

15 “(5)(A) Activities in wetlands that have been classi-
16 fied as type C wetlands by the Secretary or the Director
17 may be undertaken without authorization required under
18 subsection (b) of this section.

19 “(B) The Secretary may establish requirements for
20 reporting activities undertaken in type C wetlands.

21 “(C) No requirements for alternative site analyses or
22 mitigation of environmental impacts shall apply for activi-
23 ties undertaken in type C wetlands.

24 “(6) The Secretary may, by rule in accordance with
25 subsection (i), issue general permits on a State, regional,

1 or nationwide basis for any category of activities involving
2 activities described in section (a) of this section in wet-
3 lands if the Secretary determines that such activities are
4 similar in nature and that such activities, when performed
5 separately and cumulatively, will not result in the signifi-
6 cant loss of ecologically significant wetlands values and
7 functions. Permits issued under this subsection shall in-
8 clude procedures for expedited review of eligibility for such
9 permits (if such review is required) and may include re-
10 quirements for reporting and mitigation. Requirements for
11 compensatory mitigation for such permits may be imposed
12 where necessary to avoid or minimize the significant loss
13 or degradation of significant wetlands values and func-
14 tions where such loss or degradation is not a temporary
15 or incidental impact. Nationwide, general or regional per-
16 mits in effect on the date of the enactment of the Com-
17 prehensive Wetlands Conservation and Management Act
18 of 1995 shall remain in effect until otherwise modified by
19 the Secretary.

20 “(f) ACTIVITIES NOT REQUIRING PERMIT.—(1) Ex-
21 cept as provided in paragraph (3) of this subsection, ac-
22 tivities undertaken in wetlands are exempt from the re-
23 quirements of this section and are not prohibited by or
24 otherwise subject to regulation under this section or sec-
25 tion 301 or 402 of this Act (except effluent standards or

1 prohibitions under section 307 of this Act), if such activi-
2 ties—

3 “(A) result from normal farming, silviculture,
4 aquaculture, and ranching activities and practices,
5 such as plowing, seeding, cultivating, minor drain-
6 age, burning of vegetation in connection with such
7 activities, harvesting for the production of food,
8 fiber, and forest products, or upland soil and water
9 conservation practices;

10 “(B) are for the purpose of maintenance, in-
11 cluding emergency reconstruction of recently dam-
12 aged parts of currently serviceable structures such
13 as dikes, dams, levees, water control structures,
14 groins, riprap, breakwaters, causeways, and bridge
15 abutments or approaches, and transportation struc-
16 tures;

17 “(C) are for the purpose of construction or
18 maintenance of farm, stock or aquaculture ponds or
19 irrigation canals and ditches, or the maintenance of
20 drainage ditches;

21 “(D) are for the purpose of construction of
22 temporary sedimentation basins on a construction
23 site which does not include placement of fill material
24 into the navigable waters;

1 “(E) are for the purpose of construction or
2 maintenance of farm roads or forest roads, or tem-
3 porary roads for moving mining equipment if such
4 roads are constructed and maintained, in accordance
5 with best management practices, to assure that flow
6 and circulation patterns and chemical and biological
7 characteristics of the waters are not impaired, that
8 the reach of the waters is not reduced, and that any
9 adverse effect on the aquatic environment will be
10 otherwise minimized;

11 “(F) are undertaken on farmed wetlands, ex-
12 cept that any change in use of such land for the
13 purpose of undertaking activities that are not ex-
14 empt from regulation under this subsection shall be
15 subject to the requirements of this section to the ex-
16 tent that such farmed wetlands are ‘wetlands’ under
17 paragraph (2) of subsection (g);

18 “(G) result from any activity with respect to
19 which a State has an approved program under sec-
20 tion 208(b)(4) of this Act which meets the require-
21 ments of subparagraphs (B) and (C) of such section;

22 “(H) are consistent with a State or local land
23 management plan submitted to the Secretary and
24 approved pursuant to paragraph (2);

1 “(I) are undertaken in connection with a marsh
2 management and conservation program in a coastal
3 parish in the State of Louisiana where such program
4 has been approved by the Governor of such State or
5 the designee of the Governor;

6 “(J) are undertaken on lands or involve activi-
7 ties within a State’s coastal zone which are excluded
8 from regulation under a State coastal zone manage-
9 ment program approved under the Coastal Zone
10 Management Act of 1972 (16 U.S.C. 1451, et seq.);

11 “(K) are undertaken in incidentally created
12 wetlands, unless such incidentally created wetlands
13 have exhibited wetlands functions and values for
14 more than five years in which case activities under-
15 taken in such wetlands shall be subject to the re-
16 quirements of this section;

17 “(L) are part of expanding an ongoing farming
18 operation involving the water dependent, obligate
19 crop *Vaccinium macrocarpin*, so long as such expan-
20 sion does not occur in type A wetlands, does not re-
21 sult in the conversion of more than 10 acres of wet-
22 lands per operator per year, and the converted wet-
23 lands (other than where dikes and other necessary
24 facilities are placed) remain as wetlands or other wa-
25 ters of the United States; or

1 “(M) result from aggregate or clay mining ac-
2 tivities in wetlands conducted pursuant to a State
3 or Federal permit that requires the reclamation of
4 such affected wetlands.

5 Conditions of reclamation shall include that for any site,
6 such reclamation shall be completed within 5 years of the
7 commencement of activities at such site and that upon
8 completion of such reclamation, such wetlands shall sup-
9 port wetlands functions and values equivalent to the func-
10 tions and values supported by such wetlands at the time
11 of commencement of such activities.

12 “(2) Any State or political subdivision thereof acting
13 pursuant to State authorization may develop a land man-
14 agement plan with respect to lands that include identified
15 wetlands. The State or local government agency may sub-
16 mit any such plan to the Secretary for review and ap-
17 proval. The Secretary shall, within sixty days, notify in
18 writing the designated State or local official of approval
19 or disapproval of any such plan. The Secretary shall ap-
20 prove any plan that is consistent with the objectives and
21 policies of this section. No person shall be entitled to judi-
22 cial review of the decision of the Secretary to approve or
23 disapprove a land management plan under this paragraph.
24 Nothing in this paragraph shall be construed to alter, limit
25 or supersede the authority of a State or political subdivi-

1 sion thereof to establish land management plans for pur-
2 poses other than the provisions of this subsection.

3 “(g) RULES FOR DELINEATING WETLANDS.—(1)
4 The Secretary is authorized and directed to establish
5 standards, by rule in accordance with subsection (i), that
6 shall govern the delineation of lands as ‘wetlands’ for pur-
7 poses of this section. Such rules shall be established after
8 consultation with other agencies of the United States, in-
9 cluding the United States Fish and Wildlife Service, the
10 Environmental Protection Agency, and the United States
11 Natural Resources Conservation Service, and shall be
12 binding on all Federal agencies in connection with the ad-
13 ministration or implementation of any provision of this
14 section. The standards for delineation of wetlands and any
15 decision of the Secretary, the Director, or any other Fed-
16 eral officer or agency made in connection with the admin-
17 istration of this section shall comply with the requirements
18 for delineation of wetlands set forth in paragraph (2) of
19 this subsection.

20 “(2)(A) The standards established by rule or applied
21 in any case for purposes of this section shall ensure that
22 lands are delineated as wetlands only if such lands are
23 found to be ‘wetlands’ under section 502 of this Act, ex-
24 cept that such standards may not—

1 “(i) result in the delineation of lands as wet-
2 lands unless clear evidence of wetlands hydrology,
3 hydrophytic vegetation, and hydric soil are found to
4 be present during the period in which such delinea-
5 tion is made, which delineation shall be conducted
6 during the growing season unless otherwise re-
7 quested by the applicant;

8 “(ii) result in the classification of vegetation as
9 hydrophytic if such vegetation is equally adapted to
10 dry or wet soil conditions or is more typically adapt-
11 ed to dry soil conditions than to wet soil conditions;

12 “(iii) result in the classification of lands as wet-
13 lands unless some obligate wetlands vegetation is
14 found to be present during the period of delineation;
15 except that if such vegetation has been removed for
16 the purpose of evading jurisdiction under this sec-
17 tion, this clause shall not apply;

18 “(iv) result in the conclusion that wetlands hy-
19 drology is present unless water is found to be
20 present at the surface of such lands for at least 21
21 consecutive days during the growing season in which
22 such delineation is made and for 21 consecutive days
23 in the growing seasons in a majority of the years for
24 which records are available; and

1 “(v) result in the classification of lands as wet-
2 lands that are temporarily or incidentally created as
3 a result of adjacent development activity.

4 “(B) In addition to the requirements of subparagraph
5 (A), any standards established by rule or applied to delin-
6 eate wetlands for purposes of this section shall provide
7 that ‘normal circumstances’ shall be determined on the
8 basis of the factual circumstances in existence at the time
9 a classification is made under subsection (h) or at the time
10 of application under subsection (e), whichever is applica-
11 ble, if such circumstances have not been altered by an ac-
12 tivity prohibited under this section.

13 “(h) UNITED STATES FISH AND WILDLIFE SERVICE
14 WETLANDS IDENTIFICATION AND CLASSIFICATION
15 PROJECT.—(1) The Director, in concurrence with the
16 Chief of the Natural Resources Conservation Service, shall
17 undertake a project to identify and classify wetlands in
18 the United States. The Director shall complete such
19 project not later than 10 years after the date of the enact-
20 ment of the Comprehensive Wetlands Conservation and
21 Management Act of 1995.

22 “(2) In conducting the project under this section, the
23 Director shall identify and classify wetlands in accordance
24 with standards for delineation of wetlands established by
25 the Secretary under subsection (g) of this section.

1 “(3) In conducting the project under this section, the
2 Director shall provide notice and an opportunity for a pub-
3 lic hearing in each county, parish or borough of a State
4 before completion of identification and classification of
5 wetlands in such county, parish, or borough.

6 “(4) Promptly after completion of identification and
7 classification of wetlands in a county, parish, or borough
8 under this section, the Director shall publish information
9 on such identification and classification in the Federal
10 Register and in publications of wide circulation and take
11 other steps reasonably necessary to ensure that such infor-
12 mation is available to the public.

13 “(5) The Director shall report to Congress on imple-
14 mentation of the project to be conducted under this section
15 not later than 2 years after the date of the enactment of
16 the Comprehensive Wetlands Conservation and Manage-
17 ment Act of 1995 and annually thereafter.

18 “(6) Any classification of lands as wetlands under
19 this section shall, to the fullest extent practicable, be re-
20 corded on the property records in the county, parish or
21 borough in which such wetlands are located.

22 “(i) ADMINISTRATIVE PROVISIONS.—(1) Not later
23 than 1 year after the date of the enactment of the Com-
24 prehensive Wetlands Conservation and Management Act
25 of 1995, the Secretary shall, after notice and opportunity

1 for comment, issue (in accordance with section 553 of title
2 5 of the United States Code and as otherwise required
3 under this section), final rules and regulations for the is-
4 suance of permits. Such rules and regulations shall, in ac-
5 cordance with this section, provide—

6 “(A) standards and procedures for the classi-
7 fication and delineation of wetlands and procedures
8 for administrative review of any such classification
9 or delineation;

10 “(B) standards and procedures for the review
11 of State or local land management plans and State
12 programs for the regulation of wetlands;

13 “(C) for the issuance of general, nationwide, or
14 regional permits;

15 “(D) standards and procedures for the individ-
16 ual permit applications under this section;

17 “(E) for enforcement of this section;

18 “(F) any other rules and regulations that the
19 Secretary deems necessary or appropriate to imple-
20 ment the requirements of this section;

21 “(G) standards and procedures for administra-
22 tive appeals of actions by the Secretary denying ap-
23 plications for permits under subsection (b) or issuing
24 such permits subject to conditions; and

1 “(H) requirements governing the establishment
2 of mitigation banks.

3 “(2) Any judicial review of final regulations issued
4 pursuant to this section and the Secretary’s denial of any
5 petition for the issuance, amendment, or repeal of any reg-
6 ulation under this section shall be in accordance with sec-
7 tions 701 through 706 of title 5 of the United States Code;
8 except that a petition for review of action of the Secretary
9 in issuing any regulation or requirement under this section
10 or denying any petition for the issuance, amendment, or
11 repeal of any regulation under this section may be filed
12 only in the United States Court of Appeals for the District
13 of Columbia, and such petition shall be filed within ninety
14 days from the date of such issuance or denial or after such
15 date if such petition for review is based solely on grounds
16 arising after such ninetieth day. Action of the Secretary
17 with respect to which review could have been obtained
18 under this subsection shall not be subject to judicial review
19 in civil or criminal proceedings for enforcement.

20 “(3) The Secretary shall, within 90 days after the
21 date of the enactment of the Comprehensive Wetlands
22 Conservation and Management Act of 1995, issue interim
23 rules and regulations consistent with this section to take
24 effect immediately. Notice of the interim regulations shall
25 be published in the Federal Register, and such regulations

1 shall be binding until the issuance of final regulations pur-
2 suant to paragraph (1); except that the Secretary shall
3 provide adequate procedures for waiver of any provisions
4 of such interim regulations to avoid special hardship, in-
5 equity, or unfair distribution of burdens or to advance the
6 purposes of this section.

7 “(4) Except where otherwise expressly provided in
8 this section, the Secretary shall administer this section.
9 The Secretary or any other Federal officer or agency in
10 which any function under this section is vested or dele-
11 gated is authorized to perform any and all acts (including
12 appropriate enforcement activity), and to prescribe, issue,
13 amend, or rescind such rules or orders as such officer or
14 agency may find necessary or appropriate with this sub-
15 section, subject to the requirements of this subsection.

16 “(j) VIOLATIONS.—(1) Whenever, on the basis of reli-
17 able and substantial information and after reasonable in-
18 quiry, the Secretary finds that any person is or may be
19 in violation of this section or of any condition or limitation
20 set forth in a permit issued by the Secretary under this
21 section, the Secretary shall issue an order requiring such
22 persons to comply with this section or with such condition
23 or limitation or the Secretary shall bring a civil action in
24 accordance with paragraph (3).

1 “(2) A copy of any order issued under this subsection
2 shall be sent immediately by the Secretary to the Governor
3 of the State in which the violation occurs and the Gov-
4 ernors of other affected States. Any order issued under
5 this subsection shall be by personal service to the appro-
6 priate person or corporate officer and shall state with rea-
7 sonable specificity the nature of the asserted violation, and
8 specify a time for compliance, not to exceed 30 days, which
9 the Secretary determines is reasonable taking into account
10 the seriousness of the asserted violation and any good
11 faith efforts to comply with applicable requirements; ex-
12 cept that if the person receiving notice of the asserted vio-
13 lation disputes the Secretary’s determination and so noti-
14 fies the Secretary in writing within 90 days of receipt of
15 the Secretary’s notice, the Secretary shall within 60 days
16 after receiving notice of a dispute of an asserted violation,
17 or within 150 days from the date of notification of viola-
18 tion by the Secretary if no notice of a dispute is received
19 (or after serving notice, unless otherwise agreed to by the
20 parties) prosecute a civil action in accordance with para-
21 graph (3) or rescind such order and be estopped from any
22 further enforcement proceedings for the same asserted vio-
23 lation.

24 “(3) The Secretary is authorized to commence a civil
25 action for appropriate relief, including a permanent or

1 temporary injunction, for any violation for which the Sec-
2 retary is authorized to issue a compliance order under
3 paragraph (1) of this subsection. Any action under this
4 paragraph may be brought in the district court of the
5 United States for the district in which the defendant is
6 located or resides or is doing business, and such court
7 shall have jurisdiction to restrain such violation and to re-
8 quire compliance. Notice of the commencement of such ac-
9 tion shall be given immediately to the appropriate State.

10 “(4) Any person who violates any condition or limita-
11 tion in a permit issued by the Secretary under this section,
12 and any person who violates any order issued by the Sec-
13 retary under paragraph (1) of this subsection shall be sub-
14 ject to a civil penalty not to exceed \$25,000 per day for
15 each violation commencing on the day following expiration
16 of the time allowed for compliance. The amount of the fine
17 imposed per day shall be in proportion to the scale or
18 scope of the project. In determining the amount of a civil
19 penalty the court shall consider the seriousness of the vio-
20 lation or violations, the economic benefit (if any) resulting
21 from the violation, any history of such violations, any
22 good-faith efforts to comply with the applicable require-
23 ments, the economic impact of the penalty on the violator,
24 and such other matters as justice may require.

1 “(k) STATE AUTHORITY TO CONTROL DIS-
2 CHARGES.—Nothing in the section shall preclude or deny
3 the right of any State or interstate agency to control ac-
4 tivities in waters within the jurisdiction of such State, in-
5 cluding any activity of any Federal agency, and each such
6 agency shall comply with such State or interstate require-
7 ments both substantive and procedural to control such ac-
8 tivities to the same extent that any person is subject to
9 such requirements. This section shall not be construed as
10 affecting or impairing the authority of the Secretary to
11 maintain navigation.

12 “(l) STATE REGULATION OF WETLANDS.—(1) The
13 Governor of any State desiring to administer its own indi-
14 vidual and general permit program for activities covered
15 by this section within its jurisdiction may submit to the
16 Secretary a description of the program it proposes to es-
17 tablish and administer under State law or under an inter-
18 state compact. In addition, such State shall submit a
19 statement from the chief legal officer in the case of the
20 State or interstate agency, that the laws of such State,
21 or the interstate compact, as the case may be, provide ade-
22 quate authority to carry out the described program.

23 “(2) Not later than 1 year after the date of the re-
24 ceipt by the Secretary of a program and statement submit-
25 ted by any State under paragraph (1), the Secretary shall

1 determine whether such State has the following authority
2 with respect to the issuance of permits pursuant to such
3 program:

4 “(A) to issue permits which—

5 “(i) apply, and assure compliance with,
6 any applicable requirements of this section; and

7 “(ii) can be terminated or modified for
8 cause, including—

9 “(I) violation of any condition of the
10 permit;

11 “(II) obtaining a permit by misrepre-
12 sentation, or failure to disclose fully all rel-
13 evant facts; or

14 “(III) change in any condition that
15 requires either a temporary or permanent
16 reduction or elimination of the permitted
17 activity;

18 “(B) to issue permits which apply, and ensure
19 compliance with, all applicable requirements of sec-
20 tion 308 of this Act or to inspect, monitor, enter,
21 and require reports to at least the same extent as
22 required in section 308 of this Act;

23 “(C) to ensure that the public, and any other
24 State the waters of which may be affected, receive
25 notice of each application for a permit and to pro-

1 vide an opportunity for public hearing before a rul-
2 ing on each such application;

3 “(D) to ensure that the Secretary receives no-
4 tice of each application for a permit and that, prior
5 to any action by the State, both the applicant for the
6 permit and the State have received from the Sec-
7 retary information with respect to any advance clas-
8 sification applicable to wetlands that are the sub-
9 ject of such application;

10 “(E) to ensure that any State (other than the
11 permitting State) whose waters may be affected by
12 the issuance of a permit may submit written rec-
13 ommendation to the permitting State with respect to
14 any permit application and, if any part of such writ-
15 ten recommendations are not accepted by the per-
16 mitting State, that the permitting State will notify
17 such affected State (and the Secretary) in writing of
18 its failure to so accept such recommendations to-
19 gether with its reasons for doing so; and

20 “(F) to abate violations of the permit or the
21 permit program, including civil and criminal pen-
22 alties and other ways and means of enforcement.

23 “(3) If, with respect to a State program submitted
24 under paragraph (1) of this section, the Secretary deter-
25 mines that such State—

1 “(A) has the authority set forth in paragraph
2 (2), the Secretary shall approve the program and so
3 notify such State and suspend the issuance of per-
4 mits under subsection (b) for activities with respect
5 to which a permit may be issued pursuant to such
6 State program; or

7 “(B) does not have the authority set forth in
8 paragraph (2) of this subsection, the Secretary shall
9 so notify such State and provide a description of the
10 revisions or modifications necessary so that such
11 State may resubmit such program for a determina-
12 tion by the Secretary under this subsection.

13 “(4) If the Secretary fails to make a determination
14 with respect to any program submitted by a State under
15 this subsection within 1 year after the date of receipt of
16 such program, such program shall be deemed approved
17 pursuant to paragraph (3)(A) and the Secretary shall so
18 notify such State and suspend the issuance of permits
19 under subsection (b) for activities with respect to which
20 a permit may be issued by such State.

21 “(5) After the Secretary approves a State permit pro-
22 gram under paragraph (3)(A) or (4), the Secretary shall
23 transfer any applications for permits pending before the
24 Secretary for activities with respect to which a permit may

1 be issued pursuant to such State program to such State
2 for appropriate action.

3 “(6) Upon notification from a State with a permit
4 program approved under this subsection that such State
5 intends to administer and enforce the terms and condi-
6 tions of a general permit issued by the Secretary under
7 subsection (e) with respect to activities in such State to
8 which such general permit applies, the Secretary shall sus-
9 pend the administration and enforcement of such general
10 permit with respect to such activities.

11 “(7) Whenever the Secretary determines after public
12 hearing that a State is not administering a program ap-
13 proved under paragraph (3)(A) in accordance with this
14 section, the Secretary shall notify the State and, if appro-
15 priate corrective action is not taken within a reasonable
16 time, not to exceed ninety days after the date of the re-
17 ceipt of such notification, the Secretary shall—

18 “(A) withdraw approval of such program until
19 the Secretary determines such corrective action has
20 been taken; and

21 “(B) resume the program for the issuance of
22 permits under subsections (b) and (e) for all activi-
23 ties with respect to which the State was issuing per-
24 mits until such time as the Secretary makes the de-

1 termination described in paragraph (2) and such
2 State again has an approved program.

3 “(m) AVAILABILITY.—A copy of each permit applica-
4 tion and each permit issued under this section shall be
5 available to the public. Such permit application or portion
6 thereof shall further be available on request for the pur-
7 pose of reproduction.

8 “(n) COMPLIANCE.—Compliance with a permit issued
9 pursuant to this section, including any activity carried out
10 pursuant to a general permit issued under this section,
11 shall be deemed in compliance, for purposes of sections
12 309 and 505, with sections 301, 307, and 403.

13 “(o) SPECIAL RULES.—After the effective date of
14 this section under section 6 of the Comprehensive Wet-
15 lands Conservation and Management Act of 1995, no per-
16 mit for any activity described in subsection (a) may be
17 issued except in accordance with this section. Any permit
18 for an activity described in subsection (a) issued under
19 this section prior to such effective date shall be deemed
20 to be a permit under this section and shall continue in
21 force and effect for the term of the permit unless revoked,
22 modified, or suspended in accordance with this section.
23 Any application for a permit for such an activity pending
24 under this section on such effective date shall be deemed
25 to be an application for a permit under this section.

1 “(p) LIMITATION ON FEES.—Any fee charged in con-
2 nection with the delineation or classification of wetlands,
3 an application for a permit authorizing an activity de-
4 scribed in subsection (a), or any other action taken in
5 compliance with the requirements of this section (other
6 than fines for violation under subsection (i)) shall not ex-
7 ceed the amount in effect for such fee on January 1,
8 1990.”.

9 **SEC. 4. DEFINITIONS.**

10 Section 502 of the Federal Water Pollution Control
11 Act (33 U.S.C. 1362) is amended by adding at the end
12 thereof the following new paragraphs:

13 “(21) The term ‘wetlands’ means lands which have
14 a predominance of hydric soils and which are inundated
15 by surface water at a frequency and duration sufficient
16 to support, and that under normal circumstances do sup-
17 port, a prevalence of vegetation typically adapted for life
18 in saturated soil conditions. Wetlands generally include
19 swamps, marshes, bogs, and similar areas.

20 “(22) The term ‘creation of wetlands’ means an activ-
21 ity that brings a wetland into existence at a site where
22 it did not formerly occur for the purpose of compensation.

23 “(23) The term ‘enhancement of wetlands’ means any
24 activity that increases the value of one or more functions
25 in existing wetlands.

1 “(24) The term ‘fastlands’ means lands located be-
2 hind permitted man-made structures, such as levees con-
3 structed and maintained to permit the utilization of such
4 lands for commercial, industrial or residential purposes
5 consistent with local land use planning requirements.

6 “(25) The term ‘wetlands functions’ means the roles
7 wetlands serve which are of value including flood water
8 storage, flood water conveyance, ground water discharge,
9 erosion control, wave attenuation, water quality protec-
10 tion, scenic and aesthetic use, food chain support, fish-
11 eries, wetlands plant habitat, aquatic habitat, and habitat
12 for wetland dependent wildlife.

13 “(26) The term ‘growing seasons’ means, for each
14 plant hardiness zone, the period between the average date
15 of last frost in spring and the average date of first frost
16 in autumn.

17 “(27) The term ‘incidentally created wetlands’ means
18 lands that exhibit wetlands characteristics sufficient to
19 meet the criteria for delineation of wetlands, where one
20 or more of such characteristics is the unintended result
21 of human induced alterations of hydrology.

22 “(28) The term ‘maintenance’ means activities un-
23 dertaken to assure continuation of a wetland or the accom-
24 plishment of project goals after a restoration or creation

1 project has been technically completed, including water
2 level manipulations and control of nonnative plant species.

3 “(29) The term ‘mitigation banking’ means wetlands
4 restoration, enhancement, preservation or creation for the
5 purpose of providing compensation for wetland degrada-
6 tion or loss.

7 “(30) The term ‘normal farming, silviculture, aqua-
8 culture and ranching activities’ includes activities such as
9 plowing, seeding, cultivating, haying and grazing, fencing,
10 minor drainage, brushclearing, harvesting, construction
11 and maintenance of farm or stock ponds and farm roads,
12 construction, maintenance and replacement of irrigation
13 systems, mechanized maintenance and replacement of
14 drainage tiles and ditches, protection from flooding of
15 lands on which the activities are being conducted, the im-
16 plementation and maintenance of soil and water conserva-
17 tion practices and other activities related to the operation,
18 maintenance, and management of ongoing farming, ranch-
19 ing, aquaculture, and silviculture operations engaged in
20 the production of food, fiber, and forest products.

21 “(31) The term ‘prior converted cropland’ means
22 land (other than wetlands or waters of the United States)
23 that was manipulated (drained or otherwise physically al-
24 tered to remove excess water from the land) or intensely

1 managed or cropped for the purpose of agriculture produc-
2 tion before the date of the enactment of this paragraph.

3 “(32) The term ‘restoration’ in reference to wetlands
4 means an activity undertaken to return a wetland from
5 a disturbed or altered condition with lesser acreage or
6 fewer functions to a previous condition with greater wet-
7 lands acreage or functions.

8 “(33) The term ‘temporary impact’ means the dis-
9 turbance or alteration of wetlands caused by activities
10 under circumstances in which, within 3 years following the
11 commencement of such activities, such wetlands—

12 “(A) are returned to the conditions in existence
13 prior to the commencement of such activity; or

14 “(B) display conditions sufficient to ensure,
15 that without further human action, such wetlands
16 will return to the conditions in existence prior to the
17 commencement of such activity.”.

18 **SEC. 5. TECHNICAL AND CONFORMING AMENDMENTS.—**

19 Section 309 of the Federal Water Pollution Control
20 Act (33 U.S.C. 1319) is amended—

21 (1) by striking “or 404” in subsection (a)(1);

22 (2) by striking “or in a permit issued under
23 section 404 of this Act by a State” in subsection
24 (a)(3);

1 (3) by striking “, or in a permit issued under
2 section 404 of this Act by a State,” in subsection
3 (d);

4 (4) by striking “—” and all that follows
5 through “(A)” in subsection (g)(1);

6 (5) by striking “or in a permit issued under
7 section 404 by a State, or” in subsection (g)(1)(A);

8 (6) by striking “(B)” and all that follows
9 through “as the case may be,” and inserting “the
10 Administrator” in subsection (g)(1); and

11 (7) by striking “or Secretary”, “or the Sec-
12 retary”, “or the Secretary, as the case may be,” “or
13 Secretary’s”, and “and the Secretary” each place
14 they appear.

15 **SEC. 6. EFFECTIVE DATE.**

16 This Act, including the amendments made by this
17 Act, shall be effective on the 90th day following the date
18 of its enactment.

○

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