

Ms. COLLINS. Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Ms. COLLINS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. COLLINS. Mr. President, I ask unanimous consent that I be permitted to proceed in morning business until the Senator from West Virginia comes to the floor to give his statement. I ask unanimous consent for only 5 minutes or until such time as the Senator arrives.

The PRESIDING OFFICER. Without objection, it is so ordered.

PREVENTING FRAUD AND ABUSE WITHIN THE MEDICARE PROGRAM

Ms. COLLINS. Mr. President, as the Congress grapples with the problem of maintaining the solvency of the Medicare program and with proposals to expand Medicare coverage, we must not overlook a critical problem that threatens the financial integrity of this vital social program, which provides health care services to 38 million older and disabled Americans. I am talking, Mr. President, about the problem of waste, fraud and abuse in this program.

The Permanent Subcommittee on Investigations, which I chair, has undertaken an extensive investigation into Medicare fraud.

At our first hearing last summer, we learned from the inspector general of the Department of Health and Human Services that an astounding \$23 billion a year is lost to waste, fraud, abuse and other improper payments.

In more recent hearings, Mr. President, we discovered that career criminals, with absolutely no background in health care, were able to be certified as Medicare providers and enter the system for the sole purpose of ripping it off.

For example, one case that the subcommittee investigated involved a totally fictitious durable medical equipment company that was located in the middle of the runway of the Miami International Airport, if it had in fact existed.

I am not talking here, Mr. President, about legitimate providers or innocent mistakes or honest billing errors. I am talking about outright fraud. We need to do a better job of screening providers and controlling their entry into the Medicare system.

Mr. President, the vast majority of health care professionals are dedicated and caring individuals who deliver vital services to millions of Americans across the country. They are as appalled by this kind of fraud as any of us.

Recently, I met with the members of the Home Care Alliance of Maine con-

cerning the issue of fraud in the health care industry. The Home Care Alliance of Maine has a longstanding commitment to ensuring the highest quality home health care in the State of Maine. It has adopted a policy of zero tolerance on fraud and abuse in the home health industry. Its members recognize that unscrupulous home health providers not only tarnish the reputation of legitimate health care professionals, but that these unscrupulous individuals jeopardize the very availability of Medicare.

I ask unanimous consent the position statement of the Home Care Alliance of Maine be printed in the RECORD so my colleagues and organizations representing home health care agencies across the United States can have the benefit of the very fine work this organization has done.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MEDICARE FRAUD AND ABUSE POSITION STATEMENT

The Home Care Alliance of Maine membership has a long-standing commitment to provide the highest quality of care to the elderly and infirm of our state. Even one unscrupulous home health provider that fails to maintain the values and ethics that are at the core of home care jeopardizes the viability of ongoing access to appropriate home health services.

We recognize that the responsibility for resolving concerns of fraud and abuse lies with the government, the home health industry, and individual providers. We further believe that different strategies are needed to clearly distinguish deliberately fraudulent practice from unintentional errors that can occur in the interpretation of the complex and often vague rules and regulations in the Medicare home health care benefit.

The Home Care Alliance of Maine firmly believes that fraud and abuse can be eliminated and errors corrected when addressed by comprehensive and concerted efforts among the industry, government, individual providers, and consumers. This partnership is critical to achieve the mutually beneficial goal of assuring integrity in administration of the Medicare home health care benefit.

We further believe that education of consumers and advocacy groups is central to ensuring trust in legitimate providers of home health services. It is only through open and public discussion about the basic structure of changes in the Medicare home health care benefit that consumers and others can confidently distinguish blatant fraud and abuse from innocent errors in interpretation and provision of services. Informed consumers and their advocates can then be reassured by their choice of licensed and certified home health agencies.

The Home Care Alliance of Maine supports:

1. Zero tolerance for fraud and abuse of the Medicare home health care benefit.
2. Total cooperation with prompt and responsible investigation and resolution of any errors in interpretation and application of the Medicare home health care benefit.
3. Medicare coverage and reimbursement standards in language that is understandable and readily accessible to providers and consumers through various means, e.g. federal depository libraries, state regulatory agencies, trade associations, fiscal intermediaries, and the Internet.
4. Enhancement of education and training of home health agencies through joint efforts with regulators.

5. Credentialing and competency testing standards for government contractors and federal regulators responsible for issuing Medicare determinations.

6. Mandatory screening and background checks on all applicants for Medicare certification as a home health agency.

7. Development and provision of a summary of program coverage requirements for consumers and prospective consumers of Medicare home health care benefits.

8. Enhancement and increased accessibility of the consumer reporting hotline for suspected fraud and abuse.

The Home Care Alliance of Maine is committed to working with its membership, state and federal regulatory bodies, and consumer advocacy groups to ensure the integrity of the Medicare home health care benefit in Maine.

Ms. COLLINS. I appreciate the opportunity to comment on this issue.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. COVERDELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNITION OF MEMBERS OF ARMED FORCES HELD AS PRISONERS OF WAR DURING VIETNAM CONFLICT

Mr. COVERDELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 177, submitted earlier today by Senators COVERDELL, CLELAND and others.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 177) recognizing, and calling on all Americans to recognize, the courage and sacrifice of the members of the Armed Forces held as prisoners of war during the Vietnam conflict and stating that the American people will not forget that more than 2,000 members of the Armed Forces remain unaccounted for from the Vietnam conflict and will continue to press for the fullest possible accounting for all such members whose whereabouts are unknown.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. COVERDELL. Mr. President, colleagues, I rise on this 25th anniversary of the return of the first American POWs from Vietnam to recognize the National League of Families of American Prisoners and Missing in Southeast Asia and the many years and tireless hours Ann Mills Griffiths, the National League of Families' Executive Director, and JoAnne Shirley, Chairwoman of the League's Board and a fellow Georgian, have spent fighting for the return of American POW's and MIA's.

The National League of Families of American Prisoners and Missing in Southeast Asia was incorporated in the District of Columbia on May 28, 1970.

Voting membership is comprised solely of the wives, children, parents and other close relatives of Americans who were or are listed as prisoners of war, missing in action, killed in action/body not recovered and returned Vietnam War U.S. POWs. Associate membership is comprised of extended relation of POW/MIAs who do not meet voting membership requirements and concerned citizens. The League is a non-profit, non-partisan organization financed by contributions from the families, veterans and concerned citizens. The League's sole purpose is to obtain the release of all prisoners, the fullest possible accounting for the missing and repatriation of all recoverable remains of those who died serving our nation during the Vietnam War.

The League originated on the west coast in the late 1960's. The wife of a ranking POW who believed that the U.S. Government's policy of keeping a low profile on the POW/MIA issue and encouraging the families to refrain from publicly discussing the problem was unjustified, initiated a loosely organized movement which evolved into the National League of Families.

In October 1968, the first POW/MIA story was published. As a result of that publicity, the families began communicating with each other, and the group grew in strength from 50 to 100 to 300 and upward. Small POW/MIA family groups flooded the North Vietnamese delegation in Paris with inquiries regarding the prisoners and missing; the first major activity in which hundreds of families participated.

Eventually, the necessity for formal incorporation was recognized. In May 1970, a special AD HOC meeting of the families met at Constitution Hall in Washington, D.C. During this meeting the League's charter and by-laws were adopted.

A seven-member board of directors meets regularly to determine League policy and direction. The board is elected by the voting membership which now stands at approximately 1,000. Regional coordinators, responsible for activities in multi-state areas, and state coordinators also represent the League in most of the fifty states.

The League's national office is now staffed by only one full-time employee, augmented by concerned citizen and family member volunteers. The executive director, the sister of a soldier MIA and the organization's chief executive officer, is responsible for management of the League and implementation of policies established by the membership and board of directors.

In 1971, Mrs. Michael Hoff, an MIA wife and member of the National League, recognized the need for a symbol representing our POW/MIAs. Prompted by an article in the Jacksonville, FL Times-Union, Mrs. Hoff contacted Norman Rivkees, VP of Annin & Company, which had made a banner for the newest member of the UN, the People's Republic of China, as a part of their policy to provide flags to all UN

member states. Mrs. Hoff found Mr. Rivkees very sympathetic to the POW/MIA issue, and he along with Annin's advertising agency, designed a flag to represent our missing men. Following the National League's approval, the flags were manufactured for distribution. On March 9, 1989, a flag which flew over the White House on the 1988 National POW/MIA Recognition Day, was installed in the U.S. Capitol Rotunda, as a result of legislation passed overwhelmingly during the 100th Congress. On August 10, 1990, the 101st Congress passed U.S. Public Law 101-355, which recognized the National League's POW/MIA flag and designated it "as the symbol of our Nation's concern and commitment to resolving as fully as possible the fates of Americans still prisoner, missing and unaccounted for in Southeast Asia, thus ending the uncertainty for their families and the Nation." This POW/MIA flag is now recognized world wide, by all concerned, as the universal symbol of the "UNACCOUNTED FOR".

Mrs. Ann Mills Griffiths serves as Executive Director of the National League of POW/MIA Families, a position held since August, 1978. Mrs. Griffiths' brother, Lt. Commander James B. Mills, USNR, has been missing since September 21, 1966, when the Navy F4C on which he served as a Radar Intercept Officer was lost on a night mission over North Vietnam.

Prior to assuming her position as executive director, Mrs. Griffiths was an elected member of the League's board of directors for four years, serving as legislative chairman. During its existence from 1980 through 1992, she played an active role in the U.S. Government's POW/MIA Interagency Group, representing the families' views in development of official policy to resolve this humanitarian issue.

Mrs. Griffiths has traveled extensively for discussion with senior officials of Laos, Cambodia, and Vietnam, as well as the countries of ASEAN. She was instrumental in facilitating high level negotiations between Vietnam and the United States in 1983 and participated in fourteen U.S. Government policy-level POW/MIA delegations to Hanoi since 1982, plus two League delegations in 1982 and 1994.

Acknowledged as an expert on the POW/MIA issue, Mrs. Griffiths regularly meets with senior administration officials and members of congress, appears before congressional committees, addresses national and international audiences, participates in appropriate policy seminars, publishes articles and newsletters, and is a frequent spokeswoman on network and cable television programs.

Within policy established by the membership and elected board of directors, Mrs. Griffiths has been instrumental in building the League from a small POW/MIA family group into a nationally recognized, non-profit organization that influences U.S. policy to resolve the humanitarian POW/MIA

issue. In administering the League's affairs, Mrs. Griffiths supervises League operations, manages a successful direct-mail program and plans the League's yearly convention that includes the highest levels of the U.S. Government. With the assistance of their staff and volunteer state and regional officials, Mrs. Griffiths also coordinates a nation-wide awareness program on the issue.

Mrs. JoAnne Shirley has been serving as Chairman of the Board of Directors since June 1995. Her brother, Maj. Bobby Marvin Jones, M.D., USAF Flight Surgeon, was shot down November 28, 1972, near DaNang, South Vietnam.

Mrs. Shirley is married to Dr. Rudy Shirley, MS., and ENT doctor, and they reside in Dalton, Georgia, with their three children Bobby, Rhett and Chrissie. She served on the School Board for 10 years, and has been a volunteer in many community, county and state sponsored projects.

Mrs. Shirley co-founded the Georgia Committee for POW/MIA, Inc in the 1980s and served as Georgia State Coordinator for the National League of Families from 1983-1993. She served as Secretary of the National League of Families from 1993-94, and then as Vice-Chairman from 1994-95. In 1997, Mrs. Shirley, by herself, raised \$15,000 to fund her and Mrs. Griffiths' trip to Southeast Asia.

Mr. President, these two women who are wives, mothers, and involved citizens have spent countless hours, money and resources keeping accountability alive. Nothing strikes a louder chord with Americans than the thought of our soldiers in the hands of our country's enemies. It is important that we recognize the work of organizations such as the National League of Families and of people such as Ann Mills Griffiths and JoAnne Shirley who have worked hard to ensure we do not forget those soldiers who were left behind.

Mr. SMITH of New Hampshire. Mr. President, I am pleased to be an original cosponsor of the Senate Resolution which recognizes the 25th anniversary of the return of 591 American POWs from communist Vietnam in February and March, 1973, and reaffirms our national commitment to seek answers about missing Americans from the Vietnam War.

I have been privileged through the years to come to know many of the Americans POWs held for so many years by the Communist side and finally released in 1973. This includes heroes in the Congress like Representative SAM JOHNSON of Texas, and Senator JOHN MCCAIN of Arizona, and other heroes like Admiral James Stockdale, Ambassador Pete Peterson, Red McDaniel, Orson Swindle, Ted Guy, Giles Norrington, and Mike Benge, to name a few.

Today marks the 25th anniversary of the return of the first group of American POWs from Hanoi during what was known as Operation Homecoming. This first group included Congressman SAM

JOHNSON, someone who I have been honored to work closely with through the years to obtain answers about those still missing from the war. Several other groups of POWs were released later in February, 1973, and throughout March, 1973, with the last American acknowledged by Hanoi to be a POW being returned on April 1st.

A few years ago, one of these returned POWs I mentioned earlier, Captain McDaniell, wrote a book about his experience as a POW entitled "Scars and Stripes."

I want to quote just a small passage from that book which describes the feelings of the POWs as they were being led from their prisons to the airport in Hanoi for repatriation.

"I saw a familiar C-141 aircraft waiting for us on the field. At that moment, something broke inside me and the tears came easily. Somehow I had managed to restrict my tears to those rare times, in the nights under my mosquito net, when Hanoi Radio had gotten to me and I was down. But here, seeing that airplane waiting, I just let go, because I suddenly realized that my country had not let me down. And that great Scripture came to me, the Lord's words: I will never leave thee, nor forsake thee.

Even as God had stayed at my side through all that time and taught me the things that were to change my life completely about His reality and His presence in suffering, somehow that American plane socked home some of the things that made America and God great.

Then I was on that airplane, and pandemonium broke loose. As those wheels lifted off, the cheers shook the plane. And when the plane crossed over water on the way south, we all shouted, "Feet wet!"—we were no longer over North Vietnam. Those mouths opened in a wild cheer—some with teeth missing, some with faces showing physical and emotional scars, some who cried while they cheered. No matter what anyone would say in the future about Vietnam, somehow we had won a little piece of something that no man would take away from us.

Mr. President, what true patriots these men were. How fitting that we honor them today with this Senate resolution commemorating the 25th anniversary of their release.

With this resolution, we also call attention to the important last mission of the war which is still unresolved—the mission to obtain the fullest possible accounting for those whose whereabouts and fate are still unknown. Our thoughts go out to the families of those missing men, and we reaffirm our national commitment to learning the truth so we can remove the uncertainty these families face.

I have been personally involved with searching for answers on the POW/MIA issue, as my colleagues know, for several years now. I want to take this opportunity today to again call on the Governments in Southeast Asia, North Korea, China, Russia, and the former Eastern bloc to do more to open up their archives and make key witnesses available so we may advance the accounting effort. There is much work

still to do, and I appreciate that this resolution before us today recognizes that fact.

I yield the floor.

Mr. COVERDELL. Mr. President, I want to take a special moment here to thank my colleague from Georgia, a cosponsor of this resolution and himself a veteran of the Vietnam war; Senator SMITH of New Hampshire; Senator LOTT, the majority leader; and Senator HAGEL, a Vietnam veteran from Nebraska. I am especially delighted to be joined by Senator CLELAND who, as I said, is himself a testament to the courage and sacrifice made by so many men and women in American uniform during the Vietnam conflict.

The resolution also directs itself to two of our colleagues who were themselves long-held prisoners of war, Congressman SAM JOHNSON, who is specifically noted in the resolution, and our own Senator JOHN MCCAIN of Arizona.

Senator MCCAIN and I have known each other for some extended period of time and I have always marveled at what he endured and, I might add, that it was almost a double endurance. What I mean is that the North Vietnamese, recognizing that he was the son of a U.S. Navy admiral, tried to break him away from his colleagues and send him home. He made the choice not to accept, not to accept this unique tension in deference to his colleagues, his father and the Navy.

I was reminded earlier today that when these veterans were returned and disembarked from the aircraft—of course we all remember the scenes of them kneeling down and kissing the ground—but then to stand up and thank America for the privilege to have served her. It was an incredible act of courage, an act of care and love, of the country whose uniforms they had worn.

Interestingly enough, unbeknownst to me just earlier, I was with a young man who said but for the brief chance of fate he would have been a pilot in Vietnam. This was just moments ago and he was here when these POW's returned, and he had a chance to be among them. At that time he was about 33, which was the age of many of these POW's, the difference being, of course, that he still looked 33 and they looked 50 or older because of what they had endured. He was reminded about how moving the moment was to see these Americans who had returned, who had endured so much, who had become the epitome of courage and perseverance. He says whenever he is reminded of it, it still sends chills down his back. How much we owe these men and women. It is important that we remember.

Whenever a nation embarks on something like this—and perhaps it is uniquely important that we are remembering, considering the discussions that are underway here this very week, discussing the eve of a major conflict—we remember what these men and women did for America.

Of course, today marks the 25th anniversary of the return of the first POWs from North Vietnam. Following the signing of the peace accords, 591 United States prisoners of war were released. The operation was dubbed "Operation Homecoming." Today, as was noted in the resolution, there are still 2,000 members of our Armed Forces who remain unaccounted for from the Vietnam conflict.

This resolution recognizes that despite the brutal mistreatment these prisoners received, they nevertheless devised a means to communicate with one another, to support one another by a code transmitted by tapping on the wall. The resolution refers to Commander James B. Stockdale, U.S. Navy, who upon his capture on September 9, 1965, became the senior prisoner of war officer in what became dubbed the "Hanoi Hilton." He delivered the following message to his men to sustain their morale: "Remember, you are Americans. With faith in God, trust in one another, and devotion to your country, you will overcome, you will triumph."

This resolution resolves that the Senate expresses its gratitude for and calls upon all Americans to reflect upon and show their gratitude for the courage and sacrifice of the brave men who were held prisoners of war during the Vietnam conflict, particularly on the occasion of this, the 25th anniversary of Operation Homecoming, their return from captivity. It also resolves that the Senate, indeed America, will not, must not, forget the more than 2,000 members of the United States Armed Forces that remain unaccounted for in the Vietnam conflict, and that the Senate will continue to press for the fullest possible accounting for such members.

Mr. President, again, I thank my colleague from Georgia, Senator CLELAND, for his cosponsorship, more importantly for his service, his long service, Senator SMITH, Senator LOTT and Senator HAGEL of Nebraska.

In closing I simply say on behalf of all Americans, this American says to all who served under such difficult circumstances, a grateful Nation says thank you.

Mr. COVERDELL. Mr. President, I ask unanimous consent the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the resolution appear at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 177) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 177

Whereas participation by the United States Armed Forces in combat operations in Southeast Asia during the period from 1964 through 1972 resulted in several hundreds of members of the United States

Armed Forces being taken prisoner by North Vietnamese, Pathet Lao, and Viet Cong enemy forces;

Whereas the first such United States serviceman taken as a prisoner of war, Navy Lt. Commander Everett Alvarez, was captured on August 5, 1964;

Whereas following the Paris Peace Accords of January 1973, 591 United States prisoners of war were released from captivity by North Vietnam;

Whereas the return of these prisoners of war to United States control and to their families and comrades was designated Operation Homecoming;

Whereas many members of the United States Armed Forces who were taken prisoner as a result of ground or aerial combat in Southeast Asia have not returned to their loved ones and their whereabouts remain unknown;

Whereas United States prisoners of war in Southeast Asia were routinely subjected to brutal mistreatment, including beatings, torture, starvation, and denial of medical attention;

Whereas United States prisoners of war in Southeast Asia were held in a number of facilities, the most notorious of which was Hoa Loa Prison in downtown Hanoi, dubbed the "Hanoi Hilton" by the prisoners held there;

Whereas the hundreds of United States prisoners of war held in the Hanoi Hilton and other facilities persevered under terrible conditions;

Whereas the prisoners were frequently isolated from each other and prohibited from speaking to each other;

Whereas the prisoners nevertheless, at great personal risk, devised a means to communicate with each other through a code transmitted by tapping on cell walls;

Whereas then-Commander James B. Stockdale, United States Navy, who upon his capture on September 9, 1965, became the senior POW officer present in the Hanoi Hilton, delivered to his men a message that was to sustain them during their ordeal, as follows: Remember, you are Americans. With faith in God, trust in one another, and devotion to your country, you will overcome. You will triumph.;

Whereas the men held as prisoners of war during the Vietnam conflict truly represent all that is best about America;

Whereas two of these patriots, Congressman Sam Johnson, of Texas, and Senator John McCain, of Arizona, have continued to honor the Nation with devoted service; and

Whereas the Nation owes a debt of gratitude to all of these patriots for their courage and exemplary service: Now, therefore, be it

Resolved, That the Senate—

(1) expresses its gratitude for, and calls upon all Americans to reflect upon and show their gratitude for, the courage and sacrifice of the brave men who were held as prisoners of war during the Vietnam conflict, particularly on the occasion of the 25th anniversary of Operation Homecoming, their return from captivity; and

(2) acting on behalf of all Americans—

(A) will not forget that more than 2,000 members of the United States Armed Forces remain unaccounted for from the Vietnam conflict; and

(B) will continue to press for the fullest possible accounting for such members.

THE FEDERAL WETLANDS PERMIT PROGRAM

Mr. LOTT. Mr. President, I want to call attention to a Federal permit program that is causing problems in Mississippi, in the Southeastern United

States and, indeed, in the entire United States: the Federal Section 404 "wetlands" permit program. This program has its roots in Section 404 of the Clean Water Act, but has been designed primarily by the Federal courts and the Federal agencies, the Environmental Protection Agency and the U.S. Army Corps of Engineers, and not by the elected officials of this Nation.

Twenty years have passed since the Congress of the United States has addressed this program legislatively. Currently, a Federal appellate court decision, two pending appellate court cases and a new proposed rulemaking by the Corps of Engineers are stirring up controversy about this program. No one should be surprised. This program is held together by baling wire and string and pieces are beginning to fall off all over the place.

I encourage the Senate Environment and Public Works Committee to bring to the full Senate legislation that makes meaningful, common sense changes to the Section 404 permit program. Review of this program is long overdue. Mr. President, I hope that this Congress can take meaningful action on the Section 404 program in 1998.

One basic controversy about this program is the issue of the areas that are regulated as wetlands. The Federal agencies have interpreted their jurisdiction to extend to the farthest reaches of the Commerce Clause, and, I think, even beyond, including those isolated areas that merely "could affect" interstate commerce. Specifically, to some agencies this means those areas where a migratory bird "could" land. To make this grab for jurisdiction worse, according to the U.S. Fish and Wildlife Service, 75 percent of all Section 404 regulated areas are on privately owned property!

On December 23, in *Wilson v. United States Corps of Engineers*, the United States Court of Appeals for the Fourth Circuit overturned the criminal convictions of an individual, a corporation and a partnership for violating the Section 404 program in Charles County, Maryland. The individual had been sentenced to 21 months in jail and the three defendants had been fined a total of \$4 million. The Fourth Circuit overturned the convictions and remanded the case to the district court, finding that only those areas that are either connected on the surface to navigable waters or are proven to be in interstate commerce could be regulated under the Section 404 program. Specifically, the court held that:

Absent a clear indication to the contrary, we should not lightly presume that merely by defining 'navigable waters' as 'the waters of the United States', Congress authorized the Army Corps of Engineers to assert its jurisdiction in such a sweeping and constitutionally troubling manner. Even as a matter of statutory construction, one would expect that the phrase 'waters of the United States', when used to define the phrase 'navigable waters' refers to waters which, if not navigable in fact, are at least interstate or closely related to navigable or interstate waters.

When viewed in light of its statutory authority, (the regulation), which defines 'waters of the United States' to include intrastate waters that need have nothing to do with navigable or interstate waters, expands the statutory phrase 'waters of the United States' beyond its definable limit.

Accordingly, we believe that in promulgating (the regulation), the Army Corps of Engineers exceeded its congressional authorization under the Clean Water Act, and that, for this reason, (the regulation) is invalid.

At long last, this case begins to limit the reach of the bureaucracy onto privately owned property under this program.

A second area of controversy is a regulation issued by the Clinton Administration in September, 1993, that broadly expanded the definition of activities that are regulated under the Section 404 program. As many of you know, this permit problem was never designed to be a wetlands permit program, but rather evolved in that direction through judicial rulings and agency interpretations. The activities in "wetlands" that are regulated under Section 404 of the Clean Water Act are the "discharge of dredged and fill material" into the "navigable waters". On the face of it, the statute does not cover other activities that could degrade wetlands, such as "draining" or "excavating" wetlands. Obviously, if we are going to have a wetlands regulatory program and protect valuable wetlands, the program needs to cover "drainage" and "excavation."

In September 1993, the Clinton Administration issued a rulemaking that expanded coverage of the Section 404 program to include activities like drainage and excavation. Many of us noted that this might be good public policy, but this expansion exceeded the statute, and legislation would be necessary to expand the program to cover these activities.

On January 23, 1997, a Federal district court in the District of Columbia struck down this regulation, called the Tulloch rule, as exceeding the statutory authority of the Clean Water Act. On January 9, 1998, the United States Court of Appeals for the District of Columbia Circuit heard oral arguments in this case. The Federal government had a rough day in court. I am told that the judges suggested that the agency interpretation of the jurisdictional reach of the Section 404 program went as far as "land that might be wet someday". One of the appellate judges asked the government attorney whether riding a bike through a wetland, where dirt accumulated on the tires and then fell off into the wetland during riding, would be an activity regulated under the Section 404 program. The government attorney answered yes, but the regulation was not aimed at this activity. The judge answered correctly, "Not yet!"

This brings me to a recent Corps judgment on Nationwide Permit 26 that was attacked on the front page of the Washington Post on Saturday, January 31st.