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ALASKA WETLANDS INITIATIVE

SUMMARY REPORT

U.S. ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF THE ARMY
U.S. FISH AND WILDLIFE SERVICE
NATIONAL MARINE FISHERIES SERVICE (NOAA)

MAY 13, 1994

TABLE OF CONTENTS

Table of Contents i

Executive Summary ii

Introduction 1

The Focus of the Debate
Alaska's Wetlands
The Wetlands Regulatory Program
The Alaska Wetlands Initiative Process

A Comprehensive Response to the Issues 9

The Mitigation Sequence
Compensatory Mitigation
No Overall Net Loss of Wetlands Goal
Alternative Permit Processing Procedures
The Individual Permit Process
State, Local, and Native Roles
Advance Planning and Watershed Management
Wetlands Inventory, Classification, and Categorization
Outreach and Education
Special Alaska Circumstances -- Physical Environment
Special Alaska Circumstances -- Legal Issues

Conclusion 29

Statement on The Mitigation Sequence Attachment 1

Statement on No Overall Net Loss of Wetlands Attachment 2

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EXECUTIVE SUMMARY

As a part of the Clinton Administration's August 24, 1993, Wetlands Plan, the Environmental Protection Agency (EPA) and the US. Army Corps of Engineers (Corps) convened a panel of stakeholders and solicited public input in the State of Alaska to identify and address concerns with the implementation of the Clean Water Act Section 404 program in Alaska. This Report summarizes the results of that effort and presents the recommendations and actions, in combination with the comprehensive initiatives identified in the Administration's Wetlands Plan, that will be undertaken in Alaska to address concerns raised during this Alaska Wetlands Initiative.

On October 12, 1993, EPA and the Corps in Alaska announced the Alaska Wetlands Initiative and invited a diverse and comprehensive group of stakeholders to participate in two series of independently facilitated meetings in Juneau, Bethel, Fairbanks, and Anchorage. In addition, a number and variety of opportunities for public comment were established to ensure that the process would consider the individual opinions of Alaskans who wished to express themselves independent of a particular stakeholder. The purpose of the Alaska Wetlands Initiative was to identify legitimate concerns with the Section 404 regulatory program and to develop solutions to those concerns. The intent of this public process was to ensure that focussed discussions among Alaska's major interest groups would occur, allowing the participants to develop a common understanding of issues and to propose workable solutions. Although the issues are complex and opinions on how best to resolve them are varied, the process emphasized constructive stakeholder participation and public involvement, to provide the Federal agencies 'with the factual basis for their conclusions (Unless otherwise noted, the term "Federal agencies" refers to the four primary agencies involved in the Alaska Wetlands Initiative: the Environmental Protection Agency, the Army Corps of Engineers, the Fish and Wildlife Service, and the National Marine Fisheries Service).

The major action items that resulted from the issues and comments raised are described below and address the mitigation sequence; compensatory mitigation; no overall net loss of wetlands goal; alternative permit processing procedures; the individual permit process; State, local, and Native roles; advance planning and watershed management; wetlands inventory, classification, and categorization; outreach and education; special Alaska circumstances -- physical environment; and special Alaska circumstances -- legal issues. These recommendations complement the initiatives that the Administration is undertaking Nationally, as provided for in the Administration's August 24, 1993, Wetlands Plan. The Administration's Wetlands Plan also provided for the withdrawal of the proposed "Alaska 1%" rule, which is being published concurrent with the issuance of this Report. The Federal agencies believe that

the conclusions and recommendations of the Alaska Wetlands Initiative are a fair, flexible, and effective response to the concerns that have been expressed in the State.

The major action items include:

Mitigation and No Net Loss

- issuance of a written statement that recognizes the flexibility to consider circumstances in Alaska in implementing alternatives analyses and compensatory mitigation requirements under the Section 404 regulatory program.

- issuance of a written statement that clarifies for Alaska that although the Adminstration's goal of no overall net loss of wetlands is National policy, it will not 'always be achieved on a permit by permit basis.

- developing a comprehensive mitigation strategy for oil and gas development activities on the North Slope, in cooperation with the industry and the State, in order to increase the predictability of and opportunities for wetlands mitigation efforts there.

- acknowledging pre-application mitigation efforts by publishing them in public notices, in order to address concerns regarding the acceptance of these mitigation efforts.

Permitting

- implementing Abbreviated Permit Processing Procedures for water, wastewater, and sanitation facilities in Alaskan villages, in order to respond more effectively to the needs of Native and rural communities in Alaska.

- continuing the development of General Permits, in order to efficiently allow activities with minimal individual and cumulative impacts to proceed without individual permit authorization.

- publicizing the availability, for public review, of cumulative impacts evaluations for General Permits, in order to ensure the broadest evaluation of these data.

State, Local, and Native Roles

- establishing written partnerships with State, local, Native and other stakeholders regarding the section 404 regulatory program, in order to build on the positive communications established during the Alaska Wetlands Initiative and to establish

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a conduit for information exchange; establishing a Native liaison position in the Corps, in order to provide more effective communication on Native issues.

- placing greater emphasis on providing assistance for local wetlands planning mechanisms as they relate to the Section 404 regulatory program, in order to provide opportunities not only to identify and evaluate wetlands functions and values, but also to establish links with the wetlands regulatory program that render greater predictability in the permit process.

- coordinating strategies for outreach and education efforts, in order to provide timely and relevant information, particularly to rural and Native Alaskans.

The input of the stakeholders and comments from the public during the Alaska Wetlands initiative have been tremendously valuable in revealing where the Section 404 regulatory program can be more responsive to the concerns of Alaskans. It is important to emphasize that the Alaska Wetlands Initiative represents the beginning of an expanded dialogue between the Federal agencies and the regulated public that will continue into the future.

Please direct any inquiries on the Alaska Wetlands Initiative to EPA's Alaska Operations office at (907) 271-5083 or the Corps' Alaska District office at (907) 753-2712.

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INTRODUCTION

The Focus of the Debate

Under Section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (Corps) administers the permit program that regulates proposed discharges of dredged or fill material into waters of the U.S., including wetlands. The Environmental Protection Agency (EPA) is responsible for developing, in conjunction with the Corps, environmental criteria (Section 404(b)(l) Guidelines) that are used to evaluate- these proposed discharges. The U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) have important advisory roles.

Although the Section 404 program has been in place since 1972, several more recent actions have led Alaskans to express concerns that the Section 404 regulatory program is not responsive to the unique circumstances in the State, such as physiographic and climatic conditions that impose a short construction season and restrict the extent of developable land in some areas. In 1988, the National Wetlands Policy Forum recommended that "the nation establish a national wetlands protection policy to achieve no overall net loss of the Nation's remaining wetlands base, as defined by acreage and function, and to restore and create wetlands, where feasible, to increase the quality and quantity of the nation's wetland resource base." In February 1990, EPA and the Department of the Army (Army) signed a Memorandum of Agreement (MOA) on Mitigation, which clarified the Guidelines mitigation requirements that implicitly. seek to achieve a goal of no overall net loss of wetlands in the Section 404 regulatory program. The MOA recognized that the goal would not be met on every permit action and contained clarifying language that stated the goal may not be practicable in areas where wetlands are abundant. [1] Nevertheless, many Alaskans were concerned that the issuance of the MOA would mean an increase in the number and stringency of mitigation requirements. In January 1992, EPA and Army issued joint guidance* further clarifying the Guidelines and the MOA with respect to Alaska emphasizing "that there

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[1]Clarification of this point is made in footnote 7 of the MOA which states in part that "there are certain areas where, due to hydrological conditions, the technology for restoration or creation of wetlands may not be available at present, or may otherwise be impracticable. In addition, avoidance, minimization, and compensatory mitigation may not be practicable where there is a high proportion of land which is wetlands."

[2]January 11, 1992, Memorandum entitled"Clarification of the Clean Water Act Section 404 Memorandum of Agreement on Mitigation" from LaJuana S. Wilcher and Nancy P. Dorn.

are areas, including many locations in Alaska, where it may not be practicable to restore or create wetlands; in such cases compensatory mitigation is not required under the Guidelines." The guidance further recognizes that, "[w]here there is a high proportion of land in a watershed or region which is wetlands, it is likely that avoiding impacts to wetlands will not be practicable depending on project size and other logistical considerations."

Alaska's Wetlands

Our Nation's wetlands perform a variety of functions that include providing essential wildlife and fisheries habitat, controlling erosion, desynchronization of floods, recharging groundwater for drinking water supplies, filtering sediments and their contaminants from surface water and nonpoint sources, and providing for recreational and aesthetic enjoyment. In many cases, these wetlands functions and values easily translate to measurable social and economic figures. For example, over 90% of the commercial fishing industry's $10 billion a year National harvest depends on wetlands. Some $300 million a year is spent by hunters of waterfowl. Over 50% of the roughly 800 species of protected migratory birds rely on wetlands. Wetlands remove as much as 80-90% of sediments in floodplain wetlands, as well as over 70% of phosphorous and nitrogen from adjacent waters. Flood flows are reduced 80% in midwest basins with wetlands as opposed to those without. An estimated 50 million people spend nearly $10 billion a year in America on wetlands related recreation [3]

Alaska is estimated to have approximately 175,000,000 acres of wetlands, comprising approximately 43% of the surface area of the State: By comparison, the remainder of the U.S. contains approximately 103,000,000 acres of wetlands, comprising approximately 5% of the surface area.' In addition, much of Alaska's non-wetlands area consists of mountainous areas or more remote interior regions. Over one half of Alaska is Federally owned in National Wildlife Refuges, National Parks, National Forests, National Petroleum Reserve lands, and other designations. The State owns approximately 30%, Alaska Native Corporations own approximately 12%, and less than one percent is otherwise privately owned. Recent estimates indicate that approximately 66% of the States wetlands are found within Federally managed land, approximately 23% within State lands, approximately 11% under Native ownership, and less than 1%

[3] ***All figures from: Reilly, W.K. 1991. Testimony of Administrator, Environmental Protection Agency before the Subcommittee on Water Resources of the Committee on Public Works and Transportation, U.S. House*** of ***Representatives, October 22, 1991.***

[4] ***Frayer, WE., Hall, J. V., and Wilen, Bill O. In press. Status of Alaska Wetlands, U.S. Fish and Wildlife Service.***

otherwise privately owned.[5] The State is subject to an Arctic and sub-Arctic climate and "winter" consumes six months or more in Alaska's northern reaches. Of 550,000 residents in the State, close to half live in the City of Anchorage and the balance in some 340 small communities. Approximately 85,000 Natives reside in Alaska and well over 100,000 Alaskans conduct subsistence fishing and hunting activities.

Alaska's diverse array of wetlands possess a variety of functions and values that contribute substantially to the Nation's economy and well-being. Estuarine intertidal vegetated wetlands comprise approximately 360,000 acres [6] and are considered to be among Alaska's most valuable. Alaska wetlands also include moist and wet tundra and tundra ponds, palustrine emergent marshes, black spruce wetlands, riparian shrub communities, lacustrine littoral wetlands, and temperate rainforest Wetlands serve as valuable habitat to wildlife and fisheries, including a number of listed and candidate endangered and threatened species. Coastal and riverine wetlands are important to the salmon industry in Alaska, the State's largest nongovernmental employer, which provides approximately 70,000 seasonal and full-time jobs, and is the second leading generator of revenue (wetlands-dependent commercial and sport fishing in Alaska generate several hundred millions of dollars annually). Wetlands are not only vital to anadromous and estuarine dependent fisheries such as salmon, but also to migratory waterfowl and shorebirds, raptors, other migratory birds, marine mammals, moose, otters, and many other mammals. In addition, wetlands support subsistence fisheries for Native and rural non-Native Alaskans, as well as hunting and bird watching activities.

It is also important to note that many other activities take place in or near Alaska's wetlands. Oil and gas exploration and extraction activities, which provide a, large majority of the State's revenue, often occur in 'wetlands, including Alaska's North Slope. Mining and forestry activities commonly involve actions in wetlands as well. Other commercial and residential development in some parts of the State occurs in wetlands. In addition, recreation activities promoted by Alaska's growing tourism industry frequently are associated with wetlands.

In the past two hundred years, wetlands have declined in the lower 48 from over 200 million acres to some 103 million acres. [7] Loss rates in Alaska have been far lower, but with virtually all of the State's estimated 200,000 acre loss (less than 1%) occurring

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[5] ***Frayer, WE., Hall, J. V., and Wilen, Bill O. In press. Status of Alaska Wetlands, U.S. Fish and Wildlife Service.***

[6] ***Frayer, WE., Hall, J. V., and Wilen, Bill O. In press. Status of Alaska Wetlands, U.S. Fish and Wildlife Service.***

[7] ***Dahl, T. E. 1990. Wetlands losses in the United States 1780's to 1980's. U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C. 21 pp.***

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in the 40 years since Statehood. Coastal areas in particular, including those of Anchorage and Juneau, have sustained significant losses.

The Wetlands Regulatory Program

The Section 404 permitting program does not prohibit development in wetlands. In the U.S., as many as 60,000 discharges per year are authorized under the Section 404 program. Well over 80% of all actions subject to Section 404 are authorized by the Corps via general permits, [8] which authorize categories of activities to proceed without an individual permit application. General permits allow actions with minimal impacts to proceed with little if any administrative burden, while allowing regulators and-others to concentrate attention on activities with the potential for significant impacts. At present, there are 36 nationwide general permits that authorize such activities as placement of outfall structures, road crossings, utility line backfill, boat ramps, farm buildings, and minor discharges.

In Alaska, roughly 900 discharges are authorized annually under Section 404 (see Table 1 and Figure 1). On average, general permits account for over 70% of these authorized actions. Response times for general permits that require action by the Corps average 11 days in Alaska in comparison to the National average of 19 days. [9] In addition to the nationwide gene ra1 permits, the Alaska District currently has 21 regional general permits in effect in the State. Four general permits apply Statewide, and authorize mooring buoys, float houses, placer mining, and mariculture activities. The remaining general permits include activities such as dock construction, bank stabilization, residential fills, and commercial fills for specific regional locations such as Sitka, Anchorage, the Kenai River, Fairbanks, and Deadhorse.

Individual permits are required for only a small portion of regulated activities -- approximately 10% Nationwide The denial rate for individual permits is. approximately 6% Nationwide (approximately 1% for all authorized activities). In contrast, the denial rate is only 4% in Alaska. Although a certain percentage of these permits (approximately 35% in Alaska) may be withdrawn by the applicant," in most cases, withdrawals of individual permits are not tantamount to denial. For example, a large percentage of withdrawn actions are due to reduction of project impacts to the point that a general permit is applicable.

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[8] ***U.S. Army Corps of Engineers. 1994. FY 1993 Regulatory Statistics.***

[9] ***U.S. Army Corps of Engineers. 1994. FY 1993 Regulatory Statistics.***

[10] ***U.S. Army Cop of Engineers. 1994. FY 1993 Regulatory Statistics.***

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Individual permits are evaluated by applying environmental criteria -- the Section 404(b)(l) Guidelines ("Guidelines") -- as well as conducting a public interest review. The Guidelines detail requirements to evaluate alternatives to proposed discharges, provide for compensatory mitigation for wetlands losses, evaluate significant adverse impacts, and ensure compliance with relevant applicable State and Federal laws. The Guidelines are applied in a flexible manner -- small projects with minor impacts are subject to less rigorous permit review than larger projects with more substantial environmental impacts. In addition, the State is required to certify that a proposed activity complies with its water quality standards (i.e., Section 401 certification).

The mitigation requirements of the Guidelines outline a process that includes avoiding wetland losses where practicable, minimizing wetland impacts where avoidance is not practicable, and compensating for impacts to the extent appropriate and practicable. The term practicable is defined as "available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes."[11] Such terminology affords discretion and flexibility to the Corps to craft day-to-day decisions for highly diverse environmental, economic, and geographical conditions. This discretion has resulted in the requirement of compensatory mitigation in approximately 4% of all individual permit approvals in Alaska. [12]

The 1990 Memorandum of Agreement (MOA) on Mitigation, signed by EPA and the Department of the Army (Army), clarifies the Guidelines mitigation requirements and affirms a goal of no overall net loss of wetlands. The MOA recognizes that the goal will not be met on every permit action. In addition, the MOA contains qualifying language that states the goal may not be practicable in areas where wetlands are abundant. Moreover, in January 1992, EPA and Army issued joint guidance further clarifying the Guidelines and the MOA with respect to Alaska which emphasized "that there are areas, including many locations in Alaska, where it may not be practicable to restore or create wetlands, in such cases compensatory mitigation is not required under the Guidelines," and that "[w]here there is a high proportion of land in a watershed or region which is wetlands, it is likely that avoiding impacts to wetlands will not be practicable depending on project size and other logistical considerations."

The record of the Section 404 program in Alaska relative to the goal of no overall net loss of wetlands demonstrates the flexibility of the goal to reflect the circumstances found in the State. For example, in Fiscal Year 1993, the Alaska District Corps authorized the filling of 1,092 acres of wetlands while only 226 acres of compensatory

[11] ***40 CFR Part 230.3(q)***

[12] ***U.S. Army Corps of Engineers. 1994. FY 1993 Regulatory Statistics.***

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mitigation were required.[13] This record indicates that circumstances in Alaska such as climate, geography, permafrost, and other factors, have precluded attainment of no net loss of wetlands through restoration and creation of wetlands in the Section 404 regulatory program.

While the above statistics concerning wetlands and wetlands permitting in Alaska and the Nation do not describe the sum total of Alaska's special characteristics and circumstances or the state of the Section 404 program, they do provide an important quantitative component and factual context for the conclusions reached in this Summary Report.

The Alaska Wetlands Initiative Process

On August 24, 1993, the Clinton Administration issued a plan for protecting America's wetlands that consists of a comprehensive package of regulatory improvements and non-regulatory policies. The package supports: the interim goal of no overall net loss of the Nation's remaining wetlands, an efficient, fair, flexible, and predictable regulatory program; non-regulatory programs such as advance planning, wetlands restoration, and public-private cooperative efforts; partnerships with State, Tribal, and local governments; and policies based upon the best scientific information available.

Of more than forty actions and recommendations applicable Nationally, many of which are of value, in improving or clarifying wetlands efforts in Alaska, the Administration plan contains two provisions pertaining specifically to the State. Due to the potential significant adverse environmental consequences associated with issuance of a final Alaska 1% rule, the Administration announced that the proposal would be withdrawn." However, recognizing the need to address Alaska-specific concerns in a fair, flexible, and efficient manner, the Administration plan committed EPA and the

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[13] ***U.S. Army Corps of Engineers. 1994. FY 1993 Regulatory Statistics.***

"On August 9, 1991, the Bush Administration issued a wetlands plan that contained provisions to "improve and streamline the current regulatory system." To address the concerns of Alaskans, one element of the plan provided that "States with less than a 1 percent historic rate of wetlands development will be able to satisfy permit requirements through minimization." In November 1992, the "Alaska 1% rule" was proposed to exempt wetlands in Alaska from certain mitigation requirements until one percent of State's wetlands had been developed. EPA received over 6,500 comments on the proposal Nationwide, of which over 80% objected to issuance of a final rule. Over 60% of commentors from Alaska supported the proposed rule. The proposed "Alaska 1% rule" is being withdrawn concurrently with the issuance of this Report. Notice of this withdrawal is being published in the Federal Register.

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Corps to meet with Federal resource agencies, State and local governments, representatives of Native villages, industry groups including oil and fishing interests, and environmental groups to consider other environmentally appropriate means to assure regulatory flexibility and the feasibility of alternative permitting procedures in Alaska.

On October 12, 1993, the EPA and the Corps in Alaska announced the Alaska Wetlands Initiative and invited a diverse and comprehensive group of stakeholders to participate in a series of independently facilitated meetings in Juneau, Bethel, Fairbanks, and Anchorage in late October and early November (see Table 2). The two-day meetings offered the opportunity for stakeholders to make uninterrupted presentations, as well as to discuss concerns in a roundtable format. Stakeholders represent&g Commercial Fishing (United Fishermen of Alaska), Development (Resource Development Council for Alaska), Environment (National Wildlife Federation), Forestry (Alaska Forestry Association), Municipal Government (Alaska Municipal League), Natives (Alaska Federation of Natives), Oil and Gas (Alaska Oil and Gas Association), Sportfishing (Alaska Sport-fishing Association), the State (Office of the Governor), and Tourism (Alaska Visitors Association) were invited. In addition, the Department of Energy was represented, as well as the USFWS and NMFS who alternated representatives.

The public was also invited to attend these meetings, make an oral statement at the close of each, submit written comments, and participate in a Statewide teleconference linking 20 locations throughout Alaska. Moreover, approximately 1,500 letters were mailed to Alaskans who over the last several years had applied for Section 404 permits, to survey their opinion of their experience with the regulatory program.

The purpose of the Alaska Wetlands Initiative was to identify legitimate concerns with the Section 404 regulatory program and to develop solutions to those concerns. Although achieving consensus was not the goal, the intent of gathering the stakeholders was to ensure that focussed discussions among Alaska's major interest groups would occur, allowing the participants to develop a common understanding of issues and to propose workable solutions. In addition, the number and variety of opportunities for public comment were provided to ensure that the process would consider the individual opinions of Alaskans who wished to express themselves independent of a particular stakeholder. The meeting locations were selected not only to maximize the opportunity for the public to attend, but also to ensure that stakeholders' "home" regions of the State were included (e.g., Bethel for Native interests, Juneau for forestry interests). The expedited timeframe for the process was requested by numerous participants and reflected a desire to complete the effort prior to the upcoming field season, as well as to make the final results available prior to legislative consideration of the Clean Water Act.

As a result of the meetings and public comments received, a series of 11 draft issue papers for public review was developed by EPA and the Corps, in conjunction with

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the other Federal agencies.[15] The Federal agencies contributed in the stakeholder meetings and in the development of the Alaska Wetlands Initiative products due to their direct responsibilities in the Federal wetlands program. Each draft issue paper included a general background discussion of that issue, a summary of the stakeholder and public comments received, an analysis, and a set of proposed recommendations for discussion. This series of draft issue papers, which was distributed on December 17, 1993, served as the focus of discussion at a final set of stakeholder meetings that was convened in January 1994. At that time the Corps and EPA sought further, more focussed input from the stakeholders on how well the draft issue papers characterized their concerns and how well the proposed recommendations for discussion responded to those concerns. The public was invited to these meetings, provided with an open microphone opportunity at the conclusion of each meeting, and encouraged to comment in writing on the draft issue papers.

Following the January meetings and public comment period, which closed February 4, 1994, the Federal agencies reviewed the stakeholder and public comment record and developed a draft Summary Report The draft Summary Report summarized the major comments of the stakeholders and the public, as well as conveyed the findings of the Federal agencies and the action items that the agencies intended to undertake. Many of the proposed recommendations for discussion identified in the December 1993 draft issue papers were adopted for inclusion in the draft Summary Report After careful consideration, other recommendations were not included or were adopted in a modified form. The draft Summary Report was distributed to stakeholders for review and comment on March 28, 1994.

The agencies received over 100 pages of comments representing seven of the ten non-Federal stakeholders participating in the Initiative. The scope and extent of comments reflect the significant and valuable input provided by the stakeholders throughout this process and is greatly appreciated by the agencies. The Summary Report was subsequently revised to incorporate stakeholder comments which have contributed significantly in developing a more balanced document. A summary of the comments and response to major issues has also been prepared and is available in the public docket. Development of the final Summary Report was coordinated with the Administration's Interagency Working Group on Wetlands.

[15] ***Unless otherwise noted, the term "Federal agencies" refer: to the four primary agencies involved in the Alaska Wetlands Initiative: the Environmental Protection Agency, the Army Corps of Engineers, the Fish and Wildlife Service, and the National Marine Fisheries Service.***

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Table 1. Alaska District and National Clean Water Act Section 404 permit statistics (NA = No data available). [1]

FY 1993 statistic	Alaska District	Nation
Individual Permit Applications Received'	356	8785
Individual Permits Issued	251	3909
Individual Permits Denied	14	421
Individual Permits Withdrawn	114	4910
Individual Permits Requiring Compensatory Mitigation	11	NA
General Permits Authorized [3]	654	33,633
Acres of Wetlands Filled (All Authorizations)	1,092	11,600
Acres of Compensatory Mitigation Rewired	226	15,200
Average Days of Evaluation Time (General Permits)	11	19
Average Days of Evaluation Time (Individual Permits)	106	162
Average Days of Evaluation Time (All Authorizations)	37	35

[1] ***Includes combined Section 404/Rivers and Harbors Act Section 10 permits; information from Corps quarterly reports.***

[2] ***1ncludes only those applications received in FY 1993.***

[3] ***1ncludes only those general permit-s that were verified by the Corps.***

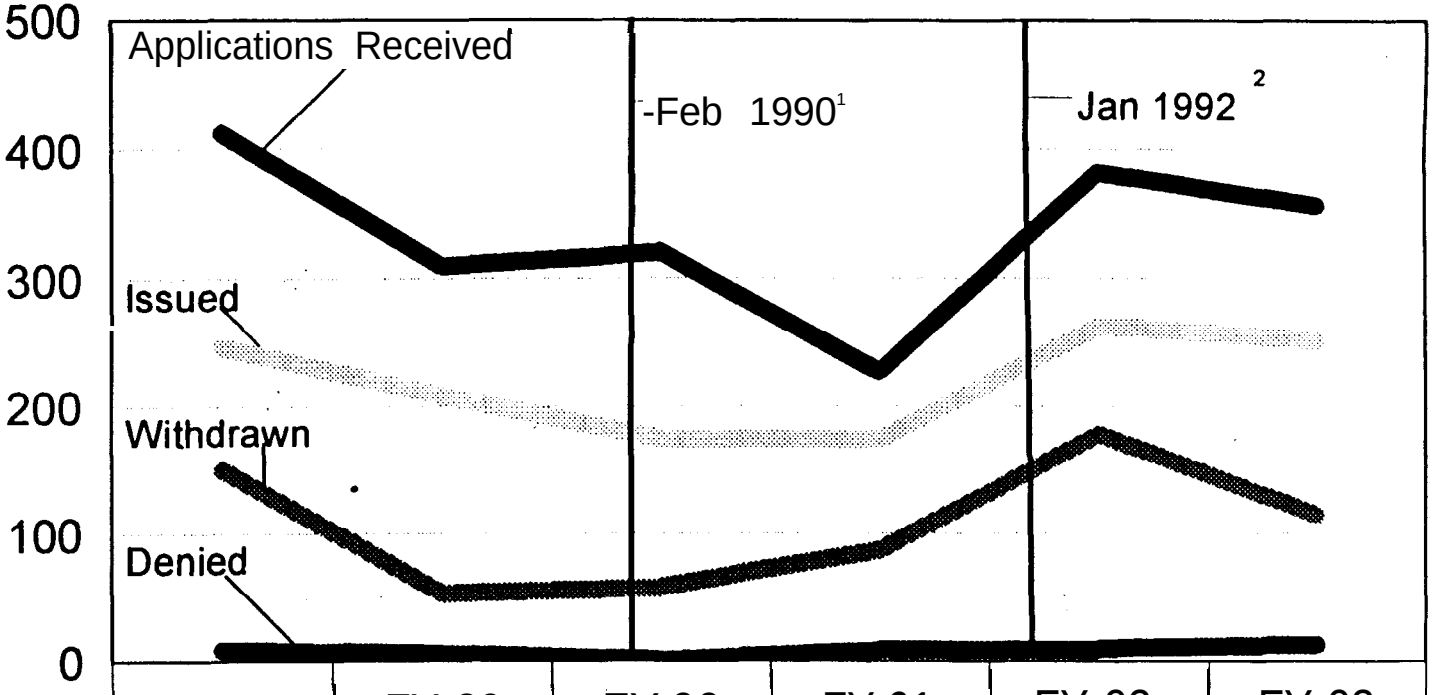
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ALASKA DISTRICT TRENDS

Figure 1.

Section 404 and 10/404 Individual Permits



	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
Applications Received	412	309	320	227	382	356
Issued	247	208	174	173	263	251
Withdrawn	150	53	58	87	178	114
Denied	9	6	1	9	10	14

[1]Army/EPA signed mitigation memoradum of agreement.

[2]Army/EPA provided clarification to Alaska regarding Section 404 mitigation requirements.

Table 2. Key dates and actions of the Alaska Wetlands Initiative.

Date	Action	Participation
October 12, 1993	Initiative formally announced	Stakeholders and public invited
October 25 - November 4, 1993	First round of stakeholder meetings held; oral public comments accepted	Stakeholders and public participated
November 12, 1993	Survey mailed to past permit applicants	1500 people contacted
December 4, 1993	State-wide teleconference held; first public comment period closed	20 locations tied-in; about 100 total comments received
December 17, 1993	Draft issue papers distributed to stakeholders and public	Stakeholders and public invited to comment
January 4-13, 1994	Second round of stakeholder meetings held; oral public comments accepted	Stakeholders and public participated
February 4, 1994	Second public comment period closed	Over 1900 total comments received
March 28, 1994	Draft summary report distributed to stakeholders	Stakeholders invited to comment
April 11, 1994	Final comments accepted from stakeholders	Stakeholder comments received
May 13, 1994	Final Summary Report distributed	Copies provided to stakeholders and public

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A COMPREHENSIVE RESPONSE TO THE ISSUES

A number of major issues were raised during the stakeholder discussions and in the public comments regarding the wetlands regulatory program in Alaska. Many perspectives on these various issues were shared. [16] After listening to the concerns raised by the stakeholders and reviewing public comments, the Federal agencies organized their responses into 11 issue areas, which correspond to those presented in the issue papers. These include the mitigation sequence; compensatory mitigation; no overall net loss of wetlands goal; alternative permit processing procedures; the individual permit process; State, local, and Native roles; advance planning and watershed management; wetlands inventory, classification, and categorization; outreach and education; special Alaska circumstances -- physical environment; and special Alaska circumstances -- legal issues.

Presented below are descriptions of the issues, key comments raised by the stakeholders and public on those issues, and the Federal agencies' response. Alaska-specific actions that the Federal agencies will implement to address the concerns of Alaskans are presented. In addition, provisions of the Administration's August 24, 1993, Wetlands Plan are listed where they are relevant to addressing concerns raised in Alaska. The term "commentor" refers to stakeholders or members of the public who presented information or opinions. Each of the 11 issue areas includes Alaska-specific action items. Where these action items address more than one issue area, they are only described in detail once, and subsequently referenced by title under the additional relevant issue area.

I. The Mitigation Sequence

The mitigation sequence refers to the Section 404 requirement to first avoid impacts to wetlands to the extent practicable, then minimize those impacts that cannot be avoided, and lastly to compensate (e.g, restore other wetlands) for any unavoidable impacts where appropriate and practicable. Many commentors were concerned with the "predictability" of having projects permitted, given the requirements to avoid, minimize, and then compensate for wetlands losses. Many were concerned how these requirements reflect the extent of wetlands and other circumstances in Alaska. A concern shared by

[16] ***For a complete summary of the issues, including stakeholder and public comments, please refer to the Alaska Wetlands Initiative Final Issue Papers. For the complete set of ail public comments received, the independent facilitator3 reports, and other background information please contact EPA's Alaska Operations Office or the Corps Alaska District to review the Alaska Wetlands Initiative docket.***

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many was that the mitigation sequence is "too rigid" for use in Alaska, due to physical, climatological, and social circumstances that are unique to the State (e.g., due to Alaska's abundance of wetlands, some argued that avoidance is not practicable in some regions of the State). Others were concerned that stringent requirements for avoidance and compensatory mitigation would prevent villages from providing public service and infrastructure needs (e.g., sanitation, safe drinking water) available to the vast majority of the lower 48 States, but which are often absent in much of the 49th State. Many cornmentors recommended modifying or waiving the mitigation sequence for all, or portions, of the State and/or certain activities.

Other commentors expressed concern that many of the suggested exemptions from the mitigation sequence would result in losses of high-value aquatic resources, and that unmitigated losses in these areas would have substantial environmental impacts. These commentors considered wide-scale exemptions unacceptable, and recommended that analysis continue on a permit-by-permit basis. They added that the sequence is both reasonable and flexible, pointing to the requirement that only "practicable" mitigation steps need be taken. Another expressed concern that impacts on eco-tourism and recreational values do not receive enough consideration in mitigation decisions. Some believed that avoidance and minimization efforts taken prior to applying for a permit are not being recognized. Others felt that modifications to the mitigation sequence were not currently necessary, but may become so if the sequencing requirements are applied differently in the future.

On the basis of the Initiative record, the Federal agencies conclude that the mitigation sequence functions in Alaska, as elsewhere, to provide a sound framework for ensuring that the level of environmental impacts of any permitted action are acceptable. The Federal agencies do not believe that broad exemptions from the mitigation sequence are necessary to accommodate circumstances in Alaska, given the inherent flexibility provided by the Guidelines, the Corps permit regulations, and associated guidance (e.g., the 1990 Army-EPA Memorandum of Agreement on Mitigation and the 1993 Corps-EPA Guidance on Mitigation Banking). However, the Federal agencies do believe that clarification of how the mitigation sequence applies in Alaska would be valuable.

The Administration's Wetlands Plan endorses several initiatives related to the mitigation sequence that are applicable in Alaska. Specifically, as part of the Plan, guidance concerning the flexibility of the Section 404(b)(l) Guidelines was issued. That guidance recognizes that all wetlands are not of equal value and clarifies that small projects with minor impacts 'are subject to less rigorous permit review than larger projects with more substantial environmental impacts. The Plan also provides for the issuance of mitigation planning guidance, as well as for the development of improved analytical tools for the assessment of wetlands functions and values.

US EPA ARCHIVE DOCUMENT

Alaska Wetlands Initiative actions are described below. In addition to these, the Federal agencies will issue public information materials on the mitigation sequence (see recommendation in Outreach and Education on page 24).

1) Issue a written statement that recognizes the flexibility afforded in the Section 404(b)(l) Guidelines to reflect circumstances in Alaska in implementing alternatives analysis and compensatory mitigation requirements. Concerns were expressed that avoidance and compensatory mitigation requirements in the Guidelines do not effectively recognize that "all wetlands are not equal" and do not allow sufficient flexibility to address circumstances found in Alaska such as climatological conditions or the extent of wetlands. In order to respond to these concerns, EPA and Army have issued-today a written statement (Attachment I) clarifying existing National policy regarding mitigation requirements under the Section 404(b)(l) Guidelines and how this National policy is implemented to reflect circumstances in Alaska. The statement includes a discussion of flexibility in the Guidelines that recognizes that the level of detail required. in the analysis of alternatives is related to the nature of potential impacts, such that small projects with minor impacts are subject to less rigorous review than larger projects with greater associated impacts. The statement further emphasizes that compensatory mitigation is only required to offset impacts of discharges in circumstances where it is appropriate and practicable to do so. The statement provides greater predictability to the Section 404 program by including specific examples that reflect experience in Alaska regarding the practicability of avoiding and compensating for wetlands losses.

2) Acknowledge pre-application mitigation efforts. In order to address concerns regarding the acceptance of pre-application mitigation efforts, the Corps has recently begun documenting these forms of mitigation in public notices. These efforts may be developed by the applicants themselves ***or*** preferably through pre-application discussions with the Corps and interested resource agencies. The Corps and the Federal agencies will consider efforts made by appli cants to address avoidance and minimization in their early project planning and will recognize legitimate efforts in determining individual permit conditions and decisions.

3) Encourage greater use of advance planning that incorporates consideration of the mitigation sequence. In order to increase the predictability of mitigation requirements, beginning immediately the Federal agencies will encourage incorporation of the mitigation sequence into advance plans, consistent with Administration emphasis on planning mechanisms and with the Memorandum of Agreement on Mitigation. The mitigation sequence is considered satisfied when proposed mitigation is in accordance with specific provisions of a Corps-EPA approved comprehensive plan that ensures compliance with the Section 404(b)(l) Guidelines. For example, watershed plans, advance identification, special area management plans, and State coastal zone management plans provide the opportunity to incorporate consideration of the

US EPA ARCHIVE DOCUMENT

mitigation sequence. Such plans can result in information on the suitability of development in specific areas and the issuance of general permits in others.

II. Compensatory Mitigation

Compensatory mitigation refers to those actions, such as restoration and creation of wetlands, that are designed to offset permitted wetlands losses. Some commentors believed that compensatory mitigation should never be required in Alaska, while others felt that there is currently not enough compensation provided, especially for the loss of high-value wetlands such as coastal and riparian wetlands. Some felt that creation and restoration of wetlands is not feasible in Alaska, given the lack of potential compensatory mitigation sites and the limited success in restoring certain wetlands types. Others emphasized that recent statistics established that a far lower level of compensatory mitigation has been required in Alaska than in the lower 48 states. Others supported the implementation of "mitigation banking," the establishment of an area as a site for consolidated mitigation efforts performed in advance of permitting. Suggestions for inclusion in the mitigation banking concept included enhancement, restoration,. and preservation. There was disagreement over whether or not mitigation and mitigation banking, if pursued, should extend outside the State.

In response to these comments, the Federal agencies emphasize that compensatory mitigation is only required when appropriate and practicable, as described in the 1990 MOA on Mitigation and the 1992 Memorandum providing clarification to Alaska on the MOA. The record demonstrates that for Alaska, the overwhelming majority (greater than 95%) of permits issued have not required compensatory mitigation. The Administration has determined that mitigation banking is a valuable concept and should be explored throughout the Nation, including Alaska. In addition, the Federal agencies conclude that compensatory mitigation will not be required outside of Alaska to offset impacts to wetlands inside the State and compensatory mitigation will not be required in Alaska for impacts occurring in other States.

The Administration's Wetlands Plan endorses several initiatives related to compensatory mitigation that are applicable in Alaska. Specifically, the Plan endorses the use of mitigation banking in the Section 404 program, included issuance of mitigation banking guidance, and commits to issuing mitigation planning guidance.

Alaska Wetlands' Initiative actions are described below.

1) Pursue opportunities to initiate a mitigation banking pilot project. In order to assess the practicability of mitigation banking in Alaska, the Federal agencies in Alaska will work with an interested party and the State, as well as research, development, and other interests, to pursue opportunities to initiate a mitigation banking pilot project in Alaska. Potential parties could include municipal governments, Native corporations or

US EPA ARCHIVE DOCUMENT

villages, or a State agency. The pilot project will evaluate the feasibility of using mitigation banking in Alaska, improve our understanding of technical considerations involved in developing Alaska mitigation banks, and establish the basis for broader application in Alaska, where feasible. These efforts will be consistent with the Administration's guidance on mitigation banking.

2) Assess the effectiveness of mitigation techniques in Alaska. In order to ensure that only mitigation likely to be successful is required of permit applicants, within 180 days the Federal agencies in Alaska, in coordination with the Corps Wetlands Research Program, will work with interested parties to develop a program to assess the effectiveness of various mitigation techniques in Alaska. This program will concentrate on those geographic areas and types of activities associated with the resources most at risk in the State, and utilize local data and knowledge where available. As a first step, the agencies will develop a standard data format for reporting results of field inspections and methods for improving communication concerning the effectiveness of the mitigation measures implemented. The agencies will assess the literature available with the goal of refining mitigation techniques applied in Alaska. The results of the assessment program will guide permitting decisions away from unnecessarily requiring or accepting typically unsuccessful forms of mitigation and toward forms which have proven to be more successful.

3) Develop a comprehensive mitigation Strategy for oil and gas development activities on the North Slope. In order to increase the predictability of and opportunities for wetlands mitigation efforts on the North Slope, the Corps, in conjunction with the other Federal agencies and in active coordination with the oil and gas industry, the State, and other interested participants, will develop a program to comprehensively address mitigation of wetland fills on the North Slope. The program will incorporate the concept of "accelerated rehabilitation," as well as provide a mechanism for restoring wetlands on the North Slope filled prior to implementation of the Section 404 permit program, to mitigate for future impacts to wetlands there. Future oil and gas activities on the North Slope requiring Section 404 permits will be reviewed under this strategy for opportunities to restore wetlands. In the interim, the actual rehabilitation of existing sites will continue.

4) Explore application of bonding procedures for permit requirements. In order to improve performance, of permit requirements, within 180 days the Corps Headquarters will work with the Alaska District to clarify the legal and logistical conditions for establishing bonding procedures. Since follow-through is essential for ensuring adequate compliance with permit requirements, such as restoration, a bonding system will help protect against default on such requirements. In addition, bonding mechanisms should facilitate more timely decision making, particularly in circumstances where questions regarding mitigation success have delayed decisions. It is anticipated that bonding would not be applied on all permits, but in general only where permits have authorized

US EPA ARCHIVE DOCUMENT

activities with actual or potential substantial adverse impacts on wetlands. Moreover, the Corps does not intend to duplicate existing Federal or State permit bonding programs, and will include a review of existing programs in the development of these procedures.

III. No Overall Net Loss of Wetlands Goal

"No overall net loss of wetlands" is an articulation of the goal for the United States that wetlands gains, through such activities as creation and restoration, will at least be equivalent to wetlands losses, in terms of quality and quantity. Of concern to many commentors was the potential for what was termed a "strict application of the no net loss of wetlands goal in Alaska" (i.e., acre-for-acre restoration or creation-required for every permit). There was a perception that the National no overall net loss of wetlands goal equates only to acre-for-acre restoration or creation required for every Section 404 permit, despite the goal's emphasis on functions and values, the Guidelines requirement of practicability, and the wetlands loss/gain record of the regulatory program in Alaska. Some cornmentors cited the record on wetlands restoration and creation required in permits versus the total amount of wetlands lost as evidence that the no net loss of wetlands goal was not at all evident in Alaska.

The Administration's Wetlands Plan affirms the interim goal of no overall net loss of the Nation's remaining wetlands and the long-term goal of increasing the quality and quantity of the Nation's wetlands resource base. To affirm the Administration's commitment to no overall net loss of the Nation's wetlands, the Administration will issue an Executive Order embracing the goal. This National goal is a component of the Section 404 regulatory program and, as discussed in the 1990 MOA on Mitigation, is applied on a permit by permit basis. This goal does not mean that acre-for-acre creation or restoration of wetlands will be required for every individual permit approved. Because compensatory mitigation is required only where appropriate and practicable, in Alaska last fiscal year only 226 acres of compensatory mitigation was required for 1,092 acres of wetlands that were authorized to be filled.

The Administration supports the goal of no net loss within the regulatory program. However, the no overall net loss of wetlands goal is broader than the Section 404 regulatory program. The Administration recognizes that efforts such as broad wetlands restoration programs and mitigation for Federal projects are necessary to achieve the no overall net loss of wetlands goal.

The Administration's Wetlands Plan endorses a number of initiatives related to the no overall net loss of wetlands goal that are applicable in Alaska. Specifically, the Plan includes developing improved analytical tools for wetlands functional assessment, supporting the concept of mitigation banking, issuing mitigation banking guidance, and issuing mitigation planning guidance.

US EPA ARCHIVE DOCUMENT

In response to the comments received, the Federal agencies will take the Alaska Wetlands Initiative action described below. In addition to this, the Federal agencies will develop a comprehensive mitigation strategy for oil and gas development on the North Slope (see recommendation in Compensatory Mitigation on page 13), assess the effectiveness of mitipation techniques in Alaska (see recommendation in Compensatory Mitigation on page 13), and EPA and the Army Corps have issued a written statement that recognizes the flexibility afforded in the Section 404(b)(l) Guidelines to reflect circumstances in Alaska in implementing alternatives analysis and compensatory mitigation requirements (see recommendation in The Mitigation Sequence on page 11 and Attachment 1).

1) Issue written statement claritify that although the Administration's goal of no overall net loss of wetlands is National policy. it will not always be achieved on a permit by permit basis. In order to respond to the concern that the goal of no overall net loss of wetlands must be achieved for each Section 404 permit in Alaska, the EPA and Army Corps have issued today a written statement (Attachment 2) clarifying how the goal of no overall net loss is applied and implemented. The statement affirms the commitment to the interim goal of no overall net loss of the Nation's wetlands. The statement acknowledges that, in striving to contribute to this National objective, the Section 404 program seeks to offset permitted losses of wetlands through compensatory mitigation such as creation or restoration. Compensatory mitigation is required in circumstances where it is determined to be "appropriate and practicable." Experience with the, Section 404 program in Alaska has demonstrated that due to climatological and physiographic conditions in Alaska, compensatory mitigation is often not practicable. The statement provides National clarification that while the goal applies Nationally, and its applicability must be determined on a case-by-case basis, it will not always be achieved in every permit.

IV. Alternative Permit Processing Procedures

Alternative permit processing procedures include mechanisms other than individual permit processing that provide a streamlined means for permit review and permit decisions. Many cornmentors favored expanding use of alternative permit processing procedures to reduce permit process time frames, as long as environmental safeguards were maintained. General Permits (GPs) and Abbreviated Permit Processing Procedures (APPs) received the most attention as alternative processes. There was support for GPs and APPs as effective ways to reduce regulatory burdens and there were statements that they worked well in Alaska. Opposition to GP and APP usage focussed on the concern that there is a lack of a credible cumulative impact analysis prior to GP issuance and insufficient follow-up or monitoring to determine permit compliance and reliability of cumulative impact predictions. Many of these commentors were concerned that significant impacts might be occurring under existing GPs and APPs.

US EPA ARCHIVE DOCUMENT

Following consideration of these comments, the Federal agencies conclude that continued use of such permitting mechanisms as GPs and APPs, with regular evaluations of their impacts, efficiently allows actions with minimal impacts to proceed with little burden on the regulated public, while allowing regulators and others to concentrate attention on activities with a greater potential for significant impacts. In fiscal year 1993, over 70% of all actions permitted in Alaska were authorized under GPs. The average evaluation time for these GPs was 11 days. The agencies note, however, that GPs can only be developed for categories of activities that would have minimal environmental impacts both individually and cumulatively.

The Administration's Wetlands Plan highlights a number of initiatives related to alternative permit processing procedures that are applicable in Alaska. Among them are encouraging advance planning efforts, which can be linked to regulatory decision-making, as well as regionalizing existing Nationwide Permit 26 for activities in isolated waters and in headwater areas.

Alaska Wetlands Initiative actions are described below.

1) Implement Abbreviated Permit Processing Procedures for water, wastewater, and sanitation facilities in Alaskan villages. In response to concerns raised by rural and Native Alaskans, the Corps, in cooperation with EPA, USFWS, and NMFS, will implement Abbreviated Permit Processing Procedures (APP) issued on March 31, 1994, to expedite the processing of permits for discharges associated with water, wastewater, and sanitation facilities, including associated support facilities such as access roads and fill pads, for communities throughout Alaska. The APP is designed to provide authorization for eligible projects within 15 calendar days of receipt of a complete application. In implementing this APP, the Corps expects to respond more effectively to the needs of Native and rural communities in Alaska to build and upgrade critically needed water, wastewater, and sanitation facilities. If experience with this APP demonstrates that changes to the process are necessary, or that appropriate general permits could provide additional streamlining while ensuring effective resource protection, the Corps will pursue these options in coordination with the public. Likewise, the Federal agencies recommend investigating additional opportunities for APPs and GPs where these permits and procedures improve the regulatory program's efficiency.

2) Continue the development of General Permits. In order to facilitate the most efficient handling of regulated activities, the Corps, in cooperation with EPA, USFWS, and NMFS, will continue the development of additional General Permits (GPs) that allow actions with minimal individual and cumulative impacts to proceed without individual permit authorization. The Corps will consider the suitability of GPs, where they do not already exist, for such activities as the construction of schools and medical clinics in Native and rural Alaskan communities. Alaskans are encouraged to identify

US EPA ARCHIVE DOCUMENT

categories of activities that they believe have minimal individual and cumulative environmental impacts and would be appropriate for GPs, as well as to review and comment on all proposed GPs when those permits are publicly noticed. The Corps, in cooperation with the Federal agencies, will monitor the use of GPs to ensure that appropriate environmental protection measures are implemented.

3) Publicize availability. for public review. of cumulative impacts evaluations for General Permits. In order to ensure the broadest evaluation of General Permit (GP) impact data, beginning immediately the Corps will take the following actions: 1) for proposed new GPs, the Corps will make its cumulative impact estimates and analysis available 'for public review prior to making a final decision on GP implementation and 2) for renewals, extensions, or expansions of existing GPs, the Corps will make its cumulative impact results and analysis available for public review prior to deciding whether to renew a GP. The analyses will describe the extent of monitoring done for specific GP authorizations, compare actual GP impacts to those predicted prior to the GP's implementation, and provide an updated cumulative analysis of expected future impacts. GPs may be revoked based on these cumulative impact analyses.

V. The Individual Permit Process

The individual permit process is the procedure used to evaluate projects that have more than a minimal adverse environmental effect, Although there was some recognition of recent improvements; there was a belief among many commentors that the individual permit process took too long without concomitant environmental benefit. Others expressed concern over how applicants were supposed to respond to public and advisory agency comments on their permit applications. Some emphasized the importance of an individual permit process that involves significant public input and that certain proposed permits necessitate a very thorough review before they are acted upon. Some also believed that the Corps lacked sufficient staff to handle its workload.

Permitting figures demonstrate that Alaska has experienced fewer delays and denials, and required less compensatory mitigation than the National average. However, the Section 404 permit process has taken too long to complete in certain instances. The average evaluation time for an individual permit in Alaska is 106 days The reasons for these delays vary and are typically due to obtaining information for an application to be complete and assessing comments from the public and Federal, State, and other organizations. The Federal agencies believe that in order to be efficient and fair, time limits should be placed on permit evaluation and decision-making.

The Administration's Wetlands Plan highlights a number of initiatives related to the individual permit process that are applicable in Alaska. These include establishing deadlines for permit actions, adopting an appeals process for jurisdictional

US EPA ARCHIVE DOCUMENT

determinations, permit denials, and administrative penalties, and issuing Section 404 flexibility guidance.

Alaska Wetlands Initiative actions are described below.

1) Render individual permit decisions within 90 days consistent with final regulations. In response to concerns over delays in the permit process and consistent with the Administration's Wetlands Plan provision on permit deadlines, the Corps, upon completion of a National notice and comment rulemaking process will render decisions on individual permit applications within 90 days, or within 60 days in the context of an approved wetlands or watershed plan (unless precluded by other laws); Because climatological and physiographic circumstances in Alaska allow limited time for conducting permitted activities in wetlands, the Corps will inform potential permit applicants of the need to supply all necessary information with sufficient lead time to make a permit decision in advance of the applicant's proposed commencement of the activity.

2) Conduct exit polls or interviews with permit applicants. Consistent with a recent Corps initiative to obtain feedback on the regulatory program, the Corps Alaska District will send a questionnaire to all permit applicants requesting their comments on the regulatory process. The questionnaire will note the availability of an oral exit interview, if desired by the permit applicant. The information gathered will be used to identify concerns with the regulatory program in Alaska and to make appropriate improvements.

3) Seek sufficient regulatory resources to ensure timely decision making. In order to effectively implement the wetlands regulatory program, the Administration will seek sufficient resources for each agency involved in administering the Section 404 permit program in Alaska. Each agency will move to assure that its organizational structure 'promotes efficient administration of the program.

4) Clarify for applicants which comments from letters received as part of the Corns' public notice process require response. In response to concerns that applicants have expended time and energy addressing comments that were not germane to the permit decision, the Corps has recently begun forwarding to the applicants only those comment letters which are relevant to the permit decision, including all comments from EPA, USFWS, and NMFS. In addition, the Corps transmittal letters will clarify that the applicants shall, after reviewing the comment letters, contact the Corps project manager to facilitate any needed communications or meetings with commenting parties. If desired, an applicant can request all of the comment letters received in response to the public notice on their application. In accordance with current regulations and practice, the Corps will consider all relevant comments when making a permit determination.

US EPA ARCHIVE DOCUMENT

VI. State, Local, and Native Roles

State, local, and Native roles include those wetlands activities, ranging from assumption of the permit program to developing a comprehensive plan, in which these entities assume a greater role in the wetlands regulatory program. The divergent comments on how the role of State and local governments and Native corporations, villages, and Tribes can be improved in the protection and regulation of Alaska's wetlands included those that believed the State and local governments and Native Alaskans need a stronger voice in the decision-making process to those that stated there is general distrust of the State and local governments ability to carefully implement their regulatory authority. Some commentors stated that the government does not use the Native and local knowledge base adequately in its-evaluation of resource values. Others commented that the State's coastal zone management program provides protection to the State's coastal wetlands. It was generally regarded, however, that if based on solid data, wetlands planning mechanisms offered the opportunity for State and local governments and Native villages and corporations to combine better wetlands protection with a more streamlined regulatory program.

The Federal agencies conclude that the role of the State, Native corporations and villages, and local governments should be increased in the wetlands program. Wetlands regulatory and planning efforts must include strong local participation to be successful. The Federal agencies recommend that these wetlands planning activities be integrated to the extent practicable with/other local planning efforts, and make maximum use of local, knowledge and data. The Federal agencies note that State, local, and Native wetlands planning mechanisms tied to the Section 404 regulatory process provide benefits such as increased predictability in the outcome of permit applications, a streamlined regulatory process, and more comprehensive identification and protection of wetland resources. To the extent the State's coastal zone management program can be further coordinated with the Section 404 permit process, it would be beneficial. If Alaska wishes to pursue assumption of the Section 404 program, EPA will provide technical assistance to the State.

The Administration's Wetlands Plan highlights a number of initiatives related to State, local, and Native roles that are applicable in Alaska. These include providing incentives for States, Tribes, and local governments to conduct watershed planning, issuing guidance specifying how these governments can take more of a leadership role in wetlands protection, and encouraging State and Tribal assumption of the Section'404 program.

Based on a review of the comments, the Federal agencies will take the Alaska Wetlands Initiative actions described below. In addition to these, the Federal agencies will implement Abbreviated Permit Processing Procedures for water, wastewater, and sanitation facilities in Alaskan villages (see recommendation in Alternative Permit

US EPA ARCHIVE DOCUMENT

Processing Procedures on page 16) and place greater emphasis on providing assistance for wetlands planning mechanisms as they relate to the Section 404 regulatory program (see recommendation in Advance Planning and Watershed Management on page 22).

1) Establish written partnerships between the Federal agencies and all interested stakeholders and organizations regarding the Section 404 regulatory program. In order to build upon the positive communications established during the Alaska Wetlands Initiative and to increase the participation of State and local governments, Native corporations, villages, and others, beginning immediately the Federal agencies will seek written partnerships with interested stakeholders and organizations. The goal of these partnerships would be to improve the quality of information available-for well-reasoned decision-making. Specifically, the partnerships would express the objectives of the respective interest groups, outline how their comment letters on particular development proposals would be considered, establish a feedback mechanism for the Corps to communicate how their comments affected a particular permit decision, and state how the interest group might improve its communications on future actions of interest or concern to them. The partnerships will establish a conduit for information exchange, so that the interest group could provide educational materials to its constituents about the regulatory program, and the agencies could become more knowledgeable of the interest group's viewpoints.

2) Establish a Native liaison position within the Corps. In response to concerns regarding the need for more effective communication with Native Alaskans, understanding of Native concerns, and implementation of the wetlands program on Native lands, the Corps will pursue, in consideration of resource constraints, establishing a Native liaison position in the regulatory program. The Corps will solicit recommendations from Native corporations, villages, and other organizations for desired qualifications, roles, or personnel for the position. If such a position is established, it is anticipated that the person in this position will be responsible for ensuring effective communication with Native permit applicants, consideration of Native interests in relevant permit applications, and development of general program policy as it relates to Native Alaskans.

3) Pursue multi-lingual communications with Native Alaskans. In response to concerns over increasing the participation by Natives in the wetlands program, within 180 days the Corps will coordinate with the Alaska Federation of Natives to develop a program to communicate through multi-lingual means Section 404 program developments of particular interest to Native Alaskans. This effort will be closely coordinated with the Alaska Federation of Natives to ensure the communication methods established are responsive to the information and participation needs of the Native peoples of Alaska.

US EPA ARCHIVE DOCUMENT

4) Provide Alaska priority status in terms of funding for development of a Wetland Conservation Plan. In response to concerns over increasing the participation by the State in the wetlands program, EPA will provide Alaska priority status in terms of funding under the Wetlands Grant program for development of a Wetland Conservation Plan. A Wetland Conservation Plan or Strategy provides a framework for States to comprehensively address wetlands issues including such issues as regulation, mapping and monitoring, planning, and research.

VII. Advance Planning and Watershed Management

Advance planning and watershed management are comprehensive approaches to wetlands (and other resources) identification, protection, regulation, and other activities. In general, commentors believed that wetland planning could be used as a tool to integrate wetland protection with development needs, streamline regulatory actions, identify resource concerns ahead of time, and guide selection of areas most appropriate for development. To this end, several commentors favored directing additional resources toward wetland planning efforts. Some emphasized that wetland plans should incorporate local input to the maximum level possible, and include consideration of long-range community plans, in addition to offering appropriate levels of protection for wetlands. Others emphasized that cost is a major factor in all phases of wetland planning, and suggested that efforts should be concentrated in areas with high resource values that are subject to development pressure.

The Federal agencies believe that comprehensive wetland planning can be an effective mechanism to integrate wetlands protection with needed development projects in Alaska. Comprehensive wetland planning should be based on wetland functions and values on a watershed or ecoregion basis, and should reflect strong local participation and incorporate existing local data. An advance plan tied to the Section 404 regulatory process provides benefits such as increased predictability in the outcome of permit applications, a streamlined regulatory process, and more comprehensive identification and protection of wetland resources. Although advance planning should be comprehensive, advance planning efforts do not need to affect permit applications submitted prior to formal adoption of a plan. Wetlands planning mechanisms may include watershed plans, advance identifications (Guidelines 40 CFR 230.80), special area management plans, and others.

The Administration's Wetlands Plan contains several initiatives related to advance planning and watershed management that are applicable in Alaska. Among these are initiatives to encourage advance planning and State and Tribal wetlands conservation plans, provide incentives for State and local governments to integrate wetlands and watershed planning, and support integration of wetlands planning into the Section 404 regulatory program.

US EPA ARCHIVE DOCUMENT

Based on the comment record, the Federal agencies will take the Alaska Wetlands Initiative actions described below. In addition to these, the Federal agencies will encourage greater use of advance planning that incorporates consideration of the mitigation sequence (see recommendation in The Mitigation Sequence on page 11) and EPA will provide Alaska priority status in funding the development of a Wetland Conservation Plan (see recommendation in State, Local, and Native Roles on page 21).

1) Place greater emphasis on providing assistance for wetlands planning mechanisms as they relate to the Section 404 regulatory program. In order to increase the use of planning procedures that offer opportunities to streamline future regulatory actions, the Federal agencies will provide technical assistance to the State, local governments, and Native corporations -and villages undertaking wetlands planning efforts. The Federal agencies will continue to support identification of wetlands functions and values and cataloguing of potential restoration sites. In particular, the Federal agencies will support efforts to identify and collect wetlands data in watersheds where development is likely to occur. The Corps and EPA will also counsel planning participants on methods to link local and regional planning with the Section 404 regulatory program.

2) Develop a watershed-based demonstration project. In order to demonstrate the feasibility of watershed planning in Alaska, within 360 days EPA, the Corps, USFWS, and the National Oceanographic and Atmospheric Administration will provide technical assistance, coordination, and, subject to appropriations, help fund with State, local, and private entities, the initiation of a demonstration watershed planning project. Once the watershed is identified, EPA and the Corps will establish an interagency team to help develop a comprehensive wetlands management plan within that watershed. The goal of the demonstration project will be to determine the feasibility of watershed planning in Alaska and to serve as a model for future efforts in the State.

VIII. Wetlands Inventory, Classification, and Categorization

Wetlands inventory, classification, and categorization are several of the basic tools employed in conducting advance planning and watershed management efforts. In general, commentors agreed that protection of high value wetland resources is important, but emphasized that some wetlands are more important than others. Some expressed a need for a single classification and categorization method to be uniformly or regionally applied throughout the State, although others opposed a ranking categorization because too little is known about the functions and values of Alaska wetlands. Some noted the lack of criteria for defining high- and low-value wetlands and suggested that attributes or types of high-value wetlands should be identified. Other commentors suggested that human values, such as subsistence, recreation, and scenic viewing, should be included in the consideration of wetland values. Several commentors noted that the existing National Wetlands Inventory (NWI) maps did not provide

adequate detail for regulatory purposes and could be limited in regard to planning, Others pointed to the usefulness of NWI maps in wetlands planning efforts.

The Federal agencies support local and regional efforts to inventory, classify, and categorize wetlands in the context of watershed and wetlands planning. The Administration recognizes that while a priori categorization (e.g., "high-, medium-, or low-value") and ranking systems appear attractive, a National 3 priori categorization and ranking system is unworkable due to technical, fiscal, and environmental constraints. However, the Administration believes that appropriate functional assessment techniques can be applied on a more local scale. Local data and technology should be-integrated to the maximum extent practicable, and the technical expertise of Native corporations, municipalities, and others should be used. Reasonably foreseeable development needs can be superimposed upon wetland inventories and functional assessments, within the context of a watershed plan, to identify appropriate regulatory responses. Although NWI maps can not be used in place of jurisdictional determinations for identifying wetlands regulated under Section 404, the maps can be used on a broader planning scale for such determinations as where wetlands are likely to be of concern or where planning efforts should be prioritized or concentrated.

The Administration's Wetlands Plan contains several initiatives related to wetlands inventory, classification, and categorization that are applicable to Alaska. Among these are to provide better and more coordinated information and technical assistance on wetlands issues and to develop improved analytical tools for assessment of wetlands functions and values.

In response to the comments received, the Federal agencies will take the Alaska Wetlands Initiative actions described below.

1) Centralize wetlands information. In order to aid in the development of wetlands planning mechanisms, within 180 days the USFWS, in coordination with the other Federal agencies, will investigate means to centralize wetlands information, including that relevant to location and type, to the extent practical. Information such as maps, information on ongoing local wetlands planning efforts, and other wetlands data should be made easily accessible to the public as an educational reference and a guide to facilitate such efforts as wetlands planning. A catalogue and/or listing of the information could be a result of such centralization. This information is not intended to replace official wetland delineations, which can only be made by the Corps, EPA, or Soil Conservation Service.

2) Accelerate National Wetlands Inventory mapping in priority areas. In response to the need to hasten completion of NWI mapping, the USFWS will give priority to NWI mapping efforts in areas with high potential for development and/or areas that possess high wetland values or ecological significance.

US EPA ARCHIVE DOCUMENT

IX. Outreach and Education

Outreach and education include the public information activities of the Federal agencies. Many commentors acknowledged the confusion and misunderstanding of wetlands regulation in Alaska, and pointed to the necessity to inform and educate the public about the resource values of wetlands, what types of activities are regulated, and how to efficiently interact with the regulatory program. Some commentors believed that there was a high level of misinformation and unproductive debate about the program in Alaska and that valuable resources are spent to correct the misinformation, diverting resources from such activities as permit reviews. Some also stated that there should be greater outreach to the bush communities and local governments. Others suggested that public notices and comment periods accommodate special Alaskan language and social circumstances, such as periods of subsistence fishing and hunting. Some commentors suggested that there be a prioritization of public notices. One commentor suggested that the tourism industry could be an effective partner in educating the public on the importance of Alaska's wetlands.

The Federal agencies have reviewed the comment record and agree that accurate, relevant, and timely information exchange is vital to the Section 404 program. The Federal agencies acknowledge that a certain amount of confusion and misunderstanding of wetlands regulation remains in Alaska, and that more effective outreach efforts are needed. This is especially true in regard to communities in Alaska where social and cultural factors (e.g., English as a second language) can make timely communication difficult.

The Administration's' Wetlands Plan emphasizes outreach and education by committing to provide better and more coordinated information and technical assistance on wetlands' issues.

Alaska Wetlands Initiative actions are described below. In addition to these, the Federal agencies will establish a Native liaison position within the Corps (see recommendation in State, Local, and Native Roles on page 20), pursue multi-lingual communications with Native Alaskans (see recommendation in State, Local, and Native Roles on page 20), and establish written partnerships between the Federal agencies and all interested stakeholders and organizations regardine the Section 404 regulatory program (see recommendation in State, Local, and Native Roles on page 20).

1) Issue public information materials. In order to clarify Section 404 program requirements and related wetlands issues, beginning immediately, the Corps and EPA will issue public information materials to inform the public in a more focused manner on selected Section 404 topics. These topics would likely include Alaska wetlands functions and values; distribution, type, and relative abundance or scarcity of wetlands; regulatory program performance; important elements of the permit review process; application of

US EPA ARCHIVE DOCUMENT

the mitigation sequence in Alaska; compensatory mitigation; availability and advantages of pre-application consultation; and popular myths about the regulatory program.

2) Coordinate strategies for outreach and education efforts. In response to concerns regarding confusion and misinformation about the Section 404 program and wetlands in general, beginning immediately, the Corps and EPA, in coordination with the other Federal agencies will coordinate public education and outreach strategies in Alaska. The Federal agencies will expand their public outreach and education efforts to bush Alaska, small communities, specific target audiences, and the general public, by using the most effective means possible for the desired audience and in a manner that minimizes duplication of other agency efforts.

3) Initiate mobile regulatory information office. In order to reach communities that normally do not have direct access to regulatory personnel and information, the Corps will, for the 1994 or 1995 field season, initiate a mobile, seasonal regulatory office to provide easy access to program information by regulated communities accessible by road ("Wetlands on Wheels"). The other Federal agencies will participate as available to offer further education and outreach.

X. Special Alaska Circumstances - Physical Environment

Special circumstances relative to Alaska's physical environment include such factors as climate and physiography. Commentors noted that many bush communities (e.g., in western, northwestern, and North Slope Alaska) are predominantly located in or surrounded by wetlands and that any development often necessitates wetland use. Some commented that the Section 404 program places a heavier burden on Alaska than the rest of the country due to the abundance of Alaska wetlands, in combination with Alaska's short building season. However, these comments were often couched in future terms, e.g., the current system would be fine with some added efficiencies. A number of commentors pointed out that despite large areas of wetlands in Alaska, permitting records demonstrate that a very low percentage of permits are denied and that the denial rate is lower in Alaska than in the rest of the country. Other commentors expressed concern over how the Corps delineates wetlands. Others believed that there is a need to regionalize wetland delineation procedures, not only from a National perspective, but also within the State. Some commentors raised concerns over the treatment of forests, particularly in Southeast Alaska, that were determined to be wetlands. Others responded that there were exemptions to Section 404 covering certain forestry activities.

The Federal agencies recognize the distinctive physical environment of Alaska, but do not believe broad exemptions from permit requirements are necessary or appropriate to address these special circumstances. As discussed above, existing regulatory flexibility (as demonstrated by such findings as permit issuance and

US EPA ARCHIVE DOCUMENT

compensatory mitigation requirement figures) allows the wetlands regulatory program to accommodate Alaska's physical environment. There are, however, a number of responses in both the Administration's Wetlands Plan and this Initiative that will improve the implementation of the program relative to the physical circumstances in the State. For example, permit deadlines will increase timeliness and predictability, and thus improve the ability to conduct permitted activities during Alaska's short construction season. Additional specific concerns are addressed below with a number of Alaska-specific actions.

Regarding delineation of wetlands, the Federal agencies on a National level will fully evaluate the National Academy of Sciences (NAS) study on wetlands delineation and make conclusions on how and if to revise the 1987 wetlands delineation manual. Any conclusions of the NAS on the need for further regionalization of the wetlands delineation methods, Alaska-specific or otherwise, can only be assessed after a National determination of how to proceed. However, it is worth noting that two members of the NAS committee are from Alaska. Likewise, although the development of the Hydrogeomorphic Classification System is proceeding Nationally as part of the Administration's Wetlands Plan, it would be premature to make a specific recommendation for its application within Alaska. Finally, it is important to note that in regard to normal ongoing silvicultural practices, such as seeding, cultivating, and harvesting, as well as the construction and maintenance of forest roads using best management practices, these are specifically exempt from regulation under Section 404.

The Administration's Wetlands Plan highlights several initiatives applicable in Alaska that deal with the variable physical environments in which wetlands occur. Among them are the issuance of Section 404 flexibility guidance, the regionalization of Nationwide Permit 26 for activities in isolated waters and headwaters, the development of improved analytical tools for the assessment of wetlands functions and values and the encouragement of advance planning efforts.

Alaska Wetlands Initiative actions are listed below and are described in more detail in the referenced sections. The Federal agencies recognize the special circumstances in Alaska and as a result EPA and the Army Corps have issued a written statement clarifying that although the Administration's goal of no overall net loss of wetlands is National policy, it will not always be achieved on a permit by permit basis (see recommendation in No Overall Net Loss of Wetlands Goal on page 15 and Attachment 2) and have issued a written statement that recognizes the flexibility afforded in the Section 404(b)(l) Guidelines to reflect circumstances in Alaska in implementing alternatives analysis and compensator-v mitigation requirements (see recommendation in The Mitigation Sequence on page 11 and Attachment 1). The Federal agencies also will encourage greater use of advance planning that incorporates consideration of the mitigation sequence (see recommendation in The Mitigation Sequence on page ll), implement Abbreviated Permit Processing Procedures for water,

US EPA ARCHIVE DOCUMENT

wastewater, and sanitation facilities in Alaskan villages (see recommendation in Alternative Permit Processing Procedures on page 16), render individual permit decisions within 90 days consistent with final regulations (see recommendation in The Individual Permit Process on page 18), place greater emphasis on providing assistance for wetland planning mechanisms as they relate to the Section 404 regulatory program (see recommendation in Advance Planning and Watershed Management on page 22), and accelerate National Wetlands Inventory mapping in priority areas (see recommendation in Wetlands Inventory, Classification, and Categorization on page. 23).

XI. Special Alaska Circumstances - Legal Issues

A number of commentors indicated that the Alaska Native Claims Settlement Act (ANCSA), Alaska National Interest Lands Conservation Act (ANILCA), and Statehood Act should justify exemptions from requirements of Section 404, such as compensatory mitigation, because these Alaskan statutes provided for the selection of certain lands for purposes such as the expansion and development of communities. In addition, Alaska Native corporations and the State voiced concern that they should be represented at the local, State, and Federal levels in the development of any statutory or regulatory process affecting wetlands policy on lands held by them. Other commentors stated that these Acts do not supersede the authorities of the Clean Water Act and other related statutes concerning resources held in the public trust. Some commentors raised concerns that Federal and State lands that contain wetlands are already "protected," while others indicated that these designations do not necessarily assure protection.

Alaska's Statehood Act contained a provision for the State to select lands for the purpose of furthering the development and expansion of communities. In 1971, ANCSA gave 44 million acres of fee simple land to Alaska Natives as part of a settlement of claims against the Federal government. In 1980, ANILCA set aside 100 million acres of land for conservation system units in the State. While ANCSA provided for the selection of lands in part for the purpose of economic development, the statute specifies that none of its provisions would "replace or diminish any right, privilege or obligation of Natives as citizens of the United States or Alaska...."[17] Likewise, although the Statehood Act allowed Alaska to select lands in part for furthering the development and expansion of communities, this provision did not obviate the need to comply with other applicable statutes. Finally, the variety of Federal land designations (e.g., National Forest, National Wildlife Refuge) have equally diverse purposes and guidelines for their use. Development can occur and has occurred within Federal lands under any designation. Thus, broad exemptions from such Clean Water Act provisions as compensatory mitigation or permitting requirements are not authorized in any of the above statutes.

[17] ***43 U.S.C.§1601***

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Nonetheless, the Federal agencies appreciate that a large percentage of Alaska was reserved for conservation system units and that ANCSA and the Statehood Act provided lands in part for economic development The Federal agencies believe that the State and Native corporations, villages, and Tribes have opportunities to increase their participation in the wetlands program, particularly with regard to wetlands planning mechanisms that can be tied to regulatory products (e.g., general permits) for lands held by them. The Administration's Wetlands Plan endorses a number of initiatives that are relevant to the legal issues raised in Alaska. Among them are initiatives to expand partnerships with and assist States and Tribal entities to take a stronger role in wetland planning and regulatory efforts, as well as developing an appeals process for landowners who disagree with jurisdictional determinations, permit denials, or administrative penalties.

Alaska Wetlands Initiative actions are listed below and are described in more detail in the referenced sections. The Federal agencies recognize the special circumstances in Alaska and will pursue multi-lingual communications with Native Alaskans (see recommendation in State, Local, and Native Roles on page 20), establish a Native liaison position within the Corps (see recommendation in State, Local, and Native Roles on page 20), EPA will provide Alaska with priority status in funding the development of a Wetland Conservation Plan (see recommendation in State, Local, and Native Roles on page 21) establish written partnerships between the Federal agencies and all interested stakeholders and organizations regarding the Section 404 regulatory program (see recommendation in State, Local, and Native Roles on page 20), and implement Abbreviated Permit Processing Procedures for water, wastewater. and sanitation facilities in Alaskan villages (see recommendation in Alternative Permit Processing Procedures on page 16). Likewise, the Corps will continue to consider fully the public interest in Section 404 permit actions, such as rural Alaska needs for basic services and facilities, subsistence rights, and Capital Improvement Projects.

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CONCLUSION

The United States has adopted a program to restore and maintain the integrity of the Nation's waters, including wetlands. Under Section 404 of the Clean Water Act, the U.S. Army Corps of Engineers administers the permit program that regulates proposed discharges of dredged or fill material into wetlands and other waters of the U.S. The Environmental Protection Agency is responsible for developing, in conjunction with the Corps, environmental criteria that are used to evaluate these proposed discharges. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service have important advisory roles. While areas for improvement have been identified and addressed in the Administration's August 24, 1993, Wetlands Plan and through the Alaska Wetlands Initiative, the Section 404 program provides a flexible framework for evaluating projects affecting this National resource. The regulatory framework is sufficiently accommodating to address the wide variety of potential impacts to our Nation's wetlands and the equally diverse circumstances under which these impacts occur.

The input of the stakeholders and comments from the public during the Alaska Wetlands Initiative have been tremendously valuable in revealing where the Section 404 regulatory program can be more responsive to the concerns of Alaskans, particularly in regard to the issues of no overall net loss of wetlands, the mitigation sequence, and rural and Native concerns. It is important to emphasize that the Alaska Wetlands Initiative represents the beginning of a dialogue between 'the Federal agencies and the regulated public that will continue into the future. Perhaps the greatest result of the Alaska Wetlands Initiative is the commitment by the Federal agencies to work more effectively with all stakeholders and the public to improve the Section 404 regulatory program in manner that makes this program more fair, flexible, and effective. In that regard, the Federal agencies express their sincere appreciation for the extensive time and effort expended by all the participants in this process.

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United States Environmental Protection Agency
Office of Wetlands Oceans, and Watersheds
Washington, D.C. 20460

United States Department of the Army
Office of the Assistant secretary
Washington, DC 20310-0103

MEMORANDUM

MAY 13 1994

SUBJECT.: Statements on the Mitigation Sequence and No Net Loss of Wetlands in Alaska

FROM: Robert H. Wayland, III, Director
Office of Wetlands, Oceans, and Watersheds
Environmental Protection Agency

Michael L. Davis, Assistant for Regulatory Affairs
Office of the Assistant Secretary of the Army (Civil Works)
Department of the Army

TO: Alvin L. Ewing, Associate Regional Administrator
Alaska Operations Office
Environmental Protection Agency Region X

Major General Stanley G. Genega
Director of Civil Works.
Army Corps of Engineers

This memorandum transmits two Environmental Protection Agency and Department of the Army policy statements regarding implementation of flexibility in mitigation requirements for Clean Water Act Section 404 permits and. application of the no overall net loss of wetlands goal that are part of the Alaska' Wetlands Initiative final Summary Report. As you are aware, the Summary Report details the environmentally appropriate actions that the Federal agencies are taking to ensure regulatory flexibility in protecting Alaska's wetlands. The statements are intended to respond to concerns raised in Alaska about "practicability" and "flexibility" considerations in the wetlands regulatory program and how these are affected by circumstances in the State.

The statements are consistent with EPA and Army Corps of Engineers Section 404 program regulations, including the Section 404(b)(l) Guidelines, the February 6, 1990 EPA/Army Memorandum of Agreement concerning the determination of mitigation under the Clean Water Act Section 404(b)(l) Guidelines, the August 23, 1993, EPA/Army Memorandum to the Field regarding the appropriate level of analysis required for evaluating compliance with the Section 404(b)(l) Guidelines alternatives requirements, and the Administration's August 24, 1993, Wetlands Plan.

We look forward to coordinating with you as the actions of the Alaska Wetlands Initiative are implemented. If you have any questions about these statements, please contact us or Gregory Peck, Chief of EPA's Wetlands and Aquatic Resources Regulatory Branch at (202) 260-8794, or John Studt, Chief of the corps of Engineers Regulatory Branch at (202) 272-1785.

Attachments

CC: Chuck Clarke, Regional Administrator
Region X

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The Guidelines' mitigation process is designed to establish a consistent approach to be used in ensuring that all practicable measures have been taken to reduce potential adverse impacts associated with proposed projects in wetlands and other aquatic systems. The Guidelines define the term "practicable" as "available and capable of being done [by the applicant] after taking into consideration cost, existing technology, and logistics in light of overall project purposes." (40 CFR 230.3(q)). The first step in the sequence requires the evaluation of potential alternative sites to locate the proposed project so that aquatic impacts are avoided to the extent practicable. As the next step in the sequence, remaining impacts are minimized, by making changes in project design or construction methods that reduce overall project impacts. Lastly, after all practicable steps have been taken to avoid and minimize potential adverse effects, compensation for remaining unavoidable impacts is sought by such measures as wetlands creation, restoration, or enhancement in order to replace lost aquatic functions and values. Compensatory mitigation is required only to the extent that it is appropriate and practicable.

Discussion

Given the unique climatological and physiographic circumstances found in Alaska, it is appropriate to apply the inherent flexibility provided by the Guidelines to proposed projects in Alaska. Applying this flexibility in a reasoned, common-sense approach will lead to effective decision-making and sound environmental protection throughout the Nation, including Alaska.

Avoidance

Avoiding impacts to wetlands may not be practicable in areas where there is a high proportion of land which is wetlands. Moreover, in some cases, the overwhelming majority of lands within a community's municipal boundary are considered wetlands, and the remaining non-wetlands areas are undevelopable. On the North Slope, for example, upland alternatives for siting oil and gas development are extremely rare given the abundance of wetlands in the area.

Minimization

Where wetlands have been avoided to the extent practicable, emphasis is placed on minimizing project impacts to wetlands by reducing the footprint of the project, using co-location of facilities whenever possible, and seeking to locate the project in lower value wetlands. Where neither avoidance nor compensatory mitigation is practicable, minimizing impacts will be the primary means of satisfying compliance with the Guidelines. In Alaska, minimization of impacts has been in many circumstances the only mitigation required.

ATTACHMENT 1

MITIGATION REQUIREMENTS OF THE CLEAN WATER ACT SECTION 404 REGULATORY PROGRAM: APPLYING FLEXIBILITY IN ALASKA

Issue

Concerns have been raised in Alaska about how "practicability" and "flexibility" considerations involved in implementing the alternatives analysis and compensatory mitigation requirements of the Clean Water Act Section 404 regulatory program are affected by circumstances in Alaska. This statement responds to those concerns by clarifying existing National policy regarding regulatory flexibility, and describing how this flexibility is applied to reflect circumstances in Alaska. Specifically, this statement recognizes that:

a) avoiding wetlands may not be practicable where there is a high proportion of land in a watershed or region which is wetlands;

b) restoring, enhancing, or creating wetlands through compensatory 'mitigation may not be practicable due to limited availability of sites or technical/logistical limitations; and

c) applying a less rigorous permit review for small projects with minor environmental impacts is consistent with the Section 404 program regulations.

Background

Section 404 Regulatory Program

The Clean Water Act Section 404 regulatory program provides that the Army Corps of Engineers evaluate permit applications for the discharge of dredged or fill material into waters of the U.S., including wetlands, in accordance with regulatory requirements of the Section 404@)(l) Guidelines (Guidelines). The Guidelines are the substantive environmental criteria used in evaluating discharges of dredged or fill material.

Mitigation Sequence

The Section 404(b)(l) Guidelines establish a mitigation sequence that provides a sound framework to ensure that the environmental impacts of permitted actions are acceptable. Under this framework, there is a three-step sequence for mitigating potential adverse impacts to the aquatic environment associated with a proposed discharge (i.e., first avoidance, then minimization, and lastly compensation for unavoidable impacts to aquatic resources).

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Compensatory Mitigation

Compensatory mitigation is provided in the Guidelines in order to offset the loss of aquatic functions and values associated with the permitted destruction/degradation of wetlands under the Section 404 regulatory program. It is also the primary means of achieving the National goal of no net loss of wetlands under the Section 404 regulatory program, for wetlands losses that can not be avoided. However, the regulations recognize that compensatory mitigation may not be appropriate and practicable for every authorized discharge.

As with avoiding impacts to wetlands, it may not be practicable to provide compensatory mitigation through wetlands restoration or creation in' areas where there is a high proportion of land which is wetlands. In cases where potential compensatory mitigation sites are not available due to the abundance of wetlands in a region and lack of enhancement or restoration sites, compensatory mitigation is not required under the Guidelines. As noted earlier, there are many regions of Alaska where wetlands constitute the overwhelming majority of the land cover type, and there is a lack of available upland sites for creating wetlands or degraded wetlands sites for enhancement or restoration.

In determining whether compensatory mitigation is practicable, issues associated with the technical feasibility of restoring or creating wetlands are also relevant. In Alaska, the combination of a short growing season and a shallow growing layer in wetlands underlain by permafrost presents unique technical difficulties for restoration and creation efforts. EPA and the Corps have determined in many cases that restoring and/or creating permafrost wetlands was not practicable, and therefore creation or restoration has generally not been required as compensatory mitigation under the Guidelines.

Flexibility in the Review of Small Projects with Minor Impacts

The Guidelines also afford flexibility in the review of Section 404 permit applications based on the relative severity of the environmental impact of proposed discharges of dredged or fill material. In particular, the amount of information and the level of scrutiny needed to determine compliance with the Guidelines is commensurate with the severity of the environmental impact (as determined by the functions of the aquatic resource and the nature of the proposed activity) and the scope/cost of the project.

While Section 404 permit reviews are associated with a wide variety of activities, ranging from those with large, complex impacts on the aquatic environment to those for which the impact is likely to be innocuous, it is unlikely that the Guidelines will apply in their entirety to any one activity, no matter how complex. Moreover, substantial numbers of permit applications are for minor, routine activities that have little, if any,

potential for adverse effects on the aquatic environment. It generally is not intended or expected that extensive evaluation or analysis will be needed to make findings of compliance with the Guidelines in such routine cases. For example, this principle is applied with the implementation of Abbreviated Permit Processing procedures for the construction or upgrade of water and sanitation facilities in rural Alaska.

In determining whether a proposed discharge would have minor impacts, and consequently, the appropriate level of analysis, consideration should be given to whether the proposed project:

(i) is located in aquatic resources of limited natural function;

(ii) is small in size and causes little direct impact; and

(iii) has little potential for secondary or cumulative impacts; or causes only temporary impacts (i.e., short-term and reversible impacts).

It is important to recognize, however, that in some circumstances even small or temporary fills result in substantial impacts, and that in such cases a more detailed evaluation is necessary. In particular, where high value coastal wetlands may be adversely affected and marine, estuarine, or anadromous fish habitat may be harmed, it is likely that a more detailed Guidelines analysis will be necessary. Moreover, it is not appropriate to consider compensatory mitigation in determining whether a proposed discharge will cause only minor impacts for purposes of the Guidelines' alternatives analysis.

The Guidelines include a presumption that for projects that do not require siting in special aquatic sites (e.g., wetlands), alternatives that do not include a discharge to special aquatic sites are available and would have less adverse impact, unless demonstrated otherwise. However, in reviewing projects that have the potential for only minor impacts on the aquatic environment the Guidelines do not require an elaborate search for practicable alternatives if it is reasonable to anticipate that there are only minor differences between the environmental impacts of the proposed activity and other potentially practicable alternatives. Moreover, when it is determined that there is no identifiable or discernible difference in adverse impacts on the environment between the applicant's proposed alternative and all other practicable alternatives, then the applicant's alternative is considered as satisfying the Guidelines' alternatives analysis requirements.

Even Where a practicable alternative exists that would have less adverse impact on the aquatic ecosystem, the Guidelines allow it to be rejected if it would have other significant adverse environmental consequences. This flexibility allows for the consideration of adverse impacts to other ecosystems in deciding whether there is a better alternative. For example, in some areas of Alaska, impacts to certain uplands,

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such as moose calving areas or important riparian habitat used by migratory birds would need to be considered. Hence, in applying the alternatives analysis required by the Guidelines, it is not appropriate to select an alternative where minor impacts on the aquatic environment are avoided at the cost of substantial impacts to other natural environmental values.

Where proposed activities result in negligible impacts, it may be possible to conclude that no alternative location could result in less adverse impact on the aquatic environment within the meaning of the Guidelines. In such cases, it is not necessary to conduct an offsite alternatives analysis; instead, on-site minimization may be more appropriate.

Conclusion

The Clean Water Act Section 404 regulatory program provides a significant degree of flexibility in making permit decisions to reflect circumstances throughout the Nation, including Alaska. Where it is not practicable to avoid wetlands, or to restore or create wetlands, such measures are not required under the Section 404 program. Where a project would have only minor impacts, the level of alternatives review is also adjusted accordingly.. Given this flexibility, Alaskans should be assured that discharges of dredged or fill material into wetlands will be evaluated in a reasonable manner, consistent with the National goal of fair, flexible, and effective protection of the Nation's wetlands resources. This statement is consistent with the February 6, 1990 EPA/Department of the Army Memorandum of Agreement concerning the determination of mitigation under the Clean Water Act Section 404(b)(l) Guidelines and the August 23, 1993 EPA/Department of the Army Memorandum to the Field regarding the appropriate level of analysis required for evaluating compliance with the Section 404(b)(l) Guidelines alternatives requirements.

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ATTACHMENT 2

Applying the No Overall Net Loss of Wetlands Goal in Alaska

Purpose

This statement is intended to clarify that, in implementing the Clean Water Act Section 404 regulatory program, the Administration's National goal of no overall net loss of wetlands will not always be achieved on a permit-by-permit basis.

Discussion

"No overall net loss of wetlands" is an articulation of the goal for the United States, that wetlands gains, through such activities as restoration and creation, will at least be equivalent to wetlands losses, in terms of quality and quantity. The Administration's August 24, 1993, Wetlands Plan affirms the interim goal of no overall net loss of the Nation's remaining wetlands and the long-term goal of increasing the quality and quantity of the Nation's wetlands resource base. The no overall net loss of wetlands goal is applicable throughout the United States.

In striving to contribute to this National goal, the Clean Water Act Section 404 program seeks to offset permitted losses of wetlands through compensatory mitigation activities such as wetlands restoration or creation. As discussed in the 1990 Environmental Protection Agency/Department of the Army Memorandum of Agreement on Mitigation, the goal is applied on a permit-by-permit basis. However, because compensatory mitigation may not be appropriate and practicable in all cases, no overall net loss of wetlands may not be achieved for each individual permitted loss of wetlands.

Due to physiographic conditions in Alaska, there are circumstances in the State where it is not practicable to restore or create wetlands. There are areas of the State where because of a high proportion of wetlands in a watershed or region, opportunities for compensatory mitigation may not be available. In addition, there are situations in the State where the technology for restoration, enhancement, or creation of wetlands is not available or is otherwise impracticable. Where compensatory mitigation is not practicable, it is not required of Section 404 permit applicants. A significantly large portion (over 95%) of Section 404 permit decisions in Alaska have not required any form of compensatory mitigation because it was determined to be impracticable.

The Administration is committed to achieving the goal of no overall net loss of the Nation's wetlands through effective regulatory and non-regulatory approaches. Federal agencies will work throughout the 50 States to encourage the development of improved analytical tools for assessing wetlands functions and values, to support the concept of environmentally sound mitigation banking, and to pursue other measures that contribute to achieving this important goal in a fair, flexible, and effective manner.

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F A C T S H E E T **ALASKA WETLANDS INITIATIVE** May 1994

The completion of the Alaska Wetlands Initiative and the withdrawal of the 1992 proposed "Alaska 1%" rulemaking implement two recommendations regarding Federal wetlands policies included in the Clinton Administration's August 24, 1993, fair, flexible, and effective approach to protecting America's wetlands. The final Summary Report of the Alaska Wetlands Initiative details the environmentally appropriate actions that are being taken to ensure regulatory flexibility in protecting Alaska's wetlands. The proposed rule, if promulgated, would have excepted all wetlands in the State from National mitigation requirements.

The Environmental Protection Agency and the Army Corps of Engineers in Alaska co-chaired the seven-month Initiative, that was developed in consultation with a diverse and comprehensive group of -Alaskan stakeholders and the public, and responds to concerns of Alaskans regarding wetlands regulation in the State. The public was invited to attend all stakeholder meetings, submit written comments, and participate in a Statewide teleconference linking 20 locations throughout Alaska.

Co-chairs: EPA and Corps

Stakeholders
- Commercial Fishing
- Development
- Environment
- Forestry
- Municipal Government
- Native
- Oil and Gas
- Sportfishing
- State of Alaska
- Tourism
- U.S. Fish and Wildlife Service/ National Marine Fisheries Service
- Department of Energy

Stakeholders and the public identified concerns with the wetlands program, focusing on how circumstances in Alaska, such as climate and the extent of wetlands, affect implementation of regulatory requirements in the State.

Conclusions in the Report are built upon the factual information and technical data identified during the Initiative. Strong agreement among the Federal agencies provides the basis to implement the actions in a manner that ensures effective protection of Alaska's valuable wetlands while providing appropriate regulatory flexibility to reflect circumstances in Alaska.

Key actions in the Summary Report include:

- implementation of abbreviated permit processing procedures for the construction of water, wastewater, and sanitation facilities in wetlands in Alaskan villages
- continued development of general permits, which efficiently allow activities with minimal impacts to proceed without the need for individual permit authorization
- strengthening relationships with the State, local governments, and Native corporations and villages through such measures as establishing written partnerships regarding the regulatory program and placing greater emphasis on providing assistance for local wetlands planning mechanisms as they relate to the regulatory program
- clarifying "practicability" and "flexibility" considerations that allow implementation of the regulatory program to reflect circumstances in Alaska

Copies of the Report may be obtained from the EPA Wetlands Hotline: (800) 832-7828.