

104TH CONGRESS
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H. R. 1330

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 28, 1995

Mr. HAYES (for himself, Mr. SHUSTER, Mr. TAUZIN, Mr. YOUNG of Alaska, Mr. EMERSON, Mr. PETE GEREN of Texas, Mr. SOLOMON, Mr. COSTELLO, Mr. CLINGER, Ms. DANNER, Mr. BLUTE, Mr. LAUGHLIN, Mr. BATEMAN, Mr. PARKER, Mr. HUTCHINSON, Mr. KIM, Mr. EWING, Mr. INGLIS of South Carolina, Mr. DICKEY, Mr. ENGLISH of Pennsylvania, Mr. BREWSTER, Mr. MICA, Mr. FIELDS of Texas, Mr. COBLE, Mr. DUNCAN, Mr. DOOLITTLE, Mrs. FOWLER, Mr. HANSEN, Mr. CALVERT, Mr. LATHAM, Mr. POMBO, Mrs. CUBIN, Mr. JONES, Mrs. LINCOLN, Mr. TAYLOR of North Carolina, Mr. SHADEGG, Mrs. CHENOWETH, Mr. DELAY, Mr. POSHARD, Mr. BAKER of Louisiana, Mr. WAMP, Mr. LIVINGSTON, Mr. CLEMENT, Mr. PACKARD, Mr. LEWIS of California, Mr. LAHOOD, Mr. DEAL of Georgia, Mr. QUINN, and Mr. GALLEGLY) 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Comprehensive
3 Wetlands Conservation and Management Act of 1995”.

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

5 (a) FINDINGS.—Congress finds that—

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

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

19 (3) much of the Nation’s resource has sustained
20 significant degradation, resulting in the need for ef-
21 fective programs to limit the loss of ecologically sig-
22 nificant wetlands and to provide for long-term res-
23 toration and enhancement of the wetlands resource
24 base;

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

1 (5) because 75 percent of the Nation's wetlands
2 in the lower 48 States are privately owned and be-
3 cause the majority of the Nation's population lives
4 in or near wetlands areas, an effective wetlands con-
5 servation and management program must reflect a
6 balanced approach that conserves and enhances im-
7 portant wetlands values and functions while observ-
8 ing private property rights, recognizing the need for
9 essential public infrastructure, such as highways,
10 ports, airports, pipelines, sewer systems, and public
11 water supply systems, and providing the opportunity
12 for sustained economic growth;

13 (6) while wetlands provide many varied eco-
14 nomic and environmental benefits, they also present
15 health risks in some instances where they act as
16 breeding grounds for insects that are carriers of
17 human and animal diseases; and

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

1 (b) PURPOSE.—The purpose of this Act is to estab-
2 lish a new Federal regulatory program for certain wet-
3 lands and waters of the United States—

4 (1) to assert Federal regulatory jurisdiction
5 over a broad category of specifically identified activi-
6 ties that result in the degradation or loss of wet-
7 lands;

8 (2) to provide that each Federal agency, officer,
9 and employee exercise Federal authority under sec-
10 tion 404 of the Federal Water Pollution Control Act
11 to ensure that agency action under such section will
12 not limit the use of privately owned property so as
13 to diminish its value;

14 (3) to account for variations in wetlands func-
15 tions in determining the character and extent of reg-
16 ulation of activities occurring in wetlands areas;

17 (4) to provide sufficient regulatory incentives
18 for conservation, restoration, or enhancement activi-
19 ties;

20 (5) to encourage conservation of resources on a
21 watershed basis to the fullest extent practicable; and

22 (6) to protect public safety and balance public
23 and private interests in determining the conditions
24 under which activity in wetlands areas may occur.

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

2 Title IV of the Federal Water Pollution Control Act
3 (33 U.S.C. 1341 et seq.) is further amended by striking
4 section 404 and inserting the following new section:

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

7 “(a) PROHIBITED ACTIVITIES.—No person shall un-
8 dertake an activity in wetlands or waters of the United
9 States unless such activity is undertaken pursuant to a
10 permit issued by the Secretary or is otherwise authorized
11 under this section.

12 “(b) AUTHORIZED ACTIVITIES.—

13 “(1) PERMITS.—The Secretary is authorized to
14 issue permits authorizing an activity in wetlands or
15 waters of the United States in accordance with the
16 requirements of this section.

17 “(2) NONPERMIT ACTIVITIES.—An activity in
18 wetlands or waters of the United States may be un-
19 dertaken without a permit from the Secretary if that
20 activity is authorized under subsection (e)(6) or
21 (e)(8) or is exempt from the requirements of this
22 section under subsection (f) or other provisions of
23 this section.

24 “(c) WETLANDS CLASSIFICATION.—

25 “(1) REGULATIONS; APPLICATIONS.—

1 “(A) DEADLINE FOR ISSUANCE OF REGU-
2 LATIONS.—Not later than 1 year after the date
3 of the enactment of the Comprehensive Wet-
4 lands Conservation and Management Act of
5 1995, the Secretary shall issue regulations to
6 classify wetlands as type A, type B, or type C
7 wetlands depending on the relative ecological
8 significance of the wetlands.

9 “(B) APPLICATION REQUIREMENT.—Any
10 person seeking to undertake activities in wet-
11 lands or waters of the United States for which
12 a permit is required under this section shall
13 make application to the Secretary identifying
14 the site of such activity and requesting that the
15 Secretary determine, in accordance with para-
16 graph (3) of this subsection, the classification
17 of the wetlands in which such activity is pro-
18 posed to occur. The applicant may also provide
19 such additional information regarding such pro-
20 posed activity as may be necessary or appro-
21 priate for purposes of determining the classi-
22 fication of such wetlands or whether and under
23 what conditions the proposed activity may be
24 permitted to occur.

25 “(2) DEADLINES FOR CLASSIFICATIONS.—

1 “(A) GENERAL RULE.—Except as provided
2 in subparagraph (B) of this paragraph, within
3 90 days following the receipt of an application
4 under paragraph (1), the Secretary shall pro-
5 vide notice to the applicant of the classification
6 of the wetlands that are the subject of such ap-
7 plication and shall state in writing the basis for
8 such classification. The classification of the wet-
9 lands that are the subject of the application
10 shall be determined by the Secretary in accord-
11 ance with the requirements for classification of
12 wetlands under paragraph (3) and subsection
13 (i).

14 “(B) RULE FOR ADVANCE CLASSIFICA-
15 TIONS.—In the case of an application proposing
16 activities located in wetlands that are the sub-
17 ject of an advance classification under sub-
18 section (h), the Secretary shall provide notice to
19 the applicant of such classification within thirty
20 days following the receipt of such application,
21 and shall provide an opportunity for review of
22 such classification under paragraph (5) and
23 subsection (i).

24 “(3) CLASSIFICATION SYSTEM.—Upon applica-
25 tion under this subsection, the Secretary shall—

1 “(A) classify as type A wetlands those wet-
2 lands that are of critical significance to the
3 long-term conservation of the aquatic environ-
4 ment of which such wetlands are a part and
5 which meet the following requirements:

6 “(i) such wetlands serve critical wet-
7 lands functions, including the provision of
8 critical habitat for a concentration of
9 avian, aquatic, or wetland dependent wild-
10 life;

11 “(ii) such wetlands consist of or may
12 be a portion of ten or more contiguous
13 acres and have an inlet or outlet for relief
14 of water flow; except that this requirement
15 shall not operate to preclude the classifica-
16 tion as type A wetlands lands containing
17 prairie pothole features, playa lakes, or
18 vernal pools if such lands otherwise meet
19 the requirements for type A classification
20 under this paragraph;

21 “(iii) there exists a scarcity within the
22 watershed or aquatic environment of iden-
23 tified functions served by such wetlands
24 such that the use of such wetlands for an
25 activity in wetlands or waters of the Unit-

1 ed States would seriously jeopardize the
2 availability of these identified wetlands
3 functions; and

4 “(iv) there is unlikely to be an over-
5 riding public interest in the use of such
6 wetlands for purposes other than conserva-
7 tion.

8 “(B) classify as type B wetlands those wet-
9 lands that provide habitat for a significant pop-
10 ulation of wetland dependent wildlife or provide
11 other significant wetlands functions, including
12 significant enhancement or protection of water
13 quality or significant natural flood control; and

14 “(C) classify as type C wetlands all wet-
15 lands that—

16 “(i) serve limited wetlands functions;

17 “(ii) serve marginal wetlands func-
18 tions but which exist in such abundance
19 that regulation of activities in such wet-
20 lands is not necessary for conserving im-
21 portant wetlands functions;

22 “(iii) are prior converted cropland;

23 “(iv) are fastlands; or

24 “(v) are wetlands within industrial,
25 commercial, or residential complexes or

1 other intensely developed areas that do not
2 serve significant wetlands functions as a
3 result of such location.

4 “(4) REQUEST FOR DETERMINATION OF JURIS-
5 DICTION.—

6 “(A) IN GENERAL.—A person who holds
7 an ownership interest in property, or who has
8 written authorization from such a person, may
9 submit a request to the Secretary identifying
10 the property and requesting the Secretary to
11 make one or more of the following determina-
12 tions with respect to the property:

13 “(i) Whether the property contains
14 waters of the United States.

15 “(ii) If the determination under clause
16 (i) is made, whether any portion of the wa-
17 ters meets the requirements for delineation
18 as wetland under subsection (g).

19 “(iii) If the determination under
20 clause (ii) is made, the classification of
21 each wetland on the property under this
22 subsection.

23 “(B) PROVISION OF INFORMATION.—The
24 person shall provide such additional information

1 as may be necessary to make each determina-
2 tion requested under subparagraph (A).

3 “(C) DETERMINATION AND NOTIFICATION
4 BY THE SECRETARY.—Not later than 90 days
5 after receipt of a request under subparagraph
6 (A), the Secretary shall—

7 “(i) notify the person submitting the
8 request of each determination made by the
9 Secretary pursuant to the request; and

10 “(ii) provide written documentation of
11 each determination and the basis for each
12 determination.

13 “(D) AUTHORITY TO SEEK IMMEDIATE RE-
14 VIEW.—Any person authorized under this para-
15 graph to request a jurisdictional determination
16 may seek immediate judicial review of any such
17 jurisdictional determination or may proceed
18 under subsection (i).

19 “(5) DE NOVO DETERMINATION AFTER AD-
20 VANCE CLASSIFICATION.—Within 30 days of receipt
21 of notice of an advance classification by the Sec-
22 retary under paragraph (2)(B) of this subsection, an
23 applicant may request the Secretary to make a de
24 novo determination of the classification of wetlands
25 that are the subject of such notice.

1 “(d) RIGHT TO COMPENSATION.—

2 “(1) IN GENERAL.—The Federal Government
3 shall compensate an owner of property whose use of
4 any portion of that property has been limited by an
5 agency action under this section that diminishes the
6 fair market value of that portion by 20 percent or
7 more. The amount of the compensation shall equal
8 the diminution in value that resulted from the agen-
9 cy action. If the diminution in value of a portion of
10 that property is greater than 50 percent, at the op-
11 tion of the owner, the Federal Government shall buy
12 that portion of the property for its fair market
13 value.

14 “(2) DURATION OF LIMITATION ON USE.—
15 Property with respect to which compensation has
16 been paid under this section shall not thereafter be
17 used contrary to the limitation imposed by the agen-
18 cy action, even if that action is later rescinded or
19 otherwise vitiated. However, if that action is later
20 rescinded or otherwise vitiated, and the owner elects
21 to refund the amount of the compensation, adjusted
22 for inflation, to the Treasury of the United States,
23 the property may be so used.

24 “(3) EFFECT OF STATE LAW.—If a use is a
25 nuisance as defined by the law of a State or is al-

1 ready prohibited under a local zoning ordinance, no
2 compensation shall be made under this section with
3 respect to a limitation on that use.

4 “(4) EXCEPTIONS.—

5 “(A) PREVENTION OF HAZARD TO HEALTH
6 OR SAFETY OR DAMAGE TO SPECIFIC PROP-
7 ERTY.—No compensation shall be made under
8 this section with respect to an agency action the
9 primary purpose of which is to prevent an iden-
10 tifiable—

11 “(i) hazard to public health or safety;

12 or

13 “(ii) damage to specific property other
14 than the property whose use is limited.

15 “(B) NAVIGATION SERVITUDE.—No com-
16 pensation shall be made under this section with
17 respect to an agency action pursuant to the
18 Federal navigation servitude, as defined by the
19 courts of the United States, except to the ex-
20 tent such servitude is interpreted to apply to
21 wetlands.

22 “(5) PROCEDURE.—

23 “(A) REQUEST OF OWNER.—An owner
24 seeking compensation under this section shall
25 make a written request for compensation to the

1 agency whose agency action resulted in the limi-
2 tation. No such request may be made later than
3 180 days after the owner receives actual notice
4 of that agency action.

5 “(B) NEGOTIATIONS.—The agency may
6 bargain with that owner to establish the
7 amount of the compensation. If the agency and
8 the owner agree to such an amount, the agency
9 shall promptly pay the owner the amount
10 agreed upon.

11 “(C) CHOICE OF REMEDIES.—If, not later
12 than 180 days after the written request is
13 made, the parties do not come to an agreement
14 as to the right to and amount of compensation,
15 the owner may choose to take the matter to
16 binding arbitration or seek compensation in a
17 civil action.

18 “(D) ARBITRATION.—The procedures that
19 govern the arbitration shall, as nearly as prac-
20 ticable, be those established under title 9, Unit-
21 ed States Code, for arbitration proceedings to
22 which that title applies. An award made in such
23 arbitration shall include a reasonable attorney’s
24 fee and other arbitration costs (including ap-

1 praisal fees). The agency shall promptly pay
2 any award made to the owner.

3 “(E) CIVIL ACTION.—An owner who does
4 not choose arbitration, or who does not receive
5 prompt payment when required by this section,
6 may obtain appropriate relief in a civil action
7 against the agency. An owner who prevails in a
8 civil action under this section shall be entitled
9 to, and the agency shall be liable for, a reason-
10 able attorney’s fee and other litigation costs (in-
11 cluding appraisal fees). The court shall award
12 interest on the amount of any compensation
13 from the time of the limitation.

14 “(F) SOURCE OF PAYMENTS.—Any pay-
15 ment made under this section to an owner and
16 any judgment obtained by an owner in a civil
17 action under this section shall, notwithstanding
18 any other provision of law, be made from the
19 annual appropriation of the agency whose ac-
20 tion occasioned the payment or judgment. If the
21 agency action resulted from a requirement im-
22 posed by another agency, then the agency mak-
23 ing the payment or satisfying the judgment
24 may seek partial or complete reimbursement
25 from the appropriated funds of the other agen-

1 cy. For this purpose the head of the agency
2 concerned may transfer or reprogram any ap-
3 propriated funds available to the agency. If in-
4 sufficient funds exist for the payment or to sat-
5 isfy the judgment, it shall be the duty of the
6 head of the agency to seek the appropriation of
7 such funds for the next fiscal year.

8 “(6) LIMITATION.—Notwithstanding any other
9 provision of law, any obligation of the United States
10 to make any payment under this section shall be
11 subject to the availability of appropriations.

12 “(7) DUTY OF NOTICE TO OWNERS.—Whenever
13 an agency takes an agency action limiting the use of
14 private property, the agency shall give appropriate
15 notice to the owners of that property directly af-
16 fected explaining their rights under this section and
17 the procedures for obtaining any compensation that
18 may be due to them under this section.

19 “(8) RULES OF CONSTRUCTION.—

20 “(A) EFFECT ON CONSTITUTIONAL RIGHT
21 TO COMPENSATION.—Nothing in this section
22 shall be construed to limit any right to com-
23 pensation that exists under the Constitution,
24 laws of the United States, or laws of any State.

1 “(B) EFFECT OF PAYMENT.—Payment of
2 compensation under this section (other than
3 when the property is bought by the Federal
4 Government at the option of the owner) shall
5 not confer any rights on the Federal Govern-
6 ment other than the limitation on use resulting
7 from the agency action.

8 “(9) TREATMENT OF CERTAIN ACTIONS.—A
9 diminution in value under this subsection shall apply
10 to surface interests in lands only or water rights al-
11 located under State law; except that—

12 “(A) if the Secretary determines that the
13 exploration for or development of oil and gas or
14 mineral interests is not compatible with limita-
15 tions on use related to the surface interests in
16 lands that have been classified as type A or
17 type B wetlands located above such oil and gas
18 or mineral interests (or located adjacent to such
19 oil and gas or mineral interests where such ad-
20 jacent lands are necessary to provide reasonable
21 access to such interests), the Secretary shall no-
22 tify the owner of such interests that the owner
23 may elect to receive compensation for such in-
24 terests under paragraph (1); and

1 “(B) the failure to provide reasonable ac-
2 cess to oil and gas or mineral interests located
3 beneath or adjacent to surface interests of type
4 A or type B wetlands shall be deemed a diminu-
5 tion in value of such oil and gas or mineral in-
6 terests.

7 “(10) JURISDICTION.—The arbitrator or court
8 under paragraph (5)(D) or (5)(E) of this subsection,
9 as the case may be, shall have jurisdiction, in the
10 case of oil and gas or mineral interests, to require
11 the United States to provide reasonable access in,
12 across, or through lands that may be the subject of
13 a diminution in value under this subsection solely for
14 the purpose of undertaking activity necessary to de-
15 termine the value of the interests diminished and to
16 provide other equitable remedies deemed appro-
17 priate.

18 “(11) LIMITATIONS ON STATUTORY CONSTRUC-
19 TION.—No action under this subsection shall be con-
20 strued—

21 “(A) to impose any obligation on any State
22 or political subdivision thereof to compensate
23 any person, even in the event that the Secretary
24 has approved a land management plan under

1 subsection (f)(2) or an individual and general
2 permit program under subsection (l); or

3 “(B) to alter or supersede requirements
4 governing use of water applicable under State
5 law.

6 “(e) REQUIREMENTS APPLICABLE TO PERMITTED
7 ACTIVITY.—

8 “(1) ISSUANCE OR DENIAL OF PERMITS.—Fol-
9 lowing the determination of wetlands classification
10 pursuant to subsection (c) if applicable, and after
11 compliance with the requirements of subsection (d)
12 if applicable, the Secretary may issue or deny per-
13 mits for authorization to undertake activities in wet-
14 lands or waters of the United States in accordance
15 with the requirements of this subsection.

16 “(2) TYPE A WETLANDS.—

17 “(A) SEQUENTIAL ANALYSIS.—The Sec-
18 retary shall determine whether to issue a permit
19 for an activity in waters of the United States
20 classified under subsection (c) as type A wet-
21 lands based on a sequential analysis that seeks,
22 to the maximum extent practicable, to—

23 “(i) avoid adverse impact on the wet-
24 lands;

1 “(ii) minimize such adverse impact on
2 wetlands functions that cannot be avoided;
3 and

4 “(iii) compensate for any loss of wet-
5 land functions that cannot be avoided or
6 minimized.

7 “(B) MITIGATION TERMS AND CONDI-
8 TIONS.—Any permit issued authorizing activi-
9 ties in type A wetlands may contain such terms
10 and conditions concerning mitigation (including
11 those applicable under paragraph (3) for type B
12 wetlands) that the Secretary deems appropriate
13 to prevent the unacceptable loss or degradation
14 of type A wetlands. The Secretary shall deem
15 the mitigation requirement of this section to be
16 met with respect to activities in type A wetlands
17 if such activities (i) are carried out in accord-
18 ance with a State-approved reclamation plan or
19 permit which requires recontouring and
20 revegetation following mining, and (ii) result in
21 overall environmental benefits being achieved.

22 “(3) TYPE B WETLANDS.—

23 “(A) GENERAL RULE.—The Secretary may
24 issue a permit authorizing activities in type B
25 wetlands if the Secretary finds that issuance of

1 the permit is in the public interest, balancing
2 the reasonably foreseeable benefits and det-
3 riments resulting from the issuance of the per-
4 mit. The permit shall be subject to such terms
5 and conditions as the Secretary finds are nec-
6 essary to carry out the purposes of the Com-
7 prehensive Wetlands Conservation and Manage-
8 ment Act of 1995. In determining whether or
9 not to issue the permit and whether or not spe-
10 cific terms and conditions are necessary to
11 avoid a significant loss of wetlands functions,
12 the Secretary shall consider the following fac-
13 tors:

14 “(i) The quality and quantity of sig-
15 nificant functions served by the areas to be
16 affected.

17 “(ii) The opportunities to reduce im-
18 pacts through cost-effective design to mini-
19 mize use of wetlands areas.

20 “(iii) The costs of mitigation require-
21 ments and the social, recreational, and eco-
22 nomic benefits associated with the pro-
23 posed activity, including local, regional, or
24 national needs for improved or expanded

1 infrastructure, minerals, energy, food pro-
2 duction, or recreation.

3 “(iv) The ability of the permittee to
4 mitigate wetlands loss or degradation as
5 measured by wetlands functions.

6 “(v) The environmental benefit, meas-
7 ured by wetlands functions, that may occur
8 through mitigation efforts, including re-
9 storing, preserving, enhancing, or creating
10 wetlands values and functions.

11 “(vi) The marginal impact of the pro-
12 posed activity on the watershed of which
13 such wetlands are a part.

14 “(vii) Whether the impact on the wet-
15 lands is temporary or permanent.

16 “(B) DETERMINATION OF PROJECT PUR-
17 POSE.—In considering an application for activi-
18 ties on type B wetlands, there shall be a rebut-
19 table presumption that the project purpose as
20 defined by the applicant shall be binding upon
21 the Secretary. The definition of project purpose
22 for projects sponsored by public agencies shall
23 be binding upon the Secretary, subject to the
24 authority of the Secretary to impose mitigation
25 requirements to minimize impacts on wetlands

1 values and functions, including cost effective re-
2 design of projects on the proposed project site.

3 “(C) MITIGATION REQUIREMENTS.—Ex-
4 cept as otherwise provided in this section, re-
5 quirements for mitigation shall be imposed
6 when the Secretary finds that activities under-
7 taken under this section will result in the loss
8 or degradation of type B wetlands functions
9 where such loss or degradation is not a tem-
10 porary or incidental impact. When determining
11 mitigation requirements in any specific case,
12 the Secretary shall take into consideration the
13 type of wetlands affected, the character of the
14 impact on wetland functions, whether any ad-
15 verse effects on wetlands are of a permanent or
16 temporary nature, and the cost effectiveness of
17 such mitigation and shall seek to minimize the
18 costs of such mitigation. The Secretary shall
19 deem the mitigation requirement of this section
20 to be met with respect to activities in type B
21 wetlands if such activities (i) are carried out in
22 accordance with a State-approved reclamation
23 plan or permit which requires recontouring and
24 revegetation following mining, and (ii) will re-

1 sult in overall environmental benefits being
2 achieved.

3 “(D) RULES GOVERNING MITIGATION.—In
4 accordance with subsection (j), the Secretary
5 shall issue rules governing requirements for
6 mitigation for activities occurring in wetlands
7 that allow for—

8 “(i) minimization of impacts through
9 project design in the proposed project site
10 consistent with the project’s purpose, pro-
11 visions for compensatory mitigation, if any,
12 and other terms and conditions necessary
13 and appropriate in the public interest;

14 “(ii) preservation or donation of type
15 A wetlands or type B wetlands (where title
16 has not been acquired by the United States
17 and no compensation under subsection (d)
18 for such wetlands has been provided) as
19 mitigation for activities that alter or de-
20 grade wetlands;

21 “(iii) enhancement or restoration of
22 degraded wetlands as compensation for
23 wetlands lost or degraded through per-
24 mitted activity;

1 “(iv) creation of wetlands as com-
2 pensation for wetlands lost or degraded
3 through permitted activity if conditions are
4 imposed that have a reasonable likelihood
5 of being successful;

6 “(v) compensation through contribu-
7 tion to a mitigation bank program estab-
8 lished pursuant to paragraph (4);

9 “(vi) offsite compensatory mitigation
10 if such mitigation contributes to the res-
11 toration, enhancement or creation of sig-
12 nificant wetlands functions on a watershed
13 basis and is balanced with the effects that
14 the proposed activity will have on the spe-
15 cific site; except that offsite compensatory
16 mitigation, if any, shall be required only
17 within the State within which the proposed
18 activity is to occur, and shall, to the extent
19 practicable, be within the watershed within
20 which the proposed activity is to occur, un-
21 less otherwise consistent with a State wet-
22 lands management plan;

23 “(vii) contribution of in-kind value ac-
24 ceptable to the Secretary and otherwise au-
25 thorized by law;

1 “(viii) in areas subject to wetlands
2 loss, the construction of coastal protection
3 and enhancement projects;

4 “(ix) contribution of resources of
5 more than one permittee toward a single
6 mitigation project; and

7 “(x) other mitigation measures, in-
8 cluding contributions of other than in-kind
9 value referred to in clause (vii), determined
10 by the Secretary to be appropriate in the
11 public interest and consistent with the re-
12 quirements and purposes of this Act.

13 “(E) LIMITATIONS ON REQUIRING MITIGA-
14 TION.—Notwithstanding the provisions of sub-
15 paragraph (C), the Secretary may determine
16 not to impose requirements for compensatory
17 mitigation if the Secretary finds that—

18 “(i) the adverse impacts of a per-
19 mitted activity are limited;

20 “(ii) the failure to impose compen-
21 satory mitigation requirements is compat-
22 ible with maintaining wetlands functions;

23 “(iii) no practicable and reasonable
24 means of mitigation are available;

1 “(iv) there is an abundance of similar
2 significant wetlands functions and values
3 in or near the area in which the proposed
4 activity is to occur that will continue to
5 serve the functions lost or degraded as a
6 result of such activity, taking into account
7 the impacts of such proposed activity and
8 the cumulative impacts of similar activity
9 in the area;

10 “(v) the temporary character of the
11 impacts and the use of minimization tech-
12 niques make compensatory mitigation un-
13 necessary to protect significant wetlands
14 values; or

15 “(vi) a waiver from requirements for
16 compensatory mitigation is necessary to
17 prevent special hardship.

18 “(4) MITIGATION BANKS.—

19 “(A) ESTABLISHMENT.—Not later than 6
20 months after the date of the enactment of this
21 subparagraph, after providing notice and oppor-
22 tunity for public review and comment, the Sec-
23 retary shall issue regulations for the establish-
24 ment, use, maintenance, and oversight of miti-
25 gation banks. The regulations shall be devel-

1 oped in consultation with the heads of other ap-
2 propriate Federal agencies.

3 “(B) PROVISIONS AND REQUIREMENTS.—

4 The regulations issued pursuant to subpara-
5 graph (A) shall ensure that each mitigation
6 bank—

7 “(i) provides for the chemical, phys-
8 ical, and biological functions of wetlands or
9 waters of the United States which are lost
10 as a result of authorized adverse impacts
11 to wetlands or other waters of the United
12 States;

13 “(ii) to the extent practicable and en-
14 vironmentally desirable, provides in-kind
15 replacement of lost wetlands functions and
16 be located in, or in proximity to, the same
17 watershed or designated geographic area
18 as the affected wetlands or waters of the
19 United States;

20 “(iii) be operated by a public or pri-
21 vate entity which has the financial capabil-
22 ity to meet the requirements of this para-
23 graph, including the deposit of a perform-
24 ance bond or other appropriate demonstra-
25 tion of financial responsibility to support

1 the long-term maintenance of the bank,
2 fulfill responsibilities for long-term mon-
3 itoring, maintenance, and protection, and
4 provide for the long-term security of own-
5 ership interests of wetlands and uplands
6 on which projects are conducted to protect
7 the wetlands functions associated with the
8 mitigation bank;

9 “(iv) employ consistent and scientif-
10 ically sound methods to determine debits
11 by evaluating wetlands functions, project
12 impacts, and duration of the impact at the
13 sites of proposed permits for authorized
14 activities pursuant to this section and to
15 determine credits based on wetlands func-
16 tions at the site of the mitigation bank;

17 “(v) provide for the transfer of credits
18 for mitigation that has been performed and
19 for mitigation that shall be performed
20 within a designated time in the future,
21 provided that financial bonds shall be post-
22 ed in sufficient amount to ensure that the
23 mitigation will be performed in the case of
24 default; and

1 “(vi) provide opportunity for public
2 notice of and comment on proposals for the
3 mitigation banks; except that any process
4 utilized by a mitigation bank to obtain a
5 permit authorizing operations under this
6 section before the date of the enactment of
7 the Comprehensive Wetlands Conservation
8 and Management Act of 1995 satisfies the
9 requirement for such public notice and
10 comment.

11 “(5) PROCEDURES AND DEADLINES FOR FINAL
12 ACTION.—

13 “(A) OPPORTUNITY FOR PUBLIC COM-
14 MENT.—Not later than 15 days after receipt of
15 an application for a permit under this section,
16 together with information necessary to consider
17 such application, the Secretary shall publish no-
18 tice that the application has been received and
19 shall provide opportunity for public comment
20 and, to the extent appropriate, opportunity for
21 a public hearing on the issuance of the permit.

22 “(B) GENERAL PROCEDURES.—In the case
23 of any application for authorization to under-
24 take activities in wetlands or waters of the
25 United States that are not eligible for treat-

1 ment on an expedited basis pursuant to para-
2 graph (8), final action by the Secretary shall
3 occur within 90 days following the date such
4 application is filed, unless—

5 “(i) the Secretary and the applicant
6 agree that such final action shall occur
7 within a longer period of time;

8 “(ii) the Secretary determines that an
9 additional, specified period of time is nec-
10 essary to permit the Secretary to comply
11 with other applicable Federal law; except
12 that if the Secretary is required under the
13 National Environmental Policy Act of
14 1969 (42 U.S.C. 4321 et seq.) to prepare
15 an environmental impact statement, with
16 respect to the application, the final action
17 shall occur not later than 45 days follow-
18 ing the date such statement is filed; or

19 “(iii) the Secretary, within 15 days
20 from the date such application is received,
21 notifies the applicant that such application
22 does not contain all information necessary
23 to allow the Secretary to consider such ap-
24 plication and identifies any necessary addi-

1 tional information, in which case, the pro-
2 visions of subparagraph (C) shall apply.

3 “(C) SPECIAL RULE WHEN ADDITIONAL
4 INFORMATION IS REQUIRED.—Upon the receipt
5 of a request for additional information under
6 subparagraph (B)(iii), the applicant shall sup-
7 ply such additional information and shall advise
8 the Secretary that the application contains all
9 requested information and is therefore com-
10 plete. The Secretary may—

11 “(i) within 30 days of the receipt of
12 notice of the applicant that the application
13 is complete, determine that the application
14 does not contain all requested additional
15 information and, on that basis, deny the
16 application without prejudice to resubmis-
17 sion; or

18 “(ii) within 90 days from the date
19 that the applicant provides notification to
20 the Secretary that the application is com-
21 plete, review the application and take final
22 action.

23 “(D) EFFECT OF NOT MEETING DEAD-
24 LINE.—If the Secretary fails to take final ac-
25 tion on an application under this paragraph

1 within 90 days from the date that the applicant
2 provides notification to the Secretary that such
3 application is complete, a permit shall be pre-
4 sumed to be granted authorizing the activities
5 proposed in such application under such terms
6 and conditions as are stated in such completed
7 application.

8 “(6) TYPE C WETLANDS.—Activities in wet-
9 lands that have been classified as type C wetlands
10 by the Secretary may be undertaken without author-
11 ization required under subsection (a) of this section.

12 “(7) STATES WITH SUBSTANTIAL CONSERVED
13 WETLANDS.—

14 “(A) IN GENERAL.—With respect to type
15 A and type B wetlands in States with substan-
16 tial conserved wetlands areas, at the option of
17 the permit applicant, the Secretary shall issue
18 permits authorizing activities in such wetlands
19 pursuant to this paragraph. Final action on is-
20 surance of such permits shall be in accordance
21 with the procedures and deadlines of paragraph
22 (5). The Secretary may include conditions or
23 requirements for minimization of adverse im-
24 pacts to wetlands functions when minimization
25 is economically practicable. No permit to which

1 this paragraph applies shall include conditions,
2 requirements, or standards for mitigation to
3 compensate for adverse impacts to wetlands or
4 waters of the United States or conditions, re-
5 quirements, or standards for avoidance of ad-
6 verse impacts to wetlands or waters of the
7 United States.

8 “(B) ECONOMIC BASE LANDS.—Upon ap-
9 plication by the owner of economic base lands
10 in a State with substantial conserved wetlands
11 areas, the Secretary shall issue individual and
12 general permits to owners of such lands for ac-
13 tivities in wetlands or waters of the United
14 States. The Secretary shall reduce the require-
15 ments of subparagraph (A)—

16 “(i) to allow economic base lands to
17 be beneficially used to create and sustain
18 economic activity; and

19 “(ii) in the case of lands owned by
20 Alaska Native entities, to reflect the social
21 and economic needs of Alaska Natives to
22 utilize economic base lands.

23 The Secretary shall consult with and provide
24 assistance to the Alaska Natives (including
25 Alaska Native Corporations) in promulgation

1 and administration of policies and regulations
2 under this section.

3 “(8) GENERAL PERMITS.—

4 “(A) GENERAL AUTHORITY.—The Sec-
5 retary may issue, by rule in accordance with
6 subsection (j), general permits on a pro-
7 grammatic, State, regional, or nationwide basis
8 for any category of activities involving an activ-
9 ity in wetlands or waters of the United States
10 if the Secretary determines that such activities
11 are similar in nature and that such activities,
12 when performed separately and cumulatively,
13 will not result in the significant loss of eco-
14 logically significant wetlands values and func-
15 tions.

16 “(B) PROCEDURES.—Permits issued under
17 this paragraph shall include procedures for ex-
18 pedited review of eligibility for such permits (if
19 such review is required) and may include re-
20 quirements for reporting and mitigation. To the
21 extent that a proposed activity requires a deter-
22 mination by the Secretary as to the eligibility to
23 qualify for a general permit under this sub-
24 section, such determination shall be made with-
25 in 30 days of the date of submission of the ap-

1 plication for such qualification, or the applica-
2 tion shall be treated as being approved.

3 “(C) COMPENSATORY MITIGATION.—Re-
4 quirements for compensatory mitigation for
5 general permits may be imposed where nec-
6 essary to offset the significant loss or degrada-
7 tion of significant wetlands functions where
8 such loss or degradation is not a temporary or
9 incidental impact.

10 “(D) GRANDFATHER OF EXISTING GEN-
11 ERAL PERMITS.—General permits in effect on
12 day before the date of the enactment of the
13 Comprehensive Wetlands Conservation and
14 Management Act of 1995 shall remain in effect
15 until otherwise modified by the Secretary.

16 “(E) STATES WITH SUBSTANTIAL CON-
17 SERVED LANDS.—Upon application by a State
18 or local authority in a State with substantial
19 conserved wetlands areas, the Secretary shall
20 issue a general permit applicable to such au-
21 thority for activities in wetlands or waters of
22 the United States. No permit issued pursuant
23 to this subparagraph shall include conditions,
24 requirements, or standards for mitigation to
25 compensate for adverse impacts to wetlands or

1 waters of the United States or shall include
2 conditions, requirements, or standards for
3 avoidance of adverse impacts of wetlands or wa-
4 ters of the United States.

5 “(9) OTHER WATERS OF THE UNITED
6 STATES.—The Secretary may issue a permit author-
7 izing activities in waters of the United States (other
8 than those classified as type A, B, or C wetlands
9 under this section) if the Secretary finds that issu-
10 ance of the permit is in the public interest, bal-
11 ancing the reasonably foreseeable benefits and det-
12 riments resulting from the issuance of the permit.
13 The permit shall be subject to such terms and condi-
14 tions as the Secretary finds are necessary to carry
15 out the purposes of the Comprehensive Wetlands
16 Conservation and Management Act of 1995. In de-
17 termining whether or not to issue the permit and
18 whether or not specific terms and conditions are nec-
19 essary to carry out such purposes, the Secretary
20 shall consider the factors set forth in paragraph
21 (3)(A) as they apply to nonwetlands areas and such
22 other provisions of paragraph (3) as the Secretary
23 determines are appropriate to apply to nonwetlands
24 areas.

25 “(f) ACTIVITIES NOT REQUIRING PERMIT.—

1 “(1) IN GENERAL.—Activities undertaken in
2 any wetlands or waters of the United States are ex-
3 empt from the requirements of this section and are
4 not prohibited by or otherwise subject to regulation
5 under this section or section 301 or 402 of this Act
6 (except effluent standards or prohibitions under sec-
7 tion 307 of this Act) if such activities—

8 “(A) result from normal farming,
9 silviculture, aquaculture, and ranching activities
10 and practices, including but not limited to plow-
11 ing, seeding, cultivating, haying, grazing, nor-
12 mal maintenance activities, minor drainage,
13 burning of vegetation in connection with such
14 activities, harvesting for the production of food,
15 fiber, and forest products, or upland soil and
16 water conservation practices;

17 “(B) are for the purpose of maintenance,
18 including emergency reconstruction of recently
19 damaged parts, of currently serviceable struc-
20 tures such as dikes, dams, levees, flood control
21 channels, water control structures, groins,
22 riprap, breakwaters, utility distribution and
23 transmission lines, causeways, and bridge abut-
24 ments or approaches, and transportation struc-
25 tures;

1 “(C) are for the purpose of construction or
2 maintenance of farm, stock or aquaculture
3 ponds, wastewater retention facilities (including
4 dikes and berms) that are used by concentrated
5 animal feeding operations, or irrigation canals
6 and ditches or the maintenance of drainage
7 ditches;

8 “(D) are for the purpose of construction of
9 temporary sedimentation basins on a construc-
10 tion site which does not include placement of
11 fill material into the navigable waters;

12 “(E) are for the purpose of construction or
13 maintenance of farm roads or forest roads, tem-
14 porary roads for moving mining equipment, ac-
15 cess roads for utility distribution and trans-
16 mission lines, or railroad lines of up to 10 miles
17 in length if such roads or railroad lines are con-
18 structed and maintained, in accordance with
19 best management practices, to assure that flow
20 and circulation patterns and chemical and bio-
21 logical characteristics of the waters are not im-
22 paired, that the reach of the waters is not re-
23 duced, and that any adverse effect on the
24 aquatic environment will be otherwise mini-
25 mized;

1 “(F) are undertaken on farmed wetlands,
2 except that any change in use of such land for
3 the purpose of undertaking activities that are
4 not exempt from regulation under this sub-
5 section shall be subject to the requirements of
6 this section to the extent that such farmed wet-
7 lands are ‘wetlands’ under this section;

8 “(G) result from any activity with respect
9 to which a State has an approved program
10 under section 208(b)(4) of this Act which meets
11 the requirements of subparagraphs (B) and (C)
12 of such section;

13 “(H) are consistent with a State or local
14 land management plan submitted to the Sec-
15 retary and approved pursuant to paragraph (2);

16 “(I) are undertaken in connection with a
17 marsh management and conservation program
18 in a coastal parish in the State of Louisiana
19 where such program has been approved by the
20 Governor of such State or the designee of the
21 Governor;

22 “(J) are undertaken on lands or involve
23 activities within a State’s coastal zone which
24 are excluded from regulation under a State
25 coastal zone management program approved

1 under the Coastal Zone Management Act of
2 1972 (16 U.S.C. 1451, et seq.);

3 “(K) are undertaken in incidentally created
4 wetlands, unless such incidentally created wet-
5 lands have exhibited wetlands functions and val-
6 ues for more than 5 years in which case activi-
7 ties undertaken in such wetlands shall be sub-
8 ject to the requirements of this section;

9 “(L) are for the purpose of preserving and
10 enhancing aviation safety or are undertaken in
11 order to prevent an airport hazard;

12 “(M) result from aggregate, clay, or phos-
13 phate mining activities in wetlands conducted
14 pursuant to a State or Federal permit that re-
15 quires the reclamation of such affected wetlands
16 if such reclamation will be completed within 5
17 years of the commencement of activities at the
18 site and, upon completion of such reclamation,
19 the wetlands will support wetlands functions
20 equivalent to the functions supported by the
21 wetlands at the time of commencement of such
22 activities;

23 “(N) are for the placement of a structural
24 member for a pile-supported structure, such as
25 a pier or dock, or for a linear project such as

1 a bridge, transmission or distribution line foot-
2 ing, powerline structure, or elevated or other
3 walkway;

4 “(O) are for the placement of a piling in
5 waters of the United States in a circumstance
6 that involves—

7 “(i) a linear project described in sub-
8 paragraph (N); or

9 “(ii) a structure such as a pier, boat-
10 house, wharf, marina, lighthouse, or indi-
11 vidual house built on stilts solely to reduce
12 the potential of flooding;

13 “(P) are for the clearing (including mecha-
14 nized clearing) of vegetation within a right-of-
15 way associated with the development and main-
16 tenance of a transmission or distribution line or
17 other powerline structure;

18 “(Q) are undertaken in or affecting
19 waterfilled depressions created in uplands inci-
20 dental to construction activity, or are under-
21 taken in or affecting pits excavated in uplands
22 for the purpose of obtaining fill, sand, gravel,
23 aggregates, or minerals, unless and until the
24 construction or excavation operation is aban-
25 doned; or

1 “(R) are undertaken in a State with sub-
2 stantial conserved wetlands areas and—

3 “(i) are for purposes of providing crit-
4 ical infrastructure, including water and
5 sewer systems, airports, roads, communica-
6 tion sites, fuel storage sites, landfills, hous-
7 ing, hospitals, medical clinics, schools, and
8 other community infrastructure;

9 “(ii) are for construction and mainte-
10 nance of log transfer facilities associated
11 with log transportation activities;

12 “(iii) are for construction of tailings
13 impoundments utilized for treatment facili-
14 ties (as determined by the development
15 document) for the mining subcategory for
16 which the tailings impoundment is con-
17 structed; or

18 “(iv) are for construction of ice pads
19 and ice roads and for purposes of snow
20 storage and removal.

21 “(2) STATE OR LOCAL MANAGEMENT PLAN.—
22 Any State or political subdivision thereof acting pur-
23 suant to State authorization may develop a land
24 management plan with respect to lands that include
25 identified wetlands. The State or local government

1 agency may submit any such plan to the Secretary
2 for review and approval. The Secretary shall, within
3 60 days, notify in writing the designated State or
4 local official of approval or disapproval of any such
5 plan. The Secretary shall approve any plan that is
6 consistent with the purposes of this section. No per-
7 son shall be entitled to judicial review of the decision
8 of the Secretary to approve or disapprove a land
9 management plan under this paragraph. Nothing in
10 this paragraph shall be construed to alter, limit, or
11 supersede the authority of a State or political sub-
12 division thereof to establish land management plans
13 for purposes other than the provisions of this sub-
14 section.

15 “(g) RULES FOR DELINEATING WETLANDS.—

16 “(1) STANDARDS.—

17 “(A) ISSUANCE OF RULE.—The Secretary
18 is authorized and directed to establish stand-
19 ards, by rule in accordance with subsection (j),
20 that shall govern the delineation of lands as
21 ‘wetlands’ for purposes of this section. Such
22 rules shall be established after consultation with
23 the heads of other appropriate Federal agencies
24 and shall be binding on all Federal agencies in
25 connection with the administration or imple-

1 mentation of any provision of this section. The
2 standards for delineation of wetlands and any
3 decision of the Secretary, the Secretary of Agri-
4 culture (in the case of agricultural lands and
5 associated nonagricultural lands), or any other
6 Federal officer or agency made in connection
7 with the administration of this section shall
8 comply with the requirements for delineation of
9 wetlands set forth in subparagraphs (B) and
10 (C).

11 “(B) EXCEPTIONS.—The standards estab-
12 lished by rule or applied in any case for pur-
13 poses of this section shall ensure that lands are
14 delineated as wetlands only if such lands are
15 found to be ‘wetlands’ under section 502 of this
16 Act; except that such standards may not—

17 “(i) result in the delineation of lands
18 as wetlands unless clear evidence of wet-
19 lands hydrology, hydrophytic vegetation,
20 and hydric soil are found to be present
21 during the period in which such delineation
22 is made, which delineation shall be con-
23 ducted during the growing season unless
24 otherwise requested by the applicant;

1 “(ii) result in the classification of
2 vegetation as hydrophytic if such vegeta-
3 tion is equally adapted to dry or wet soil
4 conditions or is more typically adapted to
5 dry soil conditions than to wet soil condi-
6 tions;

7 “(iii) result in the classification of
8 lands as wetlands unless some obligate
9 wetlands vegetation is found to be present
10 during the period of delineation; except
11 that if such vegetation has been removed
12 for the purpose of evading jurisdiction
13 under this section, this clause shall not
14 apply;

15 “(iv) result in the conclusion that wet-
16 lands hydrology is present unless water is
17 found to be present at the surface of such
18 lands for 21 consecutive days in the grow-
19 ing seasons in a majority of the years for
20 which records are available; and

21 “(v) result in the classification of
22 lands as wetlands that are temporarily or
23 incidentally created as a result of adjacent
24 development activity.

1 “(C) NORMAL CIRCUMSTANCES.—In addi-
2 tion to the requirements of subparagraph (B),
3 any standards established by rule or applied to
4 delineate wetlands for purposes of this section
5 shall provide that ‘normal circumstances’ shall
6 be determined on the basis of the factual cir-
7 cumstances in existence at the time a classifica-
8 tion is made under subsection (h) or at the time
9 of application under subsection (e), whichever is
10 applicable, if such circumstances have not been
11 altered by an activity prohibited under this sec-
12 tion.

13 “(2) LAND AREA CAP FOR TYPE A WET-
14 LANDS.—No more than 20 percent of any county,
15 parish, or borough shall be classified as type A wet-
16 lands. Type A wetlands in Federal or State owner-
17 ship (including type A wetlands in units of the Na-
18 tional Wildlife Refuge System, the National Park
19 System, and lands held in conservation easements)
20 shall be included in calculating the percent of type
21 A wetlands in a county, parish, or borough.

22 “(3) AGRICULTURAL LANDS.—

23 “(A) DELINEATION BY SECRETARY OF AG-
24 RICULTURE.—For purposes of this section, wet-
25 lands located on agricultural lands and associ-

1 ated nonagricultural lands shall be delineated
2 solely by the Secretary of Agriculture in accord-
3 ance with section 1222(j) of the Food Security
4 Act of 1985 (16 U.S.C. 3822(j)).

5 “(B) EXEMPTION OF LANDS EXEMPTED
6 UNDER FOOD SECURITY ACT.—Any area of ag-
7 ricultural land or any activities related to the
8 land determined to be exempt from the require-
9 ments of subtitle C of title XII of the Food Se-
10 curity Act of 1985 (16 U.S.C. 3821 et seq.)
11 shall also be exempt from the requirements of
12 this section for such period of time as those
13 lands are used as agricultural lands.

14 “(C) EFFECT OF APPEAL DETERMINATION
15 PURSUANT TO FOOD SECURITY ACT.—Any area
16 of agricultural land or any activities related to
17 the land determined to be exempt pursuant to
18 an appeal taken pursuant to subtitle C of title
19 XII of the Food Security Act of 1985 (16
20 U.S.C. 3821 et seq.) shall be exempt under this
21 section for such period of time as those lands
22 are used as agricultural lands.

23 “(h) MAPPING AND PUBLIC NOTICE REQUIRE-
24 MENTS.—

25 “(1) PROVISION OF PUBLIC NOTICE.—

1 “(A) IN GENERAL.—Not later than 90
2 days after the date of the enactment of the
3 Comprehensive Wetlands Conservation and
4 Management Act of 1995, the Secretary shall
5 provide the court of each county, parish, or bor-
6 ough in which the wetland subject to classifica-
7 tion under subsection (c) is located, a notice for
8 posting near the property records of the county,
9 parish, or borough. The notice shall—

10 “(i) state that wetlands regulated
11 under this section may be located in the
12 county, parish, or borough;

13 “(ii) provide an explanation under-
14 standable to the general public of how wet-
15 lands are delineated and classified;

16 “(iii) describe the requirements and
17 restrictions of the regulatory program
18 under this section; and

19 “(iv) provide instructions on how to
20 obtain a delineation and classification of
21 wetlands under this section.

22 “(2) PROVISION OF DELINEATION DETERMINA-
23 TIONS.—On completion under this section of a delin-
24 eation and classification of property that contains
25 wetlands or a delineation of property that contains

1 waters of the United States that are not wetlands,
2 the Secretary of Agriculture, in the case of wetlands
3 located on agricultural lands and associated non-
4 agricultural lands, and the Secretary, in the case of
5 other lands, shall—

6 “(A) file a copy of the delineation, includ-
7 ing the classification of any wetland located on
8 the property, with the records of the property
9 in the local courthouse; and

10 “(B) serve a copy of the delineation deter-
11 mination on every owner of the property on
12 record and any person with a recorded mort-
13 gage or lien on the property.

14 “(3) NOTICE OF ENFORCEMENT ACTIONS.—The
15 Secretary shall file notice of each enforcement action
16 under this section taken with respect to private
17 property with the records of the property in the local
18 courthouse.

19 “(4) WETLANDS IDENTIFICATION AND CLASSI-
20 FICATION PROJECT.—

21 “(A) IN GENERAL.—The Secretary and the
22 Secretary of Agriculture shall undertake a
23 project to identify and classify wetlands in the
24 United States that are regulated under this sec-
25 tion. The Secretaries shall complete such

1 project not later than 10 years after the date
2 of the enactment of the Comprehensive Wet-
3 lands Conservation and Management Act of
4 1995.

5 “(B) APPLICABILITY OF DELINEATION
6 STANDARDS.—In conducting the project under
7 this section, the Secretaries shall identify and
8 classify wetlands in accordance with standards
9 for delineation of wetlands established by the
10 Secretaries under subsection (g).

11 “(C) PUBLIC HEARINGS.—In conducting
12 the project under this section, the Secretaries
13 shall provide notice and an opportunity for a
14 public hearing in each county, parish or bor-
15 ough of a State before completion of identifica-
16 tion and classification of wetlands in such coun-
17 ty, parish, or borough.

18 “(D) PUBLICATION.—Promptly after com-
19 pletion of identification and classification of
20 wetlands in a county, parish, or borough under
21 this section, the Secretaries shall have published
22 information on such identification and classi-
23 fication in the Federal Register and in publica-
24 tions of wide circulation and take other steps

1 reasonably necessary to ensure that such infor-
2 mation is available to the public.

3 “(E) REPORTS.—The Secretaries shall re-
4 port to Congress on implementation of the
5 project to be conducted under this section not
6 later than 2 years after the date of the enact-
7 ment of the Comprehensive Wetlands Conserva-
8 tion and Management Act of 1995 and annually
9 thereafter.

10 “(F) RECORDATION.—Any classification of
11 lands as wetlands under this section shall, to
12 the maximum extent practicable, be recorded on
13 the property records in the county, parish, or
14 borough in which such wetlands are located.

15 “(i) ADMINISTRATIVE APPEALS.—

16 “(1) REGULATIONS ESTABLISHING PROCE-
17 DURES.—Not later than 1 year after the date of the
18 enactment of the Comprehensive Wetlands Conserva-
19 tion and Management Act of 1995, the Secretary
20 shall, after providing notice and opportunity for pub-
21 lic comment, issue regulations establishing proce-
22 dures pursuant to which—

23 “(A) a landowner may appeal a determina-
24 tion of regulatory jurisdiction under this section

1 with respect to a parcel of the landowner's
2 property;

3 "(B) a landowner may appeal a wetlands
4 classification under this section with respect to
5 a parcel of the landowner's property;

6 "(C) any person may appeal a determina-
7 tion that the proposed activity on the land-
8 owner's property is not exempt under sub-
9 section (f);

10 "(D) a landowner may appeal a determina-
11 tion that an activity on the landowner's prop-
12 erty does not qualify under a general permit is-
13 sued under this section;

14 "(E) an applicant for a permit under this
15 section may appeal a determination made pur-
16 suant to this section to deny issuance of the
17 permit or to impose a requirement under the
18 permit; and

19 "(F) a landowner or any other person re-
20 quired to restore or otherwise alter a parcel of
21 property pursuant to an order issued under this
22 section may appeal such order.

23 "(2) DEADLINE FOR FILING APPEAL.—An ap-
24 peal brought pursuant to this subsection shall be
25 filed not later than 30 days after the date on which

1 the decision or action on which the appeal is based
2 occurs.

3 “(3) DEADLINE FOR DECISION.—An appeal
4 brought pursuant to this subsection shall be decided
5 not later than 90 days after the date on which the
6 appeal is filed.

7 “(4) PARTICIPATION IN APPEALS PROCESS.—
8 Any person who participated in the public comment
9 process concerning a decision or action that is the
10 subject of an appeal brought pursuant to this sub-
11 section may participate in such appeal.

12 “(5) DECISIONMAKER.—An appeal brought
13 pursuant to this subsection shall be heard and de-
14 cided by an appropriate and impartial official of the
15 Federal Government, other than the official who
16 made the determination or carried out the action
17 that is the subject of the appeal.

18 “(6) STAY OF PENALTIES AND MITIGATION.—A
19 landowner or any other person who has filed an ap-
20 peal under this subsection shall not be required to
21 pay a penalty or perform mitigation or restoration
22 assessed under this section or section 309 until after
23 the appeal has been decided.

24 “(j) ADMINISTRATIVE PROVISIONS.—

1 “(1) FINAL REGULATIONS FOR ISSUANCE OF
2 PERMITS.—Not later than 1 year after the date of
3 the enactment of the Comprehensive Wetlands Con-
4 servation and Management Act of 1995, the Sec-
5 retary shall, after notice and opportunity for com-
6 ment, issue (in accordance with section 553 of title
7 5 of the United States Code and this section) final
8 regulations for implementation of this section. Such
9 regulations shall, in accordance with this section,
10 provide—

11 “(A) standards and procedures for the
12 classification and delineation of wetlands and
13 procedures for administrative review of any
14 such classification or delineation;

15 “(B) standards and procedures for the re-
16 view of State or local land management plans
17 and State programs for the regulation of wet-
18 lands;

19 “(C) for the issuance of general, including
20 programmatic, State, regional, and nationwide
21 permits;

22 “(D) standards and procedures for the in-
23 dividual permit applications under this section;

24 “(E) for enforcement of this section; and

1 “(F) any other rules and regulations that
2 the Secretary deems necessary or appropriate to
3 implement the requirements of this section.

4 “(2) JUDICIAL REVIEW OF FINAL REGULA-
5 TIONS.—Any judicial review of final regulations is-
6 sued pursuant to this section and the Secretary’s de-
7 nial of any petition for the issuance, amendment, or
8 repeal of any regulation under this section shall be
9 in accordance with sections 701 through 706 of title
10 5 of the United States Code; except that a petition
11 for review of action of the Secretary in issuing any
12 regulation or requirement under this section or de-
13 nying any petition for the issuance, amendment, or
14 repeal of any regulation under this section may be
15 filed only in the United States Court of Appeals for
16 the District of Columbia, and such petition shall be
17 filed within 90 days from the date of such issuance
18 or denial or after such date if such petition for re-
19 view is based solely on grounds arising after such
20 ninetieth day. Action of the Secretary with respect
21 to which review could have been obtained under this
22 subsection shall not be subject to judicial review in
23 civil or criminal proceedings for enforcement.

24 “(3) INTERIM REGULATIONS.—The Secretary
25 shall, within 90 days after the date of the enactment

1 of the Comprehensive Wetlands Conservation and
2 Management Act of 1995, issue interim regulations
3 consistent with this section to take effect imme-
4 diately. Notice of the interim regulations shall be
5 published in the Federal Register, and such regula-
6 tions shall be binding until the issuance of final reg-
7 ulations pursuant to paragraph (1); except that the
8 Secretary shall provide adequate procedures for
9 waiver of any provisions of such interim regulations
10 to avoid special hardship, inequity, or unfair dis-
11 tribution of burdens or to advance the purposes
12 of this section.

13 “(4) ADMINISTRATION BY SECRETARY.—Except
14 where otherwise expressly provided in this section,
15 the Secretary shall administer this section. The Sec-
16 retary or any other Federal officer or agency in
17 which any function under this section is vested or
18 delegated is authorized to perform any and all acts
19 (including appropriate enforcement activity), and to
20 prescribe, issue, amend, or rescind such rules or or-
21 ders as such officer or agency may find necessary or
22 appropriate with this subsection, subject to the re-
23 quirements of this subsection.

24 “(k) ENFORCEMENT.—

1 “(1) COMPLIANCE ORDER.—Whenever, on the
2 basis of reliable and substantial information and
3 after reasonable inquiry, the Secretary finds that
4 any person is or may be in violation of this section
5 or of any condition or limitation set forth in a per-
6 mit issued by the Secretary under this section, the
7 Secretary shall issue an order requiring such persons
8 to comply with this section or with such condition or
9 limitation.

10 “(2) NOTICE AND OTHER PROCEDURAL RE-
11 QUIREMENTS RELATING TO ORDERS.—A copy of any
12 order issued under this subsection shall be sent im-
13 mediately by the Secretary to the Governor of the
14 State in which the violation occurs and the Gov-
15 ernors of other affected States. The person commit-
16 ting the asserted violation that results in issuance of
17 the order shall be notified of the issuance of the
18 order by personal service made to the appropriate
19 person or corporate officer. The notice shall state
20 with reasonable specificity the nature of the asserted
21 violation and specify a time for compliance, not to
22 exceed 30 days, which the Secretary determines is
23 reasonable taking into account the seriousness of the
24 asserted violation and any good faith efforts to com-
25 ply with applicable requirements. If the person re-

1 ceiving the notice disputes the Secretary's deter-
2 mination, the person may file an appeal as provided
3 in subsection (i). Within 60 days of a decision which
4 denies an appeal, or within 150 days from the date
5 of notification of violation by the Secretary if no ap-
6 peal is filed, the Secretary shall prosecute a civil ac-
7 tion in accordance with paragraph (3) or rescind
8 such order and be estopped from any further en-
9 forcement proceedings for the same asserted viola-
10 tion.

11 “(3) CIVIL ACTION ENFORCEMENT.—The Sec-
12 retary is authorized to commence a civil action for
13 appropriate relief, including a permanent or tem-
14 porary injunction, for any violation for which the
15 Secretary is authorized to issue a compliance order
16 under paragraph (1). Any action under this para-
17 graph may be brought in the district court of the
18 United States for the district in which the defendant
19 is located or resides or is doing business, and such
20 court shall have jurisdiction to restrain such viola-
21 tion and to require compliance. Notice of the com-
22 mencement of such action shall be given immediately
23 to the appropriate State.

24 “(4) CIVIL PENALTIES.—Any person who vio-
25 lates any condition or limitation in a permit issued

1 by the Secretary under this section and any person
2 who violates any order issued by the Secretary under
3 paragraph (1) shall be subject to a civil penalty not
4 to exceed \$25,000 per day for each violation com-
5 mencing on expiration of the compliance period if no
6 appeal is filed or on the 30th day following the date
7 of the denial of an appeal of such violation. The
8 amount of the penalty imposed per day shall be in
9 proportion to the scale or scope of the project. In de-
10 termining the amount of a civil penalty, the court
11 shall consider the seriousness of the violation or vio-
12 lations, the economic benefit (if any) resulting from
13 the violation, any history of such violations, any
14 good-faith efforts to comply with the applicable re-
15 quirements, the economic impact of the penalty on
16 the violator, and such other matters as justice may
17 require.

18 “(5) CRIMINAL PENALTIES.—If any person
19 knowingly and willfully violates any condition or lim-
20 itation in a permit issued by the Secretary under
21 this section or knowingly and willfully violates an
22 order issued by the Secretary under paragraph (1)
23 and has been notified of the issuance of such order
24 under paragraph (2) and if such violation has re-
25 sulted in actual degradation of the environment,

1 such person shall be punished by a fine of not less
2 than \$5,000 nor more than \$50,000 per day of vio-
3 lation, or by imprisonment for not more than 3
4 years, or by both. If a conviction of a person is for
5 a violation committed after a first conviction of such
6 person under this paragraph, punishment shall be by
7 a fine of not more than \$100,000 per day of viola-
8 tion, or imprisonment of not more than 6 years, or
9 by both. An action for imposition of a criminal pen-
10 alty under this paragraph may only be brought by
11 the Attorney General.

12 “(l) STATE REGULATION.—

13 “(1) SUBMISSION OF PROPOSED STATE PRO-
14 GRAM.—The Governor of any State desiring to ad-
15 minister its own individual or general permit pro-
16 gram for some or all of the activities covered by this
17 section within any geographical region within its ju-
18 risdiction may submit to the Secretary a description
19 of the program it proposes to establish and admin-
20 ister under State law or under an interstate com-
21 pact. In addition, such State shall submit a state-
22 ment from the chief legal officer in the case of the
23 State or interstate agency, that the laws of such
24 State, or the interstate compact, as the case may be,

1 provide adequate authority to carry out the de-
2 scribed program.

3 “(2) STATE AUTHORITIES REQUIRED FOR AP-
4 PROVAL.—Not later than 1 year after the date of
5 the receipt by the Secretary of a program and state-
6 ment submitted by any State under paragraph (1),
7 the Secretary shall determine whether such State
8 has the following authority with respect to the issu-
9 ance of permits pursuant to such program:

10 “(A) to issue permits which—

11 “(i) apply, and assure compliance
12 with, any applicable requirements of this
13 section; and

14 “(ii) can be terminated or modified
15 for cause, including—

16 “(I) violation of any condition of
17 the permit;

18 “(II) obtaining a permit by mis-
19 representation, or failure to disclose
20 fully all relevant facts; or

21 “(III) change in any condition
22 that requires either a temporary or
23 permanent reduction or elimination
24 of the permitted activity;

1 “(B) to issue permits which apply, and en-
2 sure compliance with, all applicable require-
3 ments of section 308 of this Act or to inspect,
4 monitor, enter, and require reports to at least
5 the same extent as required in section 308 of
6 this Act;

7 “(C) to ensure that the public, and any
8 other State the waters of which may be af-
9 fected, receive notice of each application for a
10 permit and to provide an opportunity for public
11 hearing before a ruling on each such applica-
12 tion;

13 “(D) to ensure that the Secretary receives
14 notice of each application for a permit and that,
15 prior to any action by the State, both the appli-
16 cant for the permit and the State have received
17 from the Secretary information with respect to
18 any advance classification applicable to wet-
19 lands that are the subject of such application;

20 “(E) to ensure that any State (other than
21 the permitting State) whose waters may be af-
22 fected by the issuance of a permit may submit
23 written recommendation to the permitting State
24 with respect to any permit application and, if
25 any part of such written recommendations are

1 not accepted by the permitting State, that the
2 permitting State will notify such affected State
3 (and the Secretary) in writing of its failure to
4 so accept such recommendations together with
5 its reasons for doing so; and

6 “(F) to abate violations of the permit or
7 the permit program, including civil and criminal
8 penalties and other ways and means of enforce-
9 ment.

10 “(3) APPROVAL; RESUBMISSION.—If, with re-
11 spect to a State program submitted under paragraph
12 (1) of this section, the Secretary determines that the
13 State—

14 “(A) has the authority set forth in para-
15 graph (2), the Secretary shall approve the pro-
16 gram and so notify such State and suspend the
17 issuance of permits under subsection (b) for ac-
18 tivities with respect to which a permit may be
19 issued pursuant to the State program; or

20 “(B) does not have the authority set forth
21 in paragraph (2) of this subsection, the Sec-
22 retary shall so notify such State and provide a
23 description of the revisions or modifications
24 necessary so that the State may resubmit the

1 program for a determination by the Secretary
2 under this subsection.

3 “(4) EFFECT OF FAILURE OF SECRETARY TO
4 MAKE TIMELY DECISION.—If the Secretary fails to
5 make a determination with respect to any program
6 submitted by a State under this subsection within 1
7 year after the date of receipt of the program, the
8 program shall be treated as being approved pursuant
9 to paragraph (3)(A) and the Secretary shall so no-
10 tify the State and suspend the issuance of permits
11 under subsection (b) for activities with respect to
12 which a permit may be issued by the State.

13 “(5) TRANSFER OF PENDING APPLICATIONS
14 FOR PERMITS.—If the Secretary approves a State
15 permit program under paragraph (3)(A) or (4), the
16 Secretary shall transfer any applications for permits
17 pending before the Secretary for activities with re-
18 spect to which a permit may be issued pursuant to
19 the State program to the State for appropriate
20 action.

21 “(6) GENERAL PERMITS.—Upon notification
22 from a State with a permit program approved under
23 this subsection that such State intends to administer
24 and enforce the terms and conditions of a general
25 permit issued by the Secretary under subsection (e)

1 with respect to activities in the State to which such
2 general permit applies, the Secretary shall suspend
3 the administration and enforcement of such general
4 permit with respect to such activities.

5 “(7) REVIEW BY SECRETARY.—Every 5 years
6 after approval of a State administered program
7 under paragraph (3)(A), the Secretary shall review
8 the program to determine whether it is being admin-
9 istered in accordance with this section. If, on the
10 basis of such review, the Secretary finds that a State
11 is not administering its program in accordance with
12 this section or if the Secretary determines based on
13 clear and convincing evidence after a public hearing
14 that a State is not administering its program in ac-
15 cordance with this section and that substantial ad-
16 verse impacts to wetlands or waters of the United
17 States are imminent, the Secretary shall notify the
18 State and, if appropriate corrective action is not
19 taken within a reasonable time, not to exceed 90
20 days after the date of the receipt of such notifica-
21 tion, the Secretary shall—

22 “(A) withdraw approval of the program
23 until the Secretary determines such corrective
24 action has been taken; and

1 “(B) resume the program for the issuance
2 of permits under subsections (b) and (e) for all
3 activities with respect to which the State was is-
4 suing permits until such time as the Secretary
5 makes the determination described in para-
6 graph (2) and the State again has an approved
7 program.

8 “(m) MISCELLANEOUS PROVISIONS.—

9 “(1) STATE AUTHORITY TO CONTROL DIS-
10 CHARGES.—Nothing in this section shall preclude or
11 deny the right of any State or interstate agency to
12 control activities in waters within the jurisdiction of
13 such State, including any activity of any Federal
14 agency, and each such agency shall comply with
15 such State or interstate requirements both sub-
16 stantive and procedural to control such activities to
17 the same extent that any person is subject to such
18 requirements. This section shall not be construed as
19 affecting or impairing the authority of the Secretary
20 to maintain navigation.

21 “(2) AVAILABILITY TO PUBLIC.—A copy of each
22 permit application and each permit issued under this
23 section shall be available to the public. Such permit
24 application or portion thereof shall further be avail-
25 able on request for the purpose of reproduction.

1 “(3) PUBLICATION IN FEDERAL REGISTER.—
2 The Secretary shall have published in the Federal
3 Register all memoranda of agreement, regulatory
4 guidance letters, and other guidance documents of
5 general applicability to implementation of this sec-
6 tion at the time they are distributed to agency re-
7 gional or field offices. In addition, the Secretary
8 shall prepare, update on a biennial basis and make
9 available to the public for purchase at cost—

10 “(A) an indexed publication containing all
11 Federal regulations, general permits, memo-
12 randa of agreement, regulatory guidance letters,
13 and other guidance documents relevant to the
14 permitting of activities pursuant to this section;
15 and

16 “(B) information to enable the general
17 public to understand the delineation of wet-
18 lands, the permitting requirements referred to
19 in subsection (e), wetlands restoration and en-
20 hancement, wetlands functions, available non-
21 regulatory programs to conserve and restore
22 wetlands, and other matters that the Secretary
23 considers relevant.

24 “(4) COMPLIANCE.—

1 “(A) COMPLIANCE WITH PERMIT.—Com-
2 pliance with a permit issued pursuant to this
3 section, including any activity carried out pur-
4 suant to a general permit issued under this sec-
5 tion, shall be deemed in compliance, for pur-
6 poses of sections 309 and 505, with sections
7 301, 307, and 403.

8 “(B) CRANBERRY PRODUCTION.—Activi-
9 ties associated with expansion, improvement, or
10 modification of existing cranberry production
11 operations shall be deemed in compliance, for
12 purposes of sections 309 and 505, with section
13 301, if—

14 “(i) the activity does not result in the
15 modification of more than 10 acres of wet-
16 lands per operator per year and the modi-
17 fied wetlands (other than where dikes and
18 other necessary facilities are placed) re-
19 main as wetlands or other waters of the
20 United States; or

21 “(ii) the activity is required by any
22 State or Federal water quality program.

23 “(5) LIMITATION ON FEES.—Any fee charged
24 in connection with the delineation or classification of
25 wetlands, the submission or processing of an applica-

1 tion for a permit authorizing an activity in wetlands
2 or waters of the United States, or any other action
3 taken in compliance with the requirements of this
4 section (other than fines for violations under sub-
5 section (k)) shall not exceed the amount in effect for
6 such fee on February 15, 1995.

7 “(6) BALANCED IMPLEMENTATION.—

8 “(A) IN GENERAL.—In implementing his
9 or her responsibilities under the regulatory pro-
10 gram under this section, the Secretary shall
11 balance the objective of conserving functioning
12 wetlands with the objective of ensuring contin-
13 ued economic growth, providing essential infra-
14 structure, maintaining strong State and local
15 tax bases, and protecting against the diminish-
16 ment of the use and value of privately owned
17 property.

18 “(B) MINIMIZATION OF ADVERSE EFFECTS
19 ON PRIVATE PROPERTY.—In carrying out this
20 section, the Secretary and the heads of all other
21 Federal agencies shall seek in all actions to
22 minimize the adverse effects of the regulatory
23 program under this section on the use and
24 value of privately owned property.

1 “(7) PROCEDURES FOR EMERGENCIES.—The
2 Secretary shall develop procedures for facilitating ac-
3 tions under this section that are necessary to re-
4 spond to emergency conditions (including flood
5 events and other emergency situations) which may
6 involve loss of life and property damage. Such proce-
7 dures shall address circumstances requiring expe-
8 dited approvals as well as circumstances requiring
9 no formal approval under this section.

10 “(8) USE OF PROPERTY.—For purposes of this
11 section, a use of property is limited by an agency ac-
12 tion if a particular legal right to use that property
13 no longer exists because of the action.

14 “(9) LIMITATION ON CLASSIFICATION OF CER-
15 TAIN WATERS.—For purposes of this section, no
16 water of the United States or wetland shall be sub-
17 ject to this section based solely on the fact that mi-
18 gratory birds use or could use such water or wet-
19 land.

20 “(10) TRANSITION RULES.—

21 “(A) PERMIT REQUIRED.—After the effec-
22 tive date of this section under section 6 of the
23 Comprehensive Wetlands Conservation and
24 Management Act of 1995, no permit for any ac-
25 tivity in wetlands or waters of the United

1 States may be issued except in accordance with
2 this section. Any application for a permit for
3 such an activity pending under this section on
4 such effective date shall be deemed to be an ap-
5 plication for a permit under this section.

6 “(B) PRIOR PERMITS.—Any permit for an
7 activity in wetlands or waters of the United
8 States issued under this section prior to the ef-
9 fective date referred to in subparagraph (A)
10 shall be deemed to be a permit under this sec-
11 tion and shall continue in force and effect for
12 the term of the permit unless revoked, modified,
13 suspended, or canceled in accordance with this
14 section.

15 “(C) REEVALUATION.—Any person holding
16 a permit for an activity in wetlands or water of
17 the United States on the effective date referred
18 to in subparagraph (A) may petition, after such
19 effective date, the Secretary for reevaluation of
20 any decision made before such effective date
21 concerning (i) a determination of regulatory ju-
22 risdiction under this section, or (ii) any condi-
23 tion imposed under the permit. Upon receipt of
24 a petition for reevaluation, the Secretary shall
25 conduct the reevaluation in accordance with the

1 provisions of this section. If the Secretary finds
2 that the provisions of this section apply with re-
3 spect to activities and lands which are subject
4 to the permit, the Secretary shall modify, re-
5 voke, suspend, cancel, or continue the permit as
6 appropriate in accordance with the provisions of
7 this section; except that no compensation shall
8 be awarded under this section to any person as
9 a result of reevaluation pursuant to this sub-
10 paragraph and, if the permit covers activities in
11 type A wetlands, the permit shall continue in
12 effect without modification. The reevaluation
13 shall be carried out in accordance with time
14 limits set forth in subsection (e)(5) and shall
15 be subject to administrative appeal under sub-
16 section (i).

17 “(11) DEFINITIONS.—In this section the follow-
18 ing definitions apply:

19 “(A) ACTIVITY IN WETLANDS OR WATERS
20 OF THE UNITED STATES.—The term ‘activity in
21 wetlands or waters of the United States’
22 means—

23 “(i) the discharge of dredged or fill
24 material into waters of the United States,

1 including wetlands at a specific disposal
2 site; or

3 “(ii) the draining, channelization, or
4 excavation of wetlands.

5 “(B) AGENCY.—The term ‘agency’ has the
6 meaning given that term in section 551 of title
7 5, United States Code.

8 “(C) AGENCY ACTION.—The term ‘agency
9 action’ has the meaning given that term in sec-
10 tion 551 of title 5, United States Code, but also
11 includes the making of a grant to a public au-
12 thority conditioned upon an action by the recip-
13 ient that would constitute a limitation if done
14 directly by the agency.

15 “(D) AGRICULTURAL LAND.—The term
16 ‘agricultural land’ means cropland, pastureland,
17 native pasture, rangeland, an orchard, a vine-
18 yard, nonindustrial forest land, an area that
19 supports a water dependent crop (including
20 cranberries, taro, watercress, or rice), and any
21 other land used to produce or support the pro-
22 duction of an annual or perennial crop (includ-
23 ing forage or hay), aquaculture product, nurs-
24 ery product, or wetland crop or the production
25 of livestock.

1 “(E) CONSERVED WETLANDS.—The term
2 ‘conserved wetlands’ means wetlands that are
3 located in the National Park System, National
4 Wildlife Refuge System, National Wilderness
5 System, the Wild and Scenic River System, and
6 other similar Federal conservation systems,
7 combined with wetlands located in comparable
8 types of conservation systems established under
9 State and local authority within State and local
10 land use systems.

11 “(F) ECONOMIC BASE LANDS.—The term
12 ‘economic base lands’ means lands conveyed to,
13 selected by, or owned by Alaska Native entities
14 pursuant to the Alaska Native Claims Settle-
15 ment Act, Public Law 92–203 or the Alaska
16 Native Allotment Act of 1906 (34 Stat. 197),
17 and lands conveyed to, selected by, or owned by
18 the State of Alaska pursuant to the Alaska
19 Statehood Act, Public Law 85–508.

20 “(G) FAIR MARKET VALUE.—The term
21 ‘fair market value’ means the most probable
22 price at which property would change hands, in
23 a competitive and open market under all condi-
24 tions requisite to a fair sale, between a willing
25 buyer and a willing seller, neither being under

1 any compulsion to buy or sell and both having
2 reasonable knowledge of relevant facts, at the
3 time the agency action occurs.

4 “(H) LAW OF A STATE.—The term ‘law of
5 a State’ includes the law of a political subdivi-
6 sion of a State.

7 “(I) MITIGATION BANK.—The term ‘miti-
8 gation bank’ means a wetlands restoration, cre-
9 ation, enhancement, or preservation project un-
10 dertaken by one or more parties, including pri-
11 vate and public entities, expressly for the pur-
12 pose of providing mitigation compensation cred-
13 its to offset adverse impacts to wetlands or
14 other waters of the United States authorized by
15 the terms of permits allowing discharges of
16 dredged or fill material into such wetlands or
17 waters.

18 “(J) PROPERTY.—The term ‘property’
19 means land and includes the right to use or re-
20 ceive water.

21 “(K) SECRETARY.—The term ‘Secretary’
22 means the Secretary of the Army.

23 “(L) STATE WITH SUBSTANTIAL CON-
24 SERVED WETLANDS AREAS.—The term ‘State

1 with substantial conserved wetlands areas’
2 means any State which—

3 “(i) contains at least 10 areas of wet-
4 lands for each acre of wetlands filled,
5 drained, or otherwise converted within such
6 State (based upon wetlands loss statistics
7 reported in the 1990 United States Fish
8 and Wildlife Service Wetlands Trends re-
9 port to Congress entitled ‘Wetlands Losses
10 in the United States 1780’s to 1980’s’); or

11 “(ii) the Secretary of the Army deter-
12 mines has sufficient conserved wetlands
13 areas to provided adequate wetlands con-
14 servation in such State, based on the poli-
15 cies set forth in this Act.

16 “(M) WETLANDS.—The term ‘wetlands’
17 means those lands that meet the criteria for de-
18 lineation of lands as wetlands set forth in sub-
19 section (g).”.

20 **SEC. 4. DEFINITIONS.**

21 Section 502 of the Federal Water Pollution Control
22 Act (33 U.S.C. 1362) is further amended—

23 (1) in paragraph (6)—

24 (A) by striking “dredged spoil,”;

1 (B) by striking “or (B)” and inserting
2 “(B)”; and

3 (C) by inserting before the period at the
4 end “; and (C) dredged or fill material”; and

5 (2) by adding at the end thereof the following
6 new paragraphs:

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

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

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

20 “(24) The term ‘fastlands’ means lands located be-
21 hind legally constituted man-made structures or natural
22 formations, such as levees constructed and maintained to
23 permit the utilization of such lands for commercial, indus-
24 trial, or residential purposes consistent with local land use
25 planning requirements.

1 “(25) The term ‘wetlands functions’ means the roles
2 wetlands serve, including flood water storage, flood water
3 conveyance, ground water recharge, erosion control, wave
4 attenuation, water quality protection, scenic and aesthetic
5 use, food chain support, fisheries, wetlands plant habitat,
6 aquatic habitat, and habitat for wetland dependent wild-
7 life.

8 “(26) The term ‘growing season’ means, for each
9 plant hardiness zone, the period between the average date
10 of last frost in spring and the average date of first frost
11 in autumn.

12 “(27) The term ‘incidentally created wetlands’ means
13 lands that exhibit wetlands characteristics sufficient to
14 meet the criteria for delineation of wetlands, where one
15 or more of such characteristics is the unintended result
16 of human induced alterations of hydrology.

17 “(28) The term ‘maintenance’ when used in reference
18 to wetlands means activities undertaken to assure continu-
19 ation of a wetland or the accomplishment of project goals
20 after a restoration or creation project has been technically
21 completed, including water level manipulations and control
22 of nonnative plant species.

23 “(29) The term ‘mitigation banking’ means wetlands
24 restoration, enhancement, preservation or creation for the

1 purpose of providing compensation for wetland degrada-
2 tion or loss.

3 “(30) The term ‘normal farming, silviculture, aqua-
4 culture and ranching activities’ means normal practices
5 identified as such by the Secretary of Agriculture, in con-
6 sultation with the Cooperative Extension Service for each
7 State and the land grant university system and agricul-
8 tural colleges of the State, taking into account existing
9 practices and such other practices as may be identified
10 in consultation with the affected industry or community.

11 “(31) The term ‘prior converted cropland’ means any
12 agricultural land that was manipulated (by drainage or
13 other physical alteration to remove excess water from the
14 land) or used for the production of any annual or peren-
15 nial agricultural crop (including forage or hay),
16 aquacultural product, nursery product or wetlands crop,
17 or the production of livestock before December 23, 1985.

18 “(32) The term ‘restoration’ in reference to wetlands
19 means an activity undertaken to return a wetland from
20 a disturbed or altered condition with lesser acreage or
21 fewer functions to a previous condition with greater wet-
22 lands acreage or functions.

23 “(33) The term ‘temporary impact’ means the dis-
24 turbance or alteration of wetlands caused by activities

1 under circumstances in which, within 3 years following the
2 commencement of such activities, such wetlands—

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

5 “(B) display conditions sufficient to ensure,
6 that without further human action, such wetlands
7 will return to the conditions in existence prior to the
8 commencement of such activity.

9 “(34) The term ‘airport hazard’ has the meaning
10 such term has under section 47102 of title 49, United
11 States Code.”.

12 **SEC. 5. TECHNICAL AND CONFORMING AMENDMENTS.**

13 (a) VIOLATION.—Section 301(a) of the Federal
14 Water Pollution Control Act (33 U.S.C. 1311(a)) is
15 amended—

16 (1) by striking “402, and 404” and inserting
17 “and 402”; and

18 (2) by adding at the end the following: “Except
19 as in compliance with this section and section 404,
20 the undertaking of any activity in wetlands or waters
21 of the United States shall be unlawful.”.

22 (b) FEDERAL ENFORCEMENT.—Section 309 of the
23 Federal Water Pollution Control Act (33 U.S.C. 1319) is
24 amended—

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

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

4 (3) in each of subsections (c)(1)(A) and
5 (c)(2)(A) by striking “or in a permit” and all that
6 follows through “State;” and inserting a semicolon;

7 (4) in subsection (c)(3)(A) by striking “or in a
8 permit” and all that follows through “State, and”
9 and inserting “and”;

10 (5) by adding at the end of subsection (c) the
11 following:

12 “(8) TREATMENT OF CERTAIN VIOLATIONS.—
13 Any person who violates section 301 with respect to
14 an activity in wetlands or waters of the United
15 States for which a permit is required under section
16 404 shall not be subject to punishment under this
17 subsection but shall be subject to punishment under
18 section 404(k)(5).”;

19 (6) in subsection (d) by striking “, or in a per-
20 mit issued under section 404 of this Act by a
21 State,”;

22 (7) by adding at the end of subsection (d) the
23 following: “Any person who violates section 301 with
24 respect to an activity in wetlands or waters of the
25 United States for which a permit is required under

1 section 404 shall not be subject to a civil penalty
2 under this subsection but shall be subject to a civil
3 penalty under section 404(k)(4).”;

4 (8) in subsection (g)(1)—

5 (A) by striking “—” and all that follows
6 through “(A)”;

7 (B) by striking “or in a permit issued
8 under section 404 of this Act by a State, or”;
9 and

10 (C) by striking “(B)” and all that follows
11 through “as the case may be,” and inserting
12 “the Administrator”;

13 (9) by adding at the end of subsection (g) the
14 following:

15 “(12) TREATMENT OF CERTAIN VIOLATIONS.—

16 Any person who violates section 301 with respect to
17 an activity in wetlands or waters of the United
18 States for which a permit is required under section
19 404 shall not be subject to assessment of a civil pen-
20 alty under this subsection but shall be subject to as-
21 sessment of a civil penalty under section
22 404(k)(4).”;

23 (10) by striking “or Secretary”, “or the Sec-
24 retary”, “or the Secretary, as the case may be,” “or

1 Secretary's", and "and the Secretary" each place
2 they appear.

3 **SEC. 6. EFFECTIVE DATE.**

4 This Act, including the amendments made by this
5 Act, shall take effect on the 90th day following the date
6 of the enactment of this Act.

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