

103D CONGRESS
1ST SESSION

H. R. 350

To amend the Federal Water Pollution Control Act to further the protection of wetlands, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1993

Mr. EDWARDS of California (for himself, Mr. ABERCROMBIE, Mr. BEILENSON, Mr. BERMAN, Mr. BLACKWELL, Mr. DELLUMS, Mr. EVANS, Mr. GILCHREST, Mr. HAMBURG, Mr. KENNEDY, Mr. LANTOS, Mr. MARKEY, Mr. MILLER of California, Mr. MINETA, Mrs. MINK, Ms. PELOSI, Mr. RAVENEL, Mr. SHAYS, Mr. STARK, Mr. STOKES, Mr. VENTO, Mr. WELDON, and Mr. YATES) introduced the following bill; which was referred jointly to the Committees on Public Works and Transportation, Merchant Marine and Fisheries, and Ways and Means

APRIL 19, 1993

Additional sponsors: Mr. ANDREWS of Maine, Mr. BROWN of California, Mrs. BYRNE, Mr. CARDIN, Ms. ESHOO, Mr. GEJDENSON, Mr. HINCHEY, Mr. MACHTLEY, Mr. MCDERMOTT, Mr. OLVER, Mr. RANGEL, Mr. SABO, Mr. SANDERS, Mrs. SCHROEDER, Mr. SKAGGS, Ms. SLAUGHTER, Mr. TORRES, Mr. TOWNS, Mr. WAXMAN, Ms. WOOLSEY, Mr. ACKERMAN, Mr. ANDREWS of New Jersey, Mr. COLEMAN, Mr. CONYERS, Mr. DE LUGO, Mr. HASTINGS, Mr. HOCHBRUECKNER, Mr. MCHALE, Mrs. MALONEY, Mr. MORAN, Ms. NORTON, Mr. RICHARDSON, Mr. SAWYER, Mr. JOHNSTON of Florida, Mr. MEEHAN, Mr. LEWIS of Georgia, Mr. SWETT, Mr. JACOBS, Mr. PAYNE of New Jersey, Ms. MCKINNEY, Mr. SERRANO, Ms. HARMAN, and Mr. NADLER

A BILL

To amend the Federal Water Pollution Control Act to further the protection of wetlands, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Wetlands Reform Act
5 of 1993”.

6 **TITLE I—AMENDMENTS TO THE**
7 **FEDERAL WATER POLLUTION**
8 **CONTROL ACT**

9 **SEC. 101. STATEMENT OF POLICY.**

10 Section 101(a) of the Federal Water Pollution Con-
11 trol Act (33 U.S.C. 1251(a)) is amended—

12 (1) in paragraph (6) by striking “and” after
13 the semicolon at the end;

14 (2) in paragraph (7) by striking the period and
15 inserting “; and”; and

16 (3) by adding at the end the following:

17 “(8) it is the national policy to preserve the
18 quantity and quality of the Nation’s wetlands and to
19 restore those wetlands which have been degraded.”.

20 **SEC. 102. EXPANSION OF SCOPE OF PERMIT PROGRAM.**

21 (a) PROHIBITION OF ACTIVITIES.—Subsection
22 301(a) of the Federal Water Pollution Control Act (33
23 U.S.C. 1311(a)) is amended to read as follows:

24 “SEC. 301. (a) Except as in compliance with this sec-
25 tion and sections 302, 306, 307, 318, 402, and 404 of

1 this Act, the discharge of any pollutant or other alteration
2 of navigable waters by any person shall be unlawful.”.

3 (b) CERTIFICATION.—The first sentence of section
4 401(a) of the Federal Water Pollution Control Act (33
5 U.S.C. 1341(a)) is amended to read as follows: “Any ap-
6 plicant for a Federal license or permit to conduct any ac-
7 tivity, including the construction or operation of facilities,
8 which may result in any discharge into or other alteration
9 of navigable waters, shall provide the licensing or permit-
10 ting agency a certification from the State where the activ-
11 ity occurs or will occur, or, if appropriate, from the inter-
12 state water pollution control agency having jurisdiction
13 over the navigable waters where the activity occurs or will
14 occur, that the activity will comply with the applicable pro-
15 visions of sections 301, 302, 303, 306, and 307 and will
16 allow for the protection, achievement, and maintenance of
17 designated uses included in applicable water quality stand-
18 ards.”.

19 (c) ISSUANCE OF PERMITS.—Section 404(a) of the
20 Federal Water Pollution Control Act (33 U.S.C. 1344(a))
21 is amended by inserting before the period at the end of
22 the first sentence the following: “, or for other alterations
23 of navigable waters”.

1 (d) DEFINITION.—Section 502 of the Federal Water
2 Pollution Control Act (33 U.S.C. 1362) is amended by
3 adding at the end the following:

4 “(21) The term ‘other alteration’ means drain-
5 ing, dredging, excavation, channelization, flooding,
6 clearing of vegetation, driving of pilings or place-
7 ment of other obstructions, diversion of water, or
8 other activities in navigable waters which impair the
9 flow, reach, or circulation of surface water, or which
10 result in a more than minimal change in the hydro-
11 logic regime, bottom contour, or configuration of
12 such waters, or in the type, distribution, or diversity
13 of vegetation, fish, and wildlife that depend on such
14 waters.”.

15 **SEC. 103. DEFINITION OF FILL MATERIAL.**

16 Section 404(d) of the Federal Water Pollution Con-
17 trol Act (33 U.S.C. 1344(d)) is amended—

18 (1) by inserting “(1)” after “(d)”; and

19 (2) by adding at the end the following:

20 “(2) The term ‘fill material’ as used in this section
21 means any pollutant which has the effect of replacing por-
22 tions of navigable waters or changing the bottom elevation
23 or configuration of a water body.”.

1 **SEC. 104. PERMIT REVIEW BY RESOURCE AGENCIES.**

2 (a) REVIEW BY SECRETARY OF INTERIOR AND SEC-
3 RETARY OF COMMERCE.—Section 404(m) of the Federal
4 Water Pollution Control Act (33 U.S.C. 1344(m)) is
5 amended by striking “Secretary of the Interior, acting
6 through the Director of the United States Fish and Wild-
7 life Service” each place it appears and inserting “Sec-
8 retary of the Interior, acting through the Director of the
9 United States Fish and Wildlife Service, and the Secretary
10 of Commerce, acting through the Assistant Administrator
11 of the National Marine Fisheries Service”.

12 (b) RESPONSE IN WRITING.—Section 404(m) of the
13 Federal Water Pollution Control Act (33 U.S.C. 1344(m))
14 is amended by adding at the end the following: “The Sec-
15 retary shall adopt the recommendations made in the com-
16 ments or respond in writing to the Secretary of the Inte-
17 rior or the Secretary of Commerce, as appropriate, de-
18 scribing his or her reasons for not adopting the rec-
19 ommendations and explaining how his or her determina-
20 tion is consistent with the goals and purposes of this Act
21 and the guidelines developed under section 404(b)(1).”.

22 **SEC. 105. CLARIFICATION OF GENERAL PERMIT PROGRAM.**

23 Section 404(e)(1) of the Federal Water Pollution
24 Control Act (33 U.S.C. 1344(e)(1)) is amended to read
25 as follows:

1 “(e)(1)(A) In carrying out the functions of the Sec-
2 retary under this section relating to the discharge of
3 dredged or fill material or other alteration of navigable
4 waters, the Secretary may, after notice and opportunity
5 for public hearing, and with the concurrence of the Admin-
6 istrator, issue general permits on a State, multi-State, or
7 nationwide basis for any narrowly defined category of ac-
8 tivities involving discharges of dredged or fill material or
9 other alterations of navigable waters if the Secretary de-
10 termines that the activities in such category are similar
11 in nature, will cause only minimal adverse environmental
12 effects when performed separately, and will have only
13 minimal cumulative adverse effect on the environment.
14 Any general permit issued under this subsection shall be
15 consistent with the goals and purposes of this Act, shall
16 be based on the guidelines described in subsection (b)(1),
17 shall set forth the requirements and standards which shall
18 apply to any activity authorized by such general permit,
19 and shall include adequate measures to enable the Sec-
20 retary to be apprised of and to monitor activities con-
21 ducted pursuant to such general permit.

22 “(B) Before any activity is authorized under a gen-
23 eral permit for which pre-discharge notification is required
24 pursuant to regulations, notice and 30 days opportunity
25 to comment shall be given by the Secretary to the Admin-

1 istrator, the Secretary of the Interior, the Secretary of
2 Commerce, State agencies responsible for water quality,
3 fish, and wildlife resources which may be affected by such
4 activity, and to the public.

5 “(C) No activity shall be authorized under a general
6 permit within a State that has denied or revoked water
7 quality certification pursuant to section 401 for such ac-
8 tivities under that general permit.

9 “(D) Each general permit shall be reviewed by the
10 Secretary biennially, taking into account the information
11 contained in reports required by section 404(u), and shall,
12 after notice and hearing, be revised or revoked as nec-
13 essary to avoid or minimize cumulative adverse effects on
14 navigable waters.”.

15 **SEC. 106. REPORTS ON EFFECTS OF PERMIT PROGRAM ON**
16 **WETLANDS.**

17 Section 404 of the Federal Water Pollution Control
18 Act (33 U.S.C. 1344) is amended by adding at the end
19 the following:

20 “(u) REPORTS ON PERMIT PROGRAM.—

21 “(1) EFFECTS OF PERMITTED ACTIVITIES.—

22 “(A) IN GENERAL.—The Secretary, in con-
23 sultation with the Administrator, the Secretary
24 of the Interior, and those States which have a
25 permit program approved under subsection

1 (h)(2), shall report biennially to the Congress
2 on the effects on navigable waters of activities
3 conducted under permits issued pursuant to
4 this section, including general permits. Such re-
5 ports shall contain estimates of the acreage and
6 functions of navigable waters affected by each
7 general permit, in order to determine whether
8 the individual and cumulative adverse environ-
9 mental effects of activities authorized by each
10 general permit are minimal.

11 “(B) MONITORING.—For purposes of pre-
12 paring reports under this subsection, the Sec-
13 retary, the Administrator, and the Secretary of
14 the Interior shall jointly monitor the achieve-
15 ment of the policy stated in section 101(a)(8)
16 under permits issued under this section.

17 “(C) CONTENT OF REPORTS.—Reports
18 under this subsection shall include consideration
19 of relevant information contained in individual
20 and general permit applications, compliance
21 monitoring records and maps, and any other
22 relevant information.

23 “(2) EFFECTS OF COMPENSATORY MITIGA-
24 TION.—The Secretary, in consultation with the Ad-
25 ministrator, the Secretary of the Interior, and those

1 States which have a permit program approved under
2 subsection (h)(2), shall report biennially to the Con-
3 gress on the effects on navigable waters of compen-
4 satory mitigation required under permits issued
5 under this section, including general permits. Such
6 reports shall contain—

7 “(A) estimates of the number of permits
8 for which compensatory mitigation is required;
9 and

10 “(B) a description of—

11 “(i) the type and extent of compen-
12 satory mitigation projects required,

13 “(ii) the degree of compliance with
14 those compensatory mitigation require-
15 ments,

16 “(iii) the extent to which such com-
17 pensatory mitigation requirements have
18 been successful in restoring the intended
19 range of functions and values, and

20 “(iv) the extent to which monitoring
21 and enforcement of compensatory mitiga-
22 tion requirements have been conducted by
23 the agencies.”.

1 **SEC. 107. EXPEDITED PERMIT REVIEW.**

2 Section 404(q) of the Federal Water Pollution Con-
3 trol Act (33 U.S.C. 1344(q)) is amended to read as fol-
4 lows:

5 “(q)(1) REDUCTION IN PAPERWORK AND DELAYS.—
6 Not later than the 180th day after the date of the enact-
7 ment of this subsection, the Secretary shall enter into
8 agreements with the Administrator, the Secretaries of the
9 Departments of Agriculture, Commerce, and Interior, and
10 the heads of other appropriate Federal agencies to mini-
11 mize, to the maximum extent practicable, duplication,
12 needless paperwork, and delays in the issuance of permits
13 under this section.

14 “(2) FAST TRACK FOR MINOR PERMITS.—

15 “(A) Not later than 6 months after the date of
16 enactment of this subsection, the Secretary shall es-
17 tablish in each district office a special Fast Track
18 team to expedite the review and processing of minor
19 permits. Each team shall consist of not more than
20 25 percent of all personnel assigned to review permit
21 applications under this section, and shall not be as-
22 signed to review or process any permits other than
23 minor permits, unless final decisions have been
24 reached with respect to all such minor permits with-
25 in 60 days after the notice of application for such
26 permits is published pursuant to subsection (a).

1 “(B) The District Engineer in each district of-
2 fice shall review the operations of the Fast Track
3 team in that office every 6 months. If final decisions
4 on a significant percentage of minor permits have
5 not been reached within 60 days after the notice of
6 application for such permits is published pursuant to
7 subsection (a), additional personnel shall be assigned
8 to the Fast Track team.

9 “(C) For purposes of this subsection, a minor
10 permit is a permit for an activity that would disturb
11 no more than 1 acre of wetlands, is being performed
12 by a private individual or a business that employs no
13 more than 10 people, and is not part of a larger
14 common plan or proposal that would disturb addi-
15 tional acreage, except that a permit shall not be a
16 minor permit if—

17 “(i) the Secretary is required under the
18 National Environmental Policy Act of 1969 to
19 issue an environmental impact statement;

20 “(ii) the permit involves an activity that
21 may affect any species that is listed as an en-
22 dangered species or threatened species under
23 the Endangered Species Act of 1973, or the
24 habitat of such a species; or

1 “(iii) the Secretary, the Administrator, or
2 a Federal department or agency referred to in
3 paragraph (1) requests that the permit applica-
4 tion receive additional review.”.

5 **SEC. 108. AVOIDANCE AND MINIMIZATION OF ADVERSE EF-**
6 **FECTS.**

7 Section 404 of the Federal Water Pollution Control
8 Act (33 U.S.C. 1344), as amended by this Act, is further
9 amended by adding at the end the following:

10 “(v) No individual or general permit shall be issued
11 for an activity pursuant to this section if there is a prac-
12 ticable alternative to the proposed activity which would
13 have less adverse environmental impact on navigable
14 waters.”.

15 **SEC. 109. EXEMPTIONS FOR AGRICULTURE AND OTHER AC-**
16 **TIVITIES.**

17 (a) IN GENERAL.—Section 404(f) of the Federal
18 Water Pollution Control Act (33 U.S.C. 1344) is amended
19 to read as follows:

20 “(f)(1) Except as provided in paragraph (2), the dis-
21 charge of dredge or fill material in or other alterations
22 of navigable waters—

23 “(A) from normal farming, silviculture, and
24 ranching activities, such as plowing, seeding, cul-
25 tivating, minor drainage, harvesting for the produc-

1 tion of food, fiber, and forest products, and upland
2 soil and water conservation practices;

3 “(B) for the purpose of maintenance, including
4 emergency reconstruction of recently damaged parts,
5 of currently serviceable structures such as dikes,
6 dams, levees, groins, riprap, breakwaters, causeways,
7 bridge abutments or approaches, and transportation
8 structures, to their current or most recent configura-
9 tion;

10 “(C) for the purpose of construction or mainte-
11 nance of farm or stock ponds or irrigation ditches,
12 or the maintenance of drainage ditches;

13 “(D) for the purpose of construction of tem-
14 porary sedimentation basins on a construction site
15 which does not involve placement of fill material into
16 navigable waters;

17 “(E) for the purpose of construction or mainte-
18 nance of farm roads or forest roads, or temporary
19 roads for moving mining equipment, where such
20 roads are constructed and maintained, in accordance
21 with best management practices, to assure that flow
22 and circulation patterns and chemical and biological
23 characteristics of the navigable waters are not im-
24 paired, that the reach of the navigable waters is not

1 reduced, and that any adverse effect on the aquatic
2 environment will otherwise be minimized; or

3 “(F) resulting from any activity with respect to
4 which a State has an approved program under sec-
5 tion 208(b)(4) which meets the requirements of sub-
6 paragraphs (B) and (C) of that section;

7 is not prohibited by or otherwise subject to regulation
8 under this section or section 301(a) or 402 (except for
9 effluent standards or prohibitions under section 307).

10 “(2) Any discharge of dredged or fill material into,
11 or other alteration of, the navigable waters incidental to
12 any activity having as its purpose bringing an area of the
13 navigable waters into a use to which it was not previously
14 subject, where the flow or circulation of navigable waters
15 may be impaired or the reach of such waters be reduced,
16 shall be required to have a permit under this section.

17 “(3) An activity which does not result in the dis-
18 charge of dredge or fill material into, or other alterations
19 of, the navigable waters shall not be prohibited or other-
20 wise subject to regulation under this section.

21 “(4)(A) For purposes of this section, the following
22 shall not be considered to be navigable waters:

23 “(i) Nontidal drainage and irrigation ditches
24 excavated in uplands.

1 “(ii) Artificially irrigated areas which would re-
2 vert to uplands if the irrigation ceased.

3 “(iii) Artificial lakes or ponds created by exca-
4 vating or diking uplands to collect and retain water,
5 and which are used exclusively for stock watering, ir-
6 rigation, or rice growing.

7 “(iv) Artificial reflecting or swimming pools or
8 other small ornamental bodies of water created by
9 excavating or diking uplands to retain water for pri-
10 marily aesthetic reasons.

11 “(v) Waterfilled depressions created in uplands
12 incidental to construction activity and pits excavated
13 in uplands for the purpose of obtaining fill, sand, or
14 gravel, unless and until the construction or exca-
15 vation operation is abandoned and the resulting
16 body of water meets the definition of waters of the
17 United States.

18 “(B) Subparagraph (A) shall not apply to a particu-
19 lar water body unless the person desiring to conduct an
20 activity in that water body is able to demonstrate that the
21 water body qualifies under subparagraph (A) for exemp-
22 tion from regulation under this section.

23 “(5) Except as provided in paragraph (2), normal
24 plowing, seeding, cultivating, minor drainage for crop pro-
25 duction, or harvesting shall not be prohibited or otherwise

1 subject to regulation under this section in waters of the
2 United States which have been maintained as cropland at
3 least one growing season in the 5-years prior to such plow-
4 ing, seeding, cultivating, minor drainage, or harvesting.”.

5 **SEC. 110. CITIZEN SUITS AMENDMENTS.**

6 Section 505 of the Federal Water Pollution Control
7 Act (33 U.S.C. 1365) is amended—

8 (1) in subsection (f) by striking “or (7)” and
9 inserting the following: “(7) a permit or condition
10 thereof issued under section 404, which has been, or
11 is, in effect under this Act (including a requirement
12 applicable by reason of section 313); or (8)”;

13 (2) in subsection (a)(1)(B) by inserting after
14 “Administrator”, the following: “, the Secretary of
15 the Army”;

16 (3) in subsection (a) in the matter following
17 paragraph (2) by inserting after “under section
18 309(d)” the following: “and section 404(s)”;

19 (4) in subsection (b)(1)(A) by striking “and
20 (iii)” and inserting the following: “(iii) to the Sec-
21 retary of the Army (if the alleged violation is under
22 section 404); and (iv)”;

23 (5) in subsection (b)(1)(B) by inserting after
24 “if the Administrator” the following: “, the Sec-
25 retary of the Army,”;

1 (6) in subsection (c)(2) by inserting after “the
2 Administrator” the following: “(and the Secretary of
3 the Army, if the alleged violation is under section
4 404)”;

5 (7) in subsection (c)(3) by inserting after “At-
6 torney General” each place it appears the following:
7 “, the Secretary of the Army (if the alleged violation
8 is under section 404 of this Act),”;

9 (8) in subsection (e) by inserting after “Admin-
10 istrator” the following: “, the Secretary of the
11 Army,”;

12 (9) in subsection (h) by inserting after “Admin-
13 istrator” each place it appears the following: “or the
14 Secretary of the Army”;

15 (10) in paragraph (2) of subsection (a) and in
16 the matter following that paragraph by inserting
17 after “Administrator” each place it appears the fol-
18 lowing: “or the Secretary of the Army”; and

19 (11) in subsection (b)(2) by inserting after
20 “Administrator” the following: “or the Secretary of
21 the Army”.

1 **TITLE II—IMPROVED WETLANDS**
2 **PERMITTING; REVISIONS TO**
3 **WETLANDS DELINEATION**
4 **PROCEDURES**

5 **SEC. 201. IMPROVEMENT OF ADMINISTRATION OF WET-**
6 **LANDS PERMITTING.**

7 (a) NEEDS ANALYSIS.—

8 (1) IN GENERAL.—Not later than 90 days after
9 the date of the enactment of this Act, the Comptrol-
10 ler General of the United States shall submit to the
11 Congress an analysis of the needs of the Corps of
12 Engineers and the Environmental Protection Agency
13 for additional personnel, administrative resources,
14 and funding to improve implementation of section
15 404 of the Federal Water Pollution Control Act (33
16 U.S.C. 1344).

17 (2) CONTENTS.—The analysis submitted under
18 this subsection shall—

19 (A) give particular emphasis to the needs
20 of the Corps of Engineers and the Environ-
21 mental Protection Agency with respect to im-
22 proving and expediting wetlands delineation and
23 wetlands permitting generally;

1 (B) include recommendations regarding
2 additional appropriations necessary for that im-
3 provement and expedition; and

4 (C) identify the Corps of Engineers district
5 offices and Environmental Protection Agency
6 regions that have the greatest need for those
7 additional appropriations.

8 (b) FUNDING FOR TRAINING AND CERTIFICATION
9 PROGRAM FOR WETLANDS DELINEATORS.—Of amounts
10 appropriated for each fiscal year beginning after the date
11 of the enactment of this Act for administration of section
12 404 of the Federal Water Pollution Control Act (33
13 U.S.C. 1344) by the Corps of Engineers, the Secretary
14 of the Army (hereinafter in this title referred to as the
15 “Secretary”) shall use such amounts as are necessary to
16 carry out the program for training and certification of in-
17 dividuals as wetlands delineators authorized by section
18 307(e) of the Water Resources Development Act of 1990
19 (Public Law 101–640).

20 (c) FUNDING FOR IMPROVEMENT OF SECTION 404
21 EDUCATION AND OUTREACH PROGRAMS.—Of amounts
22 appropriated for each fiscal year beginning after the date
23 of the enactment of this Act for administration of section
24 404 of the Federal Water Pollution Control Act (33
25 U.S.C. 1344) by the Corps of Engineers or the Environ-

1 mental Protection Agency, the Secretary or the Adminis-
2 trator of the Environmental Protection Agency, respec-
3 tively, shall use such amounts as are necessary to improve
4 existing education and outreach programs of the Corps of
5 Engineers or the Environmental Protection Agency re-
6 garding requirements of that section.

7 (d) FUNDING FOR EXPEDITING AND COMPLETING
8 WETLANDS MAPPING.—

9 (1) COMPLETION OF MAPPING.—Of amounts
10 appropriated for each fiscal year beginning after the
11 date of the enactment of this Act for programs of
12 the United States Fish and Wildlife Service, the Di-
13 rector of the United States Fish and Wildlife Service
14 shall use—

15 (A) such amounts as are necessary to com-
16 plete the existing wetland mapping program of
17 the Service by not later than 1 year after the
18 date of the enactment of this Act;

19 (B) such amounts (in addition to amounts
20 used pursuant to subparagraphs (A) and (C))
21 as are necessary to conduct mapping under that
22 program in areas where there is the potential
23 for delineating particularly large areas of wet-
24 lands; and

1 (C) such amounts as may be necessary (in
2 addition to amounts used pursuant to subpara-
3 graphs (A) and (B)) to delineate wetlands
4 under that program in watersheds and
5 ecosystems for which the need for delineation is
6 particularly acute, such as where wetlands are
7 particularly difficult to identify or where pres-
8 sure for development of wetlands is intense, by
9 as soon as practicable after the date of the en-
10 actment of this Act.

11 (2) UPDATING MAPS.—The Director of the
12 United States Fish and Wildlife Service shall update
13 each map prepared under the existing wetlands map-
14 ping program at least once—

15 (A) in the 15-year period beginning on the
16 date of the completion of the map, and

17 (B) in every 15-year period thereafter.

18 (e) FUNDING TO ASSIST SMALL LANDOWNERS WITH
19 WETLANDS DELINEATION.—Of amounts appropriated for
20 each fiscal year beginning after the date of enactment of
21 this Act for administration of section 404 of the Federal
22 Water Pollution Control Act (33 U.S.C. 1344), the Sec-
23 retary of the Army shall use such amounts as are nec-
24 essary, but not to exceed \$5,000,000, to assist landowners
25 who lack the financial capacity to do wetlands delineations

1 needed to apply for permits under that section. The Sec-
2 retary may provide such assistance either by providing
3 technical assistance or by performing delineations. Within
4 180 days after the date of the enactment of this Act the
5 Secretary shall issue regulations defining which land-
6 owners are eligible for such assistance.

7 **SEC. 202. REVISIONS TO FEDERAL WETLANDS DELINEA-**
8 **TION PROCEDURES.**

9 After the date of the enactment of this Act, no revi-
10 sions to or clarifications of any Federal manual for identi-
11 fying and delineating jurisdictional wetlands shall be
12 adopted, and no guidance or regulations related to the def-
13 inition, delineation, or identification of wetlands shall be
14 issued, until the National Academy of Sciences has com-
15 pleted the study of wetlands authorized by Public Law
16 102-389. All subsequent revisions to any Federal manual
17 for the identification and delineation of wetlands shall take
18 into consideration the scientific and technical rec-
19 ommendations of the National Academy of Sciences.

20 **TITLE III—WETLANDS**
21 **RESTORATION PROGRAM**

22 **SEC. 301. WETLANDS RESTORATION PILOT PROGRAM.**

23 The Secretary, in cooperation with the Administrator,
24 the Director of the United States Fish and Wildlife Serv-
25 ice, and appropriate State and local government entities,

1 shall initiate, with opportunity for public notice and com-
2 ment, a pilot program of wetlands restoration. The pur-
3 poses of the pilot program are—

4 (1) to identify areas where the restoration of
5 significant wetland acreage and functions, including
6 fish and wildlife habitat, water quality protection,
7 and natural hydrologic functions, could contribute
8 substantially to preserving the quantity and quality
9 of the Nation's wetlands;

10 (2) to test methods and techniques for wetlands
11 restoration in such areas, and in areas previously
12 identified as suitable for restoration; and

13 (3) to develop a means of evaluating the success
14 over the long term of such wetlands restoration ef-
15 forts.

16 **SEC. 302. SENSE OF CONGRESS CONCERNING WETLANDS**
17 **RESERVE PROGRAM.**

18 It is the sense of Congress that the Wetlands Reserve
19 Program authorized by the Food, Agriculture, Conserva-
20 tion and Trade Act of 1990 is an effective wetlands con-
21 servation and restoration program which has the potential
22 to benefit agriculturalists, rural communities, and the Na-
23 tion's wetlands resource base. Further, it is the sense of
24 Congress that the Wetlands Reserve Program should be
25 fully funded to achieve its acreage enrollment goals, and

1 should be actively promoted by the Department of Agri-
2 culture to achieve full subscription.

3 **TITLE IV—TAX INCENTIVES FOR**
4 **WETLANDS CONSERVATION**

5 **SEC. 401. WETLANDS STEWARDSHIP TRUSTS.**

6 (a) DESIGNATION.—The Secretary of the Interior
7 shall designate a nonprofit organization to be a Wetlands
8 Stewardship Trust for purposes of this section if the orga-
9 nization—

10 (1) includes among its primary purposes the ac-
11 quisition of private interests in wetlands, former
12 wetlands, and associated real property for the pur-
13 pose of restoring or preserving such property, and

14 (2) meets such other requirements as may be
15 established in regulations issued under subsection
16 (c).

17 (b) APPLICATION.—A nonprofit organization seeking
18 to be designated a Wetlands Stewardship Trust for pur-
19 poses of this section may submit to the Secretary of the
20 Interior an application for that designation, in accordance
21 with procedures established in regulations issued under
22 subsection (c).

23 (c) REGULATIONS.—Not later than 180 days after
24 the date of the enactment of this Act, the Secretary of
25 the Interior, acting through the Director of the United

1 States Fish and Wildlife Service, in consultation with the
2 Secretary of the Army, acting through the Corps of Engi-
3 neers, and the Administrator of the Environmental Pro-
4 tection Agency shall issue regulations establishing require-
5 ments for being designated a Wetlands Stewardship Trust
6 under this section.

7 **SEC. 402. TAX TREATMENT OF DONATIONS OF WETLANDS.**

8 (a) TAX TREATMENT.—Subsection (e) of section 170
9 of the Internal Revenue Code of 1986 (relating to chari-
10 table, etc., contributions and gifts) is amended by adding
11 at the end thereof the following new paragraph:

12 “(6) SPECIAL RULES FOR CONTRIBUTIONS OF
13 WETLANDS.—

14 “(A) IN GENERAL.—In the case of a chari-
15 table contribution by a taxpayer of wetlands (or
16 any interest therein) to a Wetlands Stewardship
17 Trust or to a governmental unit referred to in
18 subsection (c)(1) for the purpose of preserving
19 the property in its natural state—

20 “(i) 50 PERCENT LIMITATION TO
21 APPLY TO INDIVIDUALS.—Such a contribu-
22 tion by an individual shall be treated for
23 purposes of this section as described in
24 subsection (b)(1)(A).

1 “(ii) 20-YEAR CARRYFORWARD.—Sub-
2 section (d)(1) shall be applied by substitut-
3 ing ‘20 years’ for ‘5 years’ each place it
4 appears and with appropriate adjustments
5 in the application of subparagraphs (A)(ii)
6 and (B)(ii) thereof.

7 “(iii) EXTENSION OF PERIOD FOR EX-
8 CHANGES.—If such contribution is made
9 as part of an exchange to which section
10 1031 applies, paragraph (3) of section
11 1031(a) shall be treated as met if the
12 property to be received in the exchange is
13 received by the taxpayer not later than the
14 date which is 3 years after the date on
15 which the taxpayer transfers the property
16 relinquished in the exchange.

17 “(B) PROPERTY MUST BE PROTECTED IN
18 PERPETUITY.—A contribution shall not be
19 treated as for the purpose referred to in sub-
20 paragraph (A) unless such purpose is protected
21 in perpetuity.

22 “(C) CERTAIN PROPERTY INELIGIBLE.—
23 Subparagraph (A) shall not apply to any con-
24 tribution of property if—

1 “(i) the property is required (as of the
2 date of the contribution) to be preserved in
3 perpetuity in its natural state other than
4 by reason of the terms of contribution, or

5 “(ii) the property is required to be re-
6 stored or preserved as compensatory miti-
7 gation as a condition of a permit issued
8 under section 404 of the Federal Water
9 Pollution Control Act (33 U.S.C. 1344).

10 “(D) UNUSED DEDUCTION CARRYOVER AL-
11 LOWED ON TAXPAYER’S LAST RETURN.—In the
12 case of an individual, if—

13 “(i) the taxpayer dies before the close
14 of the last taxable year for which a deduc-
15 tion for a contribution to which subpara-
16 graph (A) applies could have been allowed
17 under subsection (d)(1), and

18 “(ii) any portion of the deduction for
19 such contribution has not been allowed for
20 any taxable year before the taxable year in
21 which such death occurs,

22 then such portion shall be allowed as a deduc-
23 tion under subsection (a) for the taxable year in
24 which such death occurs without regard to sub-

1 section (b), or the unused portion may be used
2 against the estate taxes of the taxpayer.

3 “(E) DEFINITIONS.—For purposes of this
4 paragraph—

5 “(i) Wetlands.—The term ‘wetlands’
6 means any area that is inundated or satu-
7 rated by surface or groundwater at a fre-
8 quency and duration sufficient to support,
9 and which under normal circumstances
10 does support, a prevalence of vegetation
11 typically adapted for life in saturated soil
12 conditions.

13 “(ii) WETLANDS STEWARDSHIP
14 TRUST.—The term ‘Wetlands Stewardship
15 Trust’ means any entity designated by the
16 Secretary of the Interior under section 401
17 of the Wetlands Reform Act of 1993.”

18 (b) EFFECTIVE DATE.—The amendment made by
19 this section shall apply to contributions and gifts made
20 after the date of the enactment of this Act in taxable years
21 ending after such date.

1 **SEC. 403. EXCLUSION FROM GROSS INCOME FOR AMOUNTS**
2 **RECEIVED FROM COMPATIBLE USES OF WET-**
3 **LANDS.**

4 (a) IN GENERAL.—Part III of subchapter B of chap-
5 ter 1 of the Internal Revenue Code of 1986 (relating to
6 items specifically excluded from gross income) is amended
7 by redesignating section 137 as section 138 and by insert-
8 ing after section 136 the following new section:

9 **“SEC. 137. INCOME FROM COMPATIBLE USES OF WET-**
10 **LANDS.**

11 “(a) GENERAL RULE.—Gross income shall not in-
12 clude any amount received by the owner of wetlands for
13 allowing any person to use such wetlands in a compatible
14 use.

15 “(b) DEFINITIONS.—For purposes of this section—

16 “(1) WETLANDS.—The terms ‘wetlands’ has
17 the meaning given such term by section
18 170(e)(6)(E)(i).

19 “(2) COMPATIBLE USE.—The term ‘compatible
20 use’ has the meaning given such term in the regula-
21 tions prescribed under the following sentence. The
22 Secretary of the Interior, acting through the Direc-
23 tor of the Fish and Wildlife Service, shall prescribe
24 regulations identifying those activities which con-
25 stitute compatible uses for purposes of this section,
26 including any pertinent restrictions on such activi-

1 ties. Such activities may include fishing, hunting,
2 and occasional and prudent managed haying, if
3 deemed appropriate by the Secretary of the Interior,
4 but shall not include any activity which degrades the
5 functions or values of wetlands.”

6 (b) CLERICAL AMENDMENT.—The table of sections
7 for such part III is amended by striking the last item and
8 inserting the following new items:

“Sec. 137. Income from compatible uses of wetlands.
“Sec. 138. Cross references to other Acts.”

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to amounts received after the date
11 of the enactment of this Act in taxable years ending after
12 such date.

○

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