MESSAGES FROM THE HOUSE

At 12:07 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House insists upon its amendments to the bill (S.1) to curb the practice of imposing unfunded Federal mandates on States and local governments; to strengthen the partnership between the Federal Government and State, local, and tribal governments; to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate funding, in a manner that may displace other essential governmental priorities; and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statues and regulations; and for other purposes, and asks a conference with the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. CLINGER, Mr. DREIER, Mr. PORTMAN, Mr. DAVIS, Mr. CONDIT, Mrs. COLLINS of Illinois, Mr. TOWNS, and Mr. MOAKLEY as the managers of the conference on the part of the House.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–341. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10–348 adopted by the Council on December 6, 1994; to the Committee on Governmental Affairs.

EC–342. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10–349 adopted by the Council on December 6, 1994; to the Committee on Governmental Affairs.

EC–343. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10–350 adopted by the Council on December 6, 1994; to the Committee on Governmental Affairs.

EC–344. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10–351 adopted by the Council on December 6, 1994; to the Committee on Governmental Affairs.

EC–345. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10–352 adopted by the Council on December 6, 1994; to the Committee on Governmental Affairs.

EC–346. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10–353 adopted by the Council on December 6, 1994; to the Committee on Governmental Affairs.

EC–347. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10–354 adopted by the Council on December 6, 1994; to the Committee on Governmental Affairs.

EC–348. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10–355 adopted by the Council on December 6, 1994; to the Committee on Governmental Affairs.

EC–349. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10–356 adopted by the Council on December 6, 1994; to the Committee on Governmental Affairs.

EC–350. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10–357 adopted by the Council on December 6, 1994; to the Committee on Governmental Affairs.

EC–351. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10–358 adopted by the Council on December 6, 1994; to the Committee on Governmental Affairs.

EC–352. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10–359 adopted by the Council on December 6, 1994; to the Committee on Governmental Affairs.

EC–353. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10–360 adopted by the Council on December 6, 1994; to the Committee on Governmental Affairs.

EC–354. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10–361 adopted by the Council on December 6, 1994; to the Committee on Governmental Affairs.

EC–355. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10–365 adopted by the Council on December 6, 1994; to the Committee on Governmental Affairs.

EC–356. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10–367 adopted by the Council on December 6, 1994; to the Committee on Governmental Affairs.

EC–357. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10–368 adopted by the Council on December 6, 1994; to the Committee on Governmental Affairs.

EC–358. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10–369 adopted by the Council on December 6, 1994; to the Committee on Governmental Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LUGAR, from the Committee on Agriculture, Nutrition, and Forestry, without amendment:

S. 178. A bill to amend the Commodity Exchange Act to extend the authorization for the Commodity Futures Trading Commission, and for other purposes (Rept. No. 104–7).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. HATCH (for himself, Mr. BAUCUS, and Mrs. FEINSTEIN):

S. 351. A bill to amend the Internal Revenue Code of 1986 to make permanent the credit for increasing research activities; to the Committee on Finance.

By Mr. PRESSLER:

S. 352. A bill to amend the Federal Water Pollution Control Act to establish a comprehensive program for conserving and managing wetlands and waters of the United States, and for other purposes; to the Committee on Environment and Public Works.

By Mr. SIMON:

S. 353. A bill to clarify the circumstances under which a senior circuit court judge may cast a vote in a case heard en banc; to the Committee on the Judiciary.

By Mr. BREAUX (for himself, Mr. JOHNSTON, Mr. SIMON, and Mr. BUMPERS):

S. 354. A bill to amend the Internal Revenue Code of 1986 to provide tax incentives to encourage the preservation of low-income housing; to the Committee on Finance.

By Mr. ABRAHAM:

S. 355. A bill to provide that the Secretary of the Senate and the Clerk of the House of Representatives shall include an estimate of Federal retirement benefits for each Member of Congress in their semiannual reports, and for other purposes; to the Committee on Rules and Administration.

By Mr. SHELBY (for himself and Mr. COVERDELL):

S. 356. A bill to amend title 4, United States Code, to declare English as the official language of the Government of the United States; to the Committee on Governmental Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HATCH (for himself, Mr. BAUCUS and Mrs. FEINSTEIN):

S. 351. A bill to amend the Internal Revenue Code of 1986 to make permanent the credit for increasing research activities; to the Committee on Finance.

RESEARCH ACTIVITIES LEGISLATION

Mr. HATCH. Mr. President, I am pleased today to join with my friends and colleagues, Senator MAX BAUCUS, and Representatives NANCY JOHNSON and ROBERT MATSUI in the House, in introducing legislation that would extend permanently the tax credit for increasing research activities. The Omnibus Budget Reconciliation Act of 1993 temporarily extended this tax credit until June 30, 1995, when it is set to expire.

As the United States is shifting from an industrial based economy to an information and technology based economy, conducting research for tomorrow's products and methods is increasing in importance. In 1981, the Reagan administration and the Congress recognized this need, and the credit for increasing research and experimentation [R&E] activities was first enacted. Unfortunately, due to revenue concerns and uncertainty about its effectiveness, the credit was enacted with a sunset date of December 31, 1985. Since then, the credit has been extended four more times for periods varying from 6 months to 3 years.

Mr. President, this Nation is the world's undisputed leader in technological innovation. American know-how has given our Nation benefits undreamed of a few years ago. Research and development by U.S. companies has led the way in delivering these benefits, which enhance U.S. competitiveness as well as the quality of life for everyone. And, as the pace of change in our world quickens, the role of research has taken on increased importance.

The R&E credit has played a key role in placing the United States ahead of its competition in developing and marketing new products. Recent studies indicate that the marginal effect of $1 of the R&D credit stimulates approximately $1 of additional private research and development [R&D] spending over the short run, and as much as $2 of extra R&D over the long run.

Mr. President, the benefits of the R&D credit, though certainly very significant, have been limited by the fact that the credit has been temporary. In many fields, particularly pharmaceuticals and biotechnology, there are relatively long periods of development. The more uncertain the long-term future of the R&D credit is, the smaller the potential of the credit to stimulate increased research. This only makes sense, Mr. President. U.S. companies are managed by prudent business men and women. They evaluate their R&D investments by comparing the present value of the expected cash flows from the research over the life of the investment with the initial cash outlay. These estimates take into account the potential availability of tax credits. However, because of the uncertainty of a credit that has been allowed to expire 5 times in 14 years, many decision makers do not count on the R&E credit as being available in the long run. This, of course, means that fewer research projects will meet the threshold of viability and results in fewer dollars being spent on research in this country.

It is important to note that while U.S. investment in research and development has generally grown since 1970, our international competitors have not stood still. In fact, United States nondefense R&D, as a percentage of gross domestic product [GDP], has been relatively flat since 1985, while Japan's and Germany's have grown.

Unlike a few years ago, it is now not always necessary for U.S. firms to perform their research activities within the boundaries of the United States. As more nations have joined the United States as high-technology manufacturing centers, with educated work forces, multinational companies have found that moving manufacturing functions overseas is sometimes necessary to stay competitive. The same is often true with basic research activities. In fact, some of our major trading partners now provide generous tax incentives for research and development conducted in those nations. In some cases, these incentives are more attractive than the R&E credit the United States provides, particularly when the temporary nature of our credit is considered. Therefore, Mr. President, we are at risk of having some of the R&D spending in the United States transferred overseas if we do not keep competitive.

President Clinton, when campaigning for the presidency in 1992, recognized the importance of stimulating private R&D investment and called for a permanent R&E credit. I firmly hope that the President's fiscal year 1996 budget continues this commitment by providing for the permanent extension of the credit.

Mr. President, my home State of Utah is home to a large number of innovative companies who invest a high percentage of their revenue in research and development activities. For example, between Salt Lake City and Provo lies the world's biggest stretch of software and computer engineering firms. This area, which was named ''Software Valley'' by Business Week, is second only to California's Silicon Valley as a thriving high technology commercial area.

In addition, the Salt Lake City area is home to at least 145 biomedical firms that employ nearly 8,000 workers. These companies were conceived in research and development and will not survive, much less grow, without continuously conducting R&D activities.

In all, Mr. President, there are approximately 80,000 employees working in Utah's 1,400 plus and growing technology based companies. Research and development is the lifeblood of these firms, and hundreds of thousands more throughout the nation that are like them. A permanent and effective tax incentive to increase research is essential to the long-term health of these businesses.

High-technology companies are leading us into the 21st century. Research and development must continue or this industry will shrivel up and die. We cannot allow that to happen.

I am aware, Mr. President, that not every company that incurs R&D expenditures in the United States can take advantage of the R&E credit. For many companies, particularly in the defense and aerospace industries, declining research and development expenditures as a percentage of sales, which came about as a result of lower defense spending by the Federal Government, have put the credit out of reach. Thus, even a permanent credit, as currently structured, holds little or no incentive to increase research activities for these firms. Other companies find the current R&E credit less effective than it could be because of various problems inherent in the structure of the credit. In short, the credit, even if permanently extended, is not perfect. Congress should examine ways to improve it and to make it more effective in delivering incentives to increase R&D activity for all companies. I intend to explore various ideas to make the credit better. And, I invite my colleagues and interested parties to join me in this endeavor.

In the meantime, however, it is important that this Congress send a strong signal that the current credit should not be allowed to expire. This bill today is intended to serve as a benchmark. I urge my colleagues to show their support for the concept of a permanent R&E credit by cosponsoring this legislation. By the time we have the opportunity to consider a tax bill, probably later this spring, we hope to be able to offer improvements to the credit that all companies will find effective in encouraging the kind of research activities that will keep this Nation a leader in the technological developments that will lead us into the next century.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 351

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CREDIT FOR INCREASING RESEARCH ACTIVITIES MADE PERMANENT.

(a) IN GENERAL.—Section 41 of the Internal Revenue Code of 1986 (relating to credit for increasing research activities) is amended by striking subsection (h).

(b) CONFORMING AMENDMENT.—Paragraph (1) of section 28(b) of such Code is amended by striking subparagraph (D).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after June 30, 1995.

• Mr. President, it is with great pleasure that I join with my colleague from Utah, Senator HATCH, to introduce a bill critical to the ability of American businesses to effectively compete in the global marketplace. This bill will provide the economic incentive to encourage businesses to undertake the research necessary to develop the technical innovations required to increase the supply of quality jobs in the United States.

The legislation that we introduce today, and the companion legislation Representatives NANCY JOHNSON and ROBERT MATSUI are introducing in the House on this date, will make the R&D credit permanent for amounts paid for incurred after June 30, 1995.

For the past several years, essentially because of budget constraints, Congress extended the R&D credit on an sporadic basis. Corporations have been unable to count on the credit as a certainty in financing the multi-year development projects necessary to the economic well being of the companies particularly in a highly competitive, global market place.

The bill introduced today to permanently extend the R&D credit is only the beginning. Over the last few years, I have received the input of a variety of

business leaders and industry representatives concerning ways to facilitate additional investment in research and development. Included in this process were discussions with representatives of small and large businesses, new companies, and mature industries. As a result, I have concluded that additional modifications should be made to the R&D credit provisions to fulfill the objectives contemplated by Congress when it first enacted and subsequently modified the credit—fostering leadership in new technology, promoting the emergence of new businesses, aiding the conversion of the defense industry, and promoting an environment in which our Nation's companies can successfully compete with their foreign counterparts.

On March 26, 1993, I, together with our former colleague, Senator Danforth, introduced S. 666, The Research Development Enhancement Act of 1993. I believed at that time and continue to believe that S. 666 effectively addressed a number issues which, had the legislation been enacted, would have facilitated additional investment in U.S.-based research and development.

I look forward to working with my colleague, Senator HATCH, and with Members of Congress and the Administration to obtain a permanent extension of the R&D credit and to ultimately effect revisions to the credit to encourage American companies to invest additional funds in research and development.●

By Mr. PRESSLER:

S. 352 A bill to amend the Federal Water Pollution Control Act to establish a comprehensive program for conserving and managing wetlands and waters of the United States, and for other purposes; to the Committee on Environment and Public Works.

THE COMPREHENSIVE WETLANDS CONSERVATION AND MANAGEMENT ACT OF 1995

Mr. PRESSLER. Mr. President, today I am introducing legislation that addresses a major concern of land owners and businesses not only in South Dakota but throughout the United States. The concern is wetlands.

Traveling throughout South Dakota and listening to the people, it is clear that wetlands are an issue on everyone's mind. More often than not, current wetlands policy is a burden on our farmers, ranchers, and business people. Problems with current wetlands policies have affected farmers and ranchers predominantly. However, current policies also are now affecting those who live in our cities and small towns. The bill I am introducing today would go far in establishing a policy that neither is burdensome nor imposes unwarranted costs and regulations.

And what are these wetlands concerns? The right to own private property is one. Compensation to property owners when land is taken away or when use of the land is restricted is another. Government-forced changes in farming and ranching operations are on everyone's mind. Current excessive penalties and fines could force young farmers and ranchers off the land. Obstacles to business expansion are another current concern.

Mr. President, the list of concerns goes on. These concerns are not imagined. They are real. Problems are occurring throughout South Dakota. In just one county in South Dakota—Kingsbury—nearly 20 percent of that county's farmland contains Government wildlife easement wetlands. However, Government officials have not notified farmers of those easements.

Seven possible wetlands violations were reported in Kingsbury County last year. Yet four of the seven operators charged had no idea there were wetlands easements on their farms.

In several cases, local officials quickly identified the problem, and notified the affected farmers. The farmers, unaware of any wetlands damage or violations, quickly repaired the disruption of their wetlands. Now these farmers are waiting for a ruling from Washington bureaucrats on what their penalty will be.

The penalties will not be light. Farmers have told me they are being threatened with fines as high as $515,000. Fines as high as $65,000 have already been levied.

Mr. President, I do not know any farm or ranch family that can afford to lose that amount of money. Efforts must be taken to ensure that any fine or penalty is in line with violations. Many violations are incidental and quickly repaired. Penalties should fit the crime.

Thousands of South Dakotans have written, called, or visited with me about the definition of wetlands and the rules and regulations designed to protect wetlands. Farmers, ranchers, business men and women, and individual South Dakotans have clearly identified one of the most important issues affecting their lives. They are concerned about the definition of wetlands and what guidelines should be adopted to protect them.

The bill I am introducing today addresses these wetlands concerns. My bill would create much-needed guidelines for identifying and delineating wetlands and creating a balance between growth and the protection of private property. Simply put, this bill puts common sense into our wetlands policy.

Current law is too broad, and it is causing to many problems throughout the country. Congress has never passed a comprehensive law defining wetlands. Without that definition, Federal agencies have been aggressively pursuing control over private property in the name of saving wetlands.

What the Government should or should not be doing in this area needs to be defined clearly. My bill does that. It provides definitions that protect true wetlands areas and protects the rights of private property owners.

My bill requires certain criteria to be met and verified before an area can be regulated as a wetland. Such an approach is more reliable in identifying true wetlands. It prevents field inspectors from mistakenly classifying dry, upland areas that are drained effectively as wetlands, and also eliminates a major source of confusion and abuse caused by current regulations.

Mr. President, I ask that an explanation of the bill be printed in the RECORD at this point.

Mr. President, I applaud my friend and colleague Senator BREAUX for being the leader on this issue during previous Congresses. Only through the kind of common sense and balanced approach proposed in my bill can the Nation's agricultural, business, environmental, and individual interests be addressed properly. Action is needed. I urge my colleagues to take a close look at this bill and join me in supporting this bill.

Mr. President, I ask unanimous consent that a copy of my bill and additional material be printed in the RECORD.

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

S. 352

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Comprehensive Wetlands Conservation and Management Act of 1995''.

SEC. 2. FINDINGS AND STATEMENT OF PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) wetlands play an integral role in maintaining high quality of life through material contributions to the national economy, food supply, water supply and quality, flood control, and fish, wildlife, and plant resources, and to the health, safety, recreation, and economic well-being of citizens throughout the United States;

(2) wetlands serve important ecological and natural resource functions, such as providing essential nesting and feeding habitat for waterfowl, other wildlife, and many rare and endangered species, fisheries habitat, the enhancement of water quality, and natural flood control;

(3) much of the wetlands resource of the United States has sustained significant loss or degradation, resulting in the need for effective programs to limit the loss and degradation of ecologically significant wetlands and to provide for long-term restoration and enhancement of the wetlands resource base;

(4) because 75 percent of the wetlands in the lower 48 States is privately owned and because the majority of the population of the United States lives in or near wetlands, an effective wetlands conservation and management program must reflect a balanced approach that conserves and enhances important wetlands functions and values while observing private property rights, recognizing the need for essential public infrastructure, such as highways, ports, airports, sewer systems, and public water supply systems, and providing the opportunity for sustained economic growth; and

(5) the Federal permit program established under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) was not originally conceived as a wetlands regulatory program and is insufficient to ensure

that the wetlands resource base of the United States will be conserved and managed in a fair and environmentally sound manner.

(b) PURPOSE.—The purpose of this Act is to establish a new Federal regulatory program for activities in wetlands and waters of the United States to—

(1) assert Federal regulatory jurisdiction over a broad category of specifically identified activities that result in the loss or degradation of wetlands and waters of the United States;

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

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

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

(5) balance public and private interests in determining the conditions under which activity in wetlands and waters of the United States may occur.

SEC. 3. WETLANDS CONSERVATION AND MANAGEMENT.

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

"SEC. 404. PERMITS FOR ACTIVITIES IN WETLANDS OR WATERS OF THE UNITED STATES.

''(a) DEFINITIONS.—As used in this section:

''(1) ACTIVITY IN WETLANDS OR WATERS OF THE UNITED STATES.—The term 'activity in wetlands or waters of the United States' means—

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

''(B) the draining, channelization, or excavation of wetlands.

''(2) CREATION.—The term 'creation', used with respect to wetlands, means an activity that brings wetlands into existence, at a site where the wetlands did not formerly occur, for the purpose of compensation.

''(3) DIRECTOR.—The term 'Director', used without further modification, means the Director of the United States Fish and Wildlife Service.

''(4) ENHANCEMENT.—The term 'enhancement', used with respect to wetlands or waters of the United States, means an activity that increases the value of a function in wetlands or waters of the United States.

''(5) FASTLANDS.—The term 'fastlands' means lands located behind permitted manmade structures, such as lands located behind a levee to permit utilization of the lands for commercial, industrial, or residential purposes consistent with each local land use planning requirement.

''(6) GROWING SEASON.—The term 'growing season' means, for each plant hardiness zone, the period between the average date of last frost in spring and the average date of first frost in autumn.

''(7) INCIDENTALLY CREATED.—The term 'incidentally created', used with respect to wetlands, means lands that otherwise meet the standards for delineation of wetlands described in paragraphs (1) and (2) of subsection (g), if a characteristic of the wetlands is the unintended result of a human-induced alteration of hydrology.

''(8) MAINTENANCE.—The term 'maintenance' means an activity undertaken to ensure continuation of wetlands or the accomplishment of a project goal after a wetlands restoration or wetlands creation project has been technically completed, including water level manipulation and control of any nonnative plant species.

''(9) MITIGATION BANKING.—The term 'mitigation banking' means wetlands restoration, enhancement, preservation, or creation for the purpose of providing compensation for wetlands loss or degradation.

''(10) NORMAL FARMING, SILVICULTURE, AQUACULTURE, OR RANCHING ACTIVITY.—The term 'normal farming, silviculture, aquaculture, or ranching activity' means a normal ongoing practice identified as a normal ongoing activity by the Secretary of Agriculture (in consultation with the Cooperative State Research, Education, and Extension Service for each State, the land-grant university system, and the agricultural colleges of the State), taking into account any existing practice (as of the date of the identification) and any other practice that may be identified in consultation with the affected industry or community.

''(11) PRIOR CONVERTED CROPLAND.—The term 'prior converted cropland' means lands that were both manipulated (by drainage or other physical alteration to remove excess water from the land) and cropped before December 23, 1985, to the extent that the lands no longer exhibit significant wetlands functions or values.

''(12) RESTORATION.—The term 'restoration', used with respect to wetlands, means an activity undertaken to return wetlands from a disturbed or altered condition with lesser wetlands acreage or fewer wetlands functions or values to a previous condition with greater wetlands acreage or more wetlands functions or values.

''(13) SECRETARY.—The term 'Secretary', used without further modification, means the Secretary of the Army.

''(14) TEMPORARY.—The term 'temporary', used with respect to an impact, means the disturbance or alteration of wetlands or waters of the United States caused by an activity under a circumstance in which, not later than 3 years following the commencement of the activity, the wetlands or waters—

''(A) are returned to the condition in existence prior to the commencement of the activity; or

''(B) display a condition sufficient to ensure that without further human action the wetlands or waters will return to the condition in existence prior to the commencement of the activity.

''(15) WETLANDS.—The term 'wetlands' means lands that meet the standards for delineation of lands as wetlands set forth in paragraphs (1) and (2) of subsection (g).

''(16) WETLANDS FUNCTIONS.—The term 'wetlands functions' means the roles wetlands serve that are of value, including flood water storage, flood water conveyance, ground water discharge, erosion control, wave attenuation, water quality protection, scenic and aesthetic use, food chain support, fishery support, wetlands plant habitat support, aquatic habitat support, and habitat for wetlands-dependent wildlife support.

''(b) AUTHORIZED ACTIVITIES.—

''(1) PERMIT REQUIREMENT.—No person shall undertake an activity in wetlands or waters of the United States unless the activity is undertaken pursuant to a permit issued by the Secretary, except as provided in paragraph (3).

''(2) ISSUANCE OF PERMITS.—The Secretary may issue permits authorizing activities in wetlands or waters of the United States in accordance with the requirements of this section.

''(3) ACTIVITIES NOT REQUIRING PERMITS.—An activity in wetlands or waters of the United States may be undertaken without a permit described in paragraph (2) from the Secretary if the activity is authorized under paragraph (5) or (6) of subsection (e), is exempt under subsection (f), or is otherwise exempt under another provision of this section.

''(4) APPLICATION.—Any person seeking to undertake an activity in wetlands or waters of the United States shall submit an application to the Secretary identifying the site of the activity. The applicant shall also provide such additional information regarding the proposed activity as may be necessary or appropriate for purposes of determining whether and under what conditions the proposed activity may be permitted to occur.

''(c) WETLANDS CLASSIFICATION.—

''(1) APPLICATION.—In submitting an application under subsection (b), any person seeking to undertake an activity in wetlands for which a permit is required under subsection (b) shall request that the Secretary determine, in accordance with paragraph (3), the classification of the wetlands in which the activity is proposed to occur. The applicant shall also provide such information as may be necessary or appropriate for determining the classification of wetlands.

''(2) NOTICE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), not later than 90 days after the receipt of an application described in paragraph (1) relating to an activity in wetlands, the Secretary shall provide notice to the applicant of the classification of the wetlands that are the subject of the application and shall state in writing the basis for the classification. The classification of the wetlands that are the subject of the application shall be determined by the Secretary in accordance with the requirements for classification of wetlands under paragraphs (3), (4), and (5).

''(B) NOTICE REGARDING ADVANCE CLASSIFICATION.—In the case of an application proposing an activity located in wetlands that are the subject of an advance classification under subsection (h), the Secretary shall provide notice to the applicant of the classification within 30 days following the receipt of the application, and shall provide an opportunity for review of the classification under paragraphs (4) and (5).

''(3) CLASSIFICATION.—On receipt of an application under this subsection with respect to wetlands, the Secretary shall, in accordance with the standards and procedures established by regulation issued under subsection (i)—

''(A) classify as type A wetlands the wetlands that are of critical significance to the long-term conservation of the ecosystem of which the wetlands are a part if—

''(i) the wetlands serve critical wetlands functions and values, including the provision of critical habitat for a concentration of avian, aquatic, or wetlands-dependent wildlife;

''(ii)(I) the wetlands consist of or are a portion of 10 or more contiguous acres and have an inlet or outlet for relief of water flow; or

''(II) the wetlands contain a prairie pothole feature, playa lake, or vernal pool;

''(iii) there exists a scarcity within the watershed or aquatic ecosystem of identified ecological functions served by the wetlands such that the use of the wetlands for an activity in wetlands or waters of the United States would seriously jeopardize the availability of the identified functions;

''(iv) there is no overriding public interest in the use of the wetlands for purposes other than conservation; and

''(v) the nature and scope of the wetlands functions and values of the wetlands are such that minimization and compensation are not feasible means for conserving the wetlands functions and values;

''(B) classify as type B wetlands the wetlands that provide habitat for a significant population of avian, aquatic, or wetlands-dependent wildlife, or provide other significant wetlands functions and values, including significant enhancement or protection of water

quality in waters of the United States, or significant natural flood control; and

''(C) classify as type C wetlands the wetlands that—

''(i) serve limited wetlands functions and values;

''(ii) serve marginal wetlands functions and values but that exist in such abundance that regulation of activities in the wetlands is not necessary for conserving important wetlands functions and values;

''(iii) are prior converted cropland;

''(iv) are fastlands; or

''(v) are wetlands within industrial complexes or other intensely developed areas that do not serve significant wetlands functions and values as a result of the location of the wetlands.

''(4) DE NOVO DETERMINATION.—Not later than 30 days after receipt of notice of an advance classification by the Secretary under paragraph (2)(B), an applicant may request that the Secretary make a de novo determination of the classification of wetlands that are the subject of the notice. The de novo determination shall be made by the Secretary in consultation with the Director. The Secretary may sustain the advance classification made by the Director. The Secretary may modify the classification if the Secretary determines, on examination of all relevant information submitted by the applicant or otherwise available to the Secretary (including, if appropriate, an on-the-ground examination) that—

''(A) the lands involved do not meet the standards for delineating wetlands set forth in paragraph (1) or (2) of subsection (g);

''(B) the weight of relevant information does not support the determination of the advance classification with respect to the specific wetlands involved;

''(C) the factual basis for the advance classification is no longer valid; or

''(D) the limitations on uses of the specific wetlands involved that would be imposed by the Secretary under this section would effectively preclude reasonable economic use of the wetlands.

''(5) APPEALS.—In the event that the Secretary delegates authority to determine the classification of wetlands under paragraphs (3) and (4), the Secretary shall, by regulation, provide for a right of appeal to the Secretary or the designee of the Secretary of the classification of wetlands under paragraph (3) or the de novo determination of an advance classification in accordance with paragraph (4).

''(6) MAXIMUM PERCENT OF LANDS CLASSIFIED AS TYPE A WETLANDS.—No more than 20 percent of any county, parish, or borough shall be classified as type A wetlands. For purposes of this paragraph, a county, parish, or borough includes any land in the county, parish, or borough that is owned by the United States or by a State, including land in a unit of the National Wildlife Refuge System, land in the National Park System, and land subject to a conservation easement.

''(d) COMPENSATION FOR LANDOWNERS.—

''(1) ELECTION TO SEEK COMPENSATION.—Any person (including a State or political subdivision of a State) who owns an interest in lands that have been classified as type A wetlands by the Secretary under subsection (c)(3)(A) or by the Director under subsection (h) may, not later than 2 years after receipt of actual notice of the classification (or not later than 2 years after a de novo determination of the classification under subsection (c)(4)), notify the Secretary and the Director that the person is electing to seek compensation for the fair market value of the interest in lands at the time of the classification, in accordance with the requirements of this section. The fair market value may include reasonable attorney's fees and shall be calculated without regard to any diminution in value resulting from the applicability of this section.

''(2) NEGOTIATIONS.—Immediately on receipt by the Secretary and the Director of notification of election to seek compensation under paragraph (1), the Director shall enter into good faith negotiations with the owner for purposes of determining the value of the interest in lands that have been classified as type A wetlands. Not later than 90 days after receipt of the notification of election by the owner under paragraph (1), the Director shall make an offer of reasonable compensation to the owner.

''(3) ACTION OF OWNER.—

''(A) IN GENERAL.—Not later than 6 years after the date the Director makes an offer of compensation under paragraph (2), the owner shall provide notice that the owner, in the discretion of the owner—

''(i) accepts the offer of compensation;

''(ii) has filed a claim for determination of the value of the compensation described in paragraph (1) with the United States Court of Federal Claims; or

''(iii) advises the Director and the Secretary that the owner elects to retain title to the wetlands and elects not to receive compensation for the taking of land under this subsection.

''(B) FAILURE TO PROVIDE NOTICE.—Failure to provide notice in accordance with this paragraph shall be deemed an election to retain title to the wetlands and not to receive compensation under this subsection.

''(4) EFFECT OF ACCEPTANCE OF OFFER OR FILING OF CLAIM.—On acceptance of an offer of compensation, or the filing of a claim for determination of the value of compensation, under paragraph (3), the classification as type A wetlands of the wetlands that are the subject of the offer or claim shall be binding on the owner and any successor in interest, and the title to the lands shall pass to the United States. The classification of the lands as type A wetlands under this paragraph shall constitute a taking by the United States of the interests in the lands of the owner and shall be compensable under this subsection.

''(5) EXTENT OF TAKING.—A taking under this subsection shall be deemed to be a taking of surface interests in lands only, with the following exceptions:

''(A) EXPLORATION OR DEVELOPMENT NOT COMPATIBLE WITH CONSERVATION.—If the Secretary determines that the exploration for or development of oil and gas or mineral interests is not compatible with conservation of the surface interests in lands that have been classified as type A wetlands located above the oil and gas or mineral interests (or located adjacent to the oil and gas or mineral interests where the adjacent lands are necessary to provide reasonable access to the interests), the Secretary may classify the oil and gas or mineral interests as type A wetlands and notify the owner of the interests that the owner may elect to receive compensation for the interests under paragraph (1).

''(B) FAILURE TO PROVIDE REASONABLE ACCESS.—The failure of the Secretary to provide reasonable access to oil and gas or mineral interests located beneath or adjacent to surface interests of type A wetlands shall be deemed a taking of the oil and gas or mineral interests. The Secretary shall classify the oil and gas or mineral interests as type A wetlands and notify the owner of the interests that the owner may elect to receive compensation for the interests under paragraph (1).

''(6) JURISDICTION.—The United States Court of Federal Claims shall have jurisdiction—

''(A) to determine the value of interests taken and the fair compensation required under this subsection and the Constitution;

''(B) in the case of oil and gas or mineral interests, to require the United States to provide reasonable access in, across, or through lands that may be the subject of a taking under this subsection solely for the purpose of undertaking activity necessary to determine the value of the interests taken; and

''(C) to provide other equitable remedies determined to be appropriate.

''(7) EXECUTION OF JUDGMENT.—Any judgment rendered under paragraph (6) may be executed, at the election of the owner. Any owner seeking to execute such a judgment shall execute the judgment not later than 2 years after the date the judgment is rendered. The owner may, prior to the execution of the judgment, enter into an agreement with the United States for satisfaction of the judgment through a crediting of a tax benefit, acquisition of an interest in oil and gas or minerals, an exchange of interests in lands with the United States, or other means of compensation.

''(8) CONSTRUCTION.—

''(A) AVAILABILITY OF OTHER REMEDIES.—The remedy for a taking of an interest in lands under this subsection shall not be construed to preempt, alter, or limit the availability of other remedies for the taking of the interest in lands under the Constitution or under State law, including the taking of rights to the use of water allocated under State law or the taking of the interest in lands by denial of a permit under this section.

''(B) TAKING BY DENIAL OF A PERMIT.—Any award of compensation for the taking of an interest in lands by denial of a permit under this section shall be based on the fair market value of the interest in lands at the time of the taking. The fair market value may include reasonable attorney's fees and shall be calculated without regard to any diminution in value resulting from the applicability of this section.

''(9) MANAGEMENT.—Interests in lands acquired by the United States under this subsection shall be managed by the United States Fish and Wildlife Service as a part of the National Wildlife Refuge System unless the Secretary of the Interior, acting through the Director, makes a determination otherwise, or unless otherwise provided by law.

''(10) REQUIREMENTS GOVERNING USE OF WATER.—No action taken under this subsection shall be construed to alter or supersede requirements governing use of water applicable under State law.

''(e) REQUIREMENTS APPLICABLE TO PERMITTED ACTIVITY.—

''(1) ISSUANCE OR DENIAL OF PERMITS.—Following the provision of notice of wetlands classification pursuant to subsection (c) if applicable, and after compliance with the requirements of subsection (d) if applicable, the Secretary may issue or deny a permit for authorization to undertake an activity in wetlands or waters of the United States, in accordance with the requirements of this subsection.

''(2) TYPE A WETLANDS.—

''(A) IN GENERAL.—The Secretary shall deny a permit authorizing an activity in type A wetlands unless the Secretary determines that—

''(i) the activity can be undertaken with minimal alteration or surface disturbance of the wetlands; or

''(ii) the proposed use of the land, taking into account all proposed mitigation, will result in overall environmental benefits, including the prevention of wetlands loss or degradation.

''(B) TERMS AND CONDITIONS CONCERNING MITIGATION.—Any permit issued authorizing activities in type A wetlands may contain such terms and conditions concerning mitigation (including terms and conditions applicable under paragraph (3) for type B wetlands) as the Secretary determines to be appropriate to prevent the unacceptable loss or degradation of type A wetlands.

''(3) TYPE B WETLANDS.—

''(A) CONSIDERATIONS.—The Secretary may issue a permit authorizing an activity in type B wetlands subject to such terms and conditions as the Secretary finds are necessary to ensure that the watershed or aquatic ecosystem of which the wetlands are a part does not suffer significant loss or degradation of wetlands functions and values. In determining whether specific terms and conditions are necessary to avoid a significant loss or degradation of wetlands functions and values, the Secretary shall consider the following:

''(i) The quality and quantity of ecologically significant functions and values served by the areas to be affected.

''(ii) The opportunities to reduce impacts through cost-effective design to avoid or minimize use of wetlands.

''(iii) The costs of mitigation requirements and the social, recreational, and economic benefits associated with the proposed activity, including local, regional, or national needs for improved or expanded infrastructure.

''(iv) The ability of the applicant for the permit to mitigate wetlands loss or degradation as measured by wetlands functions and values.

''(v) The environmental benefit, measured by wetlands functions and values, that may occur through mitigation efforts, including restoration, preservation, enhancement, or creation of wetlands functions and values.

''(vi) The marginal impact of the proposed activity on the watershed or aquatic ecosystem of which the wetlands are a part.

''(B) ALTERNATIVE SITE ANALYSES AND PROJECT PURPOSES.—In considering applications for permits with respect to activities on type B wetlands, the Secretary may require alternative site analyses for individual permit applications involving the alteration or permanent surface disturbance of 10 or more contiguous acres of wetlands. In the case of such an application, there shall be a rebuttable presumption that the project purpose for the activities as defined by the applicant shall be binding on the Secretary. In the case of such an application, the definition of project purpose for the activities sponsored by a public agency shall be binding on the Secretary, subject to the authority of the Secretary to impose mitigation requirements to minimize impacts on wetlands functions and values, including cost-effective redesign of the project to avoid wetlands.

''(C) REQUIREMENTS FOR MITIGATION.—Except as otherwise provided in this section, requirements for mitigation shall be imposed if the Secretary finds that activities undertaken under this section will result in the loss or degradation of type B wetlands functions and values where the loss or degradation is not an incidental or a temporary impact. When determining the mitigation requirements in any specific case, the Secretary shall take into consideration the characteristics of the wetlands affected, the character of the impact on ecological functions, whether any adverse effects on wetlands are of a permanent or temporary nature, and the cost-effectiveness of the mitigation and shall seek to minimize the costs of the mitigation.

''(D) REGULATIONS GOVERNING REQUIREMENTS FOR MITIGATION.—The Secretary shall issue regulations under subsection (i) governing requirements for compensatory mitigation, for activities occurring in type B wetlands, that allow for—

''(i) minimization of impacts through project design for the activities, including avoidance of specific wetlands impacts where economically practicable and consistent with the project purpose, provisions for compensatory mitigation, if any, and other terms and conditions necessary and appropriate in the public interest;

''(ii) preservation or donation of type A wetlands or type B wetlands (if title has not been acquired by the United States and no compensation for the taking of the wetlands has been provided) as mitigation for activities that result in loss or degradation of wetlands;

''(iii) enhancement or restoration of lost or degraded wetlands as compensation for wetlands lost or degraded through permitted activity;

''(iv) compensation through contribution to a mitigation banking program established for a State pursuant to subparagraph (F);

''(v) offsite compensatory mitigation with respect to an activity in a wetlands, if the mitigation contributes to the restoration, enhancement, or creation of significant wetlands functions and values on a watershed or ecosystem-wide basis and is balanced with the effects that an activity proposed to be carried out under a permit will have on the specific site (except that offsite compensatory mitigation, if any, shall be required only in the State in which the proposed activity is to occur, and shall, to the extent practicable, be within the watershed or aquatic ecosystem within which the proposed activity is to occur, unless otherwise consistent with a State wetlands management plan);

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

''(vii) in areas subject to wetlands loss or degradation, construction of coastal protection and enhancement projects;

''(viii) contribution of resources of more than 1 permit recipient toward a single mitigation project; and

''(ix) other mitigation measures determined by the Secretary to be appropriate, in the public interest, and consistent with the requirements and purposes of this Act.

''(E) COMPENSATORY MITIGATION.—Notwithstanding subparagraph (C), the Secretary may determine not to impose requirements for compensatory mitigation, with respect to an activity in a wetlands, if the Secretary finds that—

''(i) the adverse impacts of an activity proposed to be carried out under a permit are limited;

''(ii) the failure to impose compensatory mitigation requirements is compatible with maintaining wetlands functions and values and no practicable and reasonable means of compensatory mitigation is available;

''(iii) there is an abundance of similar significant wetlands functions and values in or near the area in which the proposed activity is to occur that will continue to serve the functions and values lost or degraded as a result of the activity, taking into account the impacts of the activity and the cumulative impacts of similar activity in the area;

''(iv) the temporary character of the impacts and the use of minimization techniques make compensatory mitigation unnecessary to protect significant wetlands functions and values; or

''(v) a waiver from requirements for compensatory mitigation is necessary to prevent special hardship.

''(F) MITIGATION BANKING PROGRAM.—

''(i) ESTABLISHMENT.—The Secretary, in consultation with the Director, shall establish a mitigation banking program in each State. The mitigation banking program shall be developed in consultation with the Director and the Governor of the State in which the wetlands covered by the mitigation banking program is located. After approval of the program by the Secretary, the Secretary may require contributions to the program as a means for ensuring compensation for loss and degradation of wetlands functions and values in the State in accordance with the requirements of this paragraph.

''(ii) PRIMARY OBJECTIVE.—The primary objective of the programs shall be to provide for the restoration, enhancement, or, where feasible, creation of ecologically significant wetlands on an ecosystem basis.

''(iii) FUNCTIONS AND VALUES.—Each program described in clause (i) shall—

''(I) provide a preference for large-scale projects for conservation, enhancement, or restoration of wetlands, unless the Secretary (or the Governor of a State that is administering a State permit program under subsection (l)) determines that a smaller project will contribute substantially to the conservation, enhancement, or restoration of ecologically significant wetlands functions and values or that the restoration of indigenous wetlands resources cannot be accomplished through large-scale projects;

''(II) authorize mitigation banks sponsored by private entities or public entities;

''(III) provide for the crediting to a State or privately maintained mitigation bank of contributions in land or cash, or in-kind contributions, so that persons unable to sponsor specific mitigation projects can contribute to the mitigation bank;

''(IV) have sufficient requirements to ensure completion, maintenance, and supervision of wetlands projects for at least a 25-year period, including requirements for bonds or other evidence of financial responsibility;

''(V) authorize the imposition of bonding requirements on private entities operating the banks;

''(VI) limit activities in or on wetlands that are part of a mitigation bank to uses that are consistent with maintaining or gaining significant wetlands functions and values; and

''(VII) authorize a credit to be provided on an acre-for-acre or value-for-value basis for type A and B wetlands that are permanently protected in national conservation units in any State that has converted less than 10 percent of the historic wetlands base of the State to other uses.

''(4) ACTION ON APPLICATIONS.—

''(A) TIMING.—In the case of any application for authorization to undertake activities in wetlands or waters of the United States that are not type C wetlands, final action by the Secretary shall occur not later than 180 days after the date the application is filed, unless—

''(i) the Secretary and the applicant agree that the final action shall occur within a shorter or longer period of time;

''(ii) the Secretary determines that an additional, specified period of time is necessary to permit the Secretary to comply with other applicable Federal law; or

''(iii) the Secretary, not later than 15 days after the date the application is received, notifies the applicant that the application does not contain all information necessary to allow the Secretary to consider the application and identifies any necessary additional information, in which case the provisions of subparagraph (B) shall apply.

''(B) ADDITIONAL INFORMATION.—On the receipt of a request for additional information under subparagraph (A)(iii), the applicant shall supply the additional information and shall provide notice to the Secretary that

the application contains all requested additional information and is therefore complete. The Secretary may—

''(i) not later than 30 days after the receipt of notice from the applicant that the application is complete, determine that the application does not contain all requested additional information and, on the basis of the determination, deny the application without prejudice with respect to resubmission; or

''(ii) not later than 180 days after the receipt of notice from the applicant that the application is complete, review the application and take final action on the application.

''(C) FAILURE TO ACT ON APPLICATION.—If the Secretary fails to take final action on an application as provided in subparagraph (B)(ii), on the 180th day described in the subparagraph a permit shall be presumed to be granted authorizing the activities proposed in the application under such terms and conditions as are stated in the completed application.

''(D) APPEALS.—Not later than 60 days after the date of a decision of the Secretary denying a permit requested in an application under this paragraph, the applicant may appeal the decision to the Secretary of Defense or the designee of the Secretary of Defense. On such an appeal, the Secretary of Defense or the designee shall uphold the decision of the Secretary of the Army if the Secretary of the Army proves by clear and convincing evidence that granting the permit requested in the application would be inconsistent with this section.

''(5) TYPE C WETLANDS.—

''(A) PERMIT NOT REQUIRED.—Activities in wetlands that have been classified as type C wetlands under subsection (c)(3)(C) by the Secretary or under subsection (h) by the Director may be undertaken without a permit referred to in subsection (b).

''(B) REPORTING REQUIREMENTS.—The Secretary may establish requirements for reporting activities undertaken in type C wetlands.

''(C) ALTERNATIVE SITE ANALYSIS AND MITIGATION NOT REQUIRED.—No requirements for alternative site analyses or mitigation of environmental impacts shall apply for activities undertaken in type C wetlands.

''(6) NATIONAL, REGIONAL, OR STATEWIDE GENERAL PERMITS.—

''(A) IN GENERAL.—The Secretary may, in accordance with a regulation issued under subsection (i), issue general permits on a national, regional, or statewide basis for any category of activities in wetlands or waters of the United States for which a permit would otherwise be required under subsection (b), if the Secretary determines that the activities in the category are similar in nature and that the activities, whether performed separately or cumulatively, will not result in a significant loss or degradation of ecologically significant wetlands functions and values or of ecologically significant waters of the United States. Permits issued under this paragraph shall include procedures for expedited review of eligibility for the permits (if the review is required) and may include requirements for reporting and mitigation. The Secretary may impose requirements for compensatory mitigation for the permits if necessary to avoid or minimize the significant loss or degradation of significant wetlands functions and values where the loss or degradation is not an incidental or a temporary impact.

''(B) EXISTING GENERAL PERMITS.—General permits issued on a national or regional basis for activities in the wetlands or waters of the United States and in effect on the date of enactment of the Comprehensive Wetlands Conservation and Management Act of 1995 shall remain in effect until otherwise modified by the Secretary.

''(f) ACTIVITIES NOT REQUIRING PERMIT.—

''(1) ACTIVITIES.—Except as provided in paragraph (3), activities in wetlands or waters of the United States shall be exempt from the requirements of this section and shall not be prohibited by or otherwise subject to regulation under this section or section 301 or 402 (except to the extent the sections relate to compliance with effluent standards or prohibitions under section 307), if the activities—

''(A) result from normal farming, silviculture, aquaculture, or ranching activities and practices, such as plowing, seeding, cultivating, minor drainage, burning of vegetation in connection with the activities and practices, harvesting for the production of food, fiber, or forest products, or upland soil and water conservation practices;

''(B) are for the purpose of maintenance, including emergency reconstruction of recently damaged parts of currently (as of the date of the maintenance) serviceable structures, such as dikes, dams, levees, water control structures, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures;

''(C) are for the purpose of construction or maintenance of farm, stock, or aquaculture ponds or irrigation canals and ditches, or the maintenance of drainage ditches;

''(D) are for the purpose of construction of temporary sedimentation basins on a construction site that does not include placement of fill material into navigable waters;

''(E) are for the purpose of construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, if the roads are constructed and maintained, in accordance with best management practices, to ensure that flow and circulation patterns and chemical and biological characteristics of the waters involved are not impaired, that the reach of the waters is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized;

''(F) are undertaken on farmed wetlands, except that any change in use of the wetlands for the purpose of undertaking activities that are not exempt from regulation under this subsection shall be subject to this section;

''(G) result from any activity with respect to which a State has an approved program for which an application was submitted under section 208(b)(4) that meets the requirements of subparagraphs (B) and (C) of the section;

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

''(I) are undertaken in connection with a marsh management and conservation program in a coastal parish in Louisiana if the program has been approved by the Governor of the State or the designee of the Governor;

''(J) are undertaken on lands or involve activities within a coastal zone of a State that are excluded from regulation under the State coastal zone management program approved under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.);

''(K) are undertaken in incidentally created wetlands, unless the incidentally created wetlands have exhibited wetlands functions and values for more than 5 years (in which case activities undertaken in the wetlands shall be subject to the requirements of this section);

''(L) are part of expanding an ongoing farming operation involving the water dependent, obligate crop, Vaccinium macrocarpin, if—

''(i) the expansion does not occur in type A wetlands;

''(ii) the expansion does not result in the conversion of more than 10 acres of wetlands or waters of the United States per operator per year; and

''(iii) the converted wetlands or waters of the United States (other than in locations where dikes and other necessary facilities are placed) remain as wetlands or other waters of the United States; or

''(M) result from aggregate or clay mining activities in wetlands or waters of the United States conducted pursuant to a State or Federal permit that requires the reclamation of the wetlands or waters of the United States, if the reclamation meets conditions for reclamation, including conditions that—

''(i) the reclamation shall be completed within 5 years of the commencement of activities in the wetlands or waters; and

''(ii) on completion of the reclamation, the wetlands or waters shall support functions (including wetlands functions, as appropriate) and values equivalent to the functions and values supported by the wetlands or waters at the time of commencement of the activities.

''(2) STATE AND LOCAL LAND MANAGEMENT PLANS.—

''(A) DEVELOPMENT AND SUBMISSION OF PLAN.—Any State or political subdivision of a State acting pursuant to State authorization may develop a land management plan with respect to lands that include wetlands. A State or local government agency, acting on behalf of the State or political subdivision, may submit the plan to the Secretary for review and approval. The Secretary shall, not later than 60 days after receipt of the plan, notify a designated State or local official in writing of approval or disapproval of the plan.

''(B) APPROVAL.—The Secretary shall approve any plan described in subparagraph (A) that is consistent with the objectives of this section. No person shall be entitled to judicial review of the decision of the Secretary to approve or disapprove a land management plan under this paragraph.

''(C) CONSTRUCTION.—Nothing in this paragraph shall be construed to alter, limit, or supersede the authority of a State or political subdivision of a State to establish a land management plan for purposes other than the objectives of this subsection.

''(g) STANDARDS FOR DELINEATING WETLANDS.—

''(1) IN GENERAL.—

''(A) ESTABLISHMENT OF STANDARDS.—The Secretary shall establish standards, by regulation issued under subsection (i), that shall govern the delineation of lands as wetlands for purposes of this section.

''(B) CONSULTATION.—Before establishing standards as described in subparagraph (A), the Secretary shall consult with the heads of other departments and agencies of the United States, including the Director, the Administrator of the Environmental Protection Agency, and the Chief of the Natural Resources Conservation Service of the Department of Agriculture.

''(C) STANDARDS BINDING ON FEDERAL AGENCIES.—The standards established as described in subparagraph (A) shall bind all Federal agencies in connection with the administration or implementation of this section.

''(2) DELINEATION OF WETLANDS.—

''(A) IN GENERAL.—The standards established as described in paragraph (1)(A) shall be issued in accordance with this paragraph, and any decision of the Secretary, the Director, or any other Federal officer or employee, made in connection with the administration of the standards, shall be made in accordance with this paragraph.

''(B) REQUIREMENTS FOR DELINEATION OF WETLANDS.—For purposes of this section,

lands shall be delineated as wetlands only if—

''(i) the lands are wetlands, as defined in section 502;

''(ii) the Secretary finds clear evidence of wetlands hydrology, hydrophytic vegetation, and hydric soil during the period in which the delineation (to be conducted during the growing season unless otherwise requested by the applicant) is made;

''(iii) the delineation does not result in the classification of vegetation as hydrophytic if the vegetation is equally adapted to dry or wet soil conditions or is more typically adapted to dry soil conditions than to wet soil conditions;

''(iv) the Secretary finds some obligate wetlands vegetation present during the period of delineation (except that if the vegetation is removed for the purpose of evading a requirement of this section, this clause shall not apply);

''(v) the delineation does not result in the conclusion that conditions of wetlands hydrology are present, unless the Secretary finds water present at the surface of the lands for at least 21 consecutive days during the growing season (or period requested by the applicant) in which the delineation is made and for 21 consecutive days during the growing seasons in a majority of the years for which records are available; and

''(vi) the lands were not temporarily or incidentally created as a result of adjacent development activity.

''(C) NORMAL CIRCUMSTANCES.—For the purpose of delineating wetlands under this section, a normal circumstance shall be determined on the basis of the factual circumstance in existence on the date a classification is made under subsection (h), or on the date of application under subsection (b), whichever is applicable, if the circumstance has not been altered by an activity prohibited under this section.

''(h) UNITED STATES FISH AND WILDLIFE SERVICE WETLANDS ADVANCE IDENTIFICATION AND CLASSIFICATION PROJECT.—

''(1) IN GENERAL.—The Director, after receiving the concurrence of the Chief of the Natural Resources Conservation Service, shall conduct a project to identify and classify wetlands in the United States. The Director shall complete the project not later than 10 years after the date of enactment of the Comprehensive Wetlands Conservation and Management Act of 1995.

''(2) STANDARDS FOR CLASSIFYING WETLANDS.—In conducting the project, the Director shall identify and classify wetlands in accordance with the standards for delineation of wetlands established by the Secretary as described in paragraphs (1) and (2) of subsection (g).

''(3) NOTICE AND HEARING.—Before completion of identification and classification of wetlands under paragraph (1), the Director shall provide notice and an opportunity for a public hearing in each county, parish, or borough that includes lands subject to identification and classification.

''(4) PUBLICATION.—Promptly after completion of identification and classification of wetlands under paragraph (1), the Director shall publish information concerning the identification and classification in the Federal Register and in publications of wide circulation and take other steps reasonably necessary to ensure that information concerning the identification and classification is made available to the public.

''(5) RECORDING.—The Director shall, to the fullest extent practicable, record any classification of lands as wetlands under paragraph (1) on the property records in the county, parish, or borough in which the wetlands are located.

''(6) REPORT TO CONGRESS.—Not later than 2 years after the date of enactment of the Comprehensive Wetlands Conservation and Management Act of 1995, and annually thereafter, the Secretary of the Interior shall prepare and submit to the appropriate committees of Congress a report on implementation of the project conducted under this subsection.

''(i) ADMINISTRATIVE PROVISIONS.—

''(1) PROMULGATION OF FINAL REGULATIONS.—Not later than 1 year after the date of enactment of the Comprehensive Wetlands Conservation and Management Act of 1995, the Secretary shall, after notice and opportunity for public comment, issue 1 or more final regulations for the issuance of permits under this section. The regulations shall—

''(A) establish standards and procedures for—

''(i) the classification and delineation of wetlands, and procedures for administrative review of the classification or delineation of wetlands;

''(ii) the review of State or local land management plans and State programs for the regulation of wetlands and waters of the United States;

''(iii) the issuance of general permits on a national, regional, or statewide basis under this section;

''(iv) the issuance of individual permit applications under this section;

''(v) enforcement of this section;

''(vi) administrative appeal of an action by the Secretary denying an application for a permit referred to in subsection (b), or issuing a permit referred to in subsection (b) subject to 1 or more conditions; and

''(vii) any other related area that the Secretary determines necessary or appropriate to implement the requirements of this section; and

''(B) establish requirements governing the establishment of a mitigation bank.

''(2) JUDICIAL REVIEW OF A FINAL REGULATION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), any judicial review of a final regulation issued pursuant to paragraph (1), and any denial by the Secretary of a petition for the issuance or repeal of a regulation under paragraph (1), shall be conducted in accordance with sections 701 through 706 of title 5, United States Code.

''(B) JURISDICTION OF COURT.—

''(i) PETITIONS FOR REVIEW.—A petition for review of the action of the Secretary in issuing a regulation under paragraph (1), or denying a petition for the issuance or repeal of a regulation under paragraph (1), may be filed only in the United States Court of Appeals for the District of Columbia. The petition for review may only be filed—

''(I) not later than 90 days after the date of issuance or denial; or

''(II) if the petition for review is based solely on grounds arising after the date of issuance or denial, not later than 90 days after the date the grounds arise.

''(ii) PROHIBITION ON REVIEW DURING ENFORCEMENT PROCEEDINGS.—Action by the Secretary with respect to which review could have been obtained under this paragraph shall not be subject to judicial review in civil or criminal proceedings for enforcement.

''(3) INTERIM REGULATIONS.—

''(A) PROMULGATION OF INTERIM REGULATIONS.—Not later than 90 days after the date of enactment of the Comprehensive Wetlands Conservation and Management Act of 1995, the Secretary shall issue interim regulations consistent with paragraph (1). The interim regulations shall become effective on the date of issuance. Notice of the interim regulations shall be published in the Federal Register. Except as provided in subparagraph (B), the interim regulations shall apply until the issuance of final regulations under paragraph (1).

''(B) WAIVER OF INTERIM REGULATIONS.—The Secretary shall provide a procedure for waiving a provision of an interim regulation—

''(i) in a case in which the applicant demonstrates special hardship, inequity, or unfair distribution of burdens; or

''(ii) in a case in which the Secretary determines that a waiver under this subparagraph would advance the purposes of this section.

''(4) AUTHORITY TO CARRY OUT REGULATIONS.—Except as otherwise expressly provided in this section, the Secretary shall be responsible for carrying out this section. The Secretary or any other Federal officer or employee in whom any function under this section is vested or to whom any such function is delegated may perform any and all acts (including appropriate enforcement activity), and may prescribe, issue, amend, or rescind any regulation or order the officer or employee may find necessary or appropriate to prescribe, issue, amend, or rescind under this section, subject to the requirements of this section.

''(j) VIOLATIONS.—

''(1) ENFORCEMENT BY SECRETARY.—Whenever the Secretary finds, on the basis of reliable and substantial information and after reasonable inquiry, that a person is or may be in violation of this section or a condition or limitation set forth in a permit issued by the Secretary under subsection (b), the Secretary shall—

''(A) issue an order requiring the person to comply with this section or with the condition or limitation in the permit; or

''(B) bring a civil action in accordance with paragraph (3).

''(2) ORDERS ISSUED BY SECRETARY.—

''(A) COPY OF ORDER SENT TO STATES.—A copy of each order issued under paragraph (1) shall be sent immediately by the Secretary to the Governor of the State in which the violation occurred and the Governor of any other affected State.

''(B) SERVICE.—Except as provided in subparagraph (C), any order issued under paragraph (1) shall—

''(i) be issued by personal service to the appropriate person or corporate officer;

''(ii) state with reasonable specificity the nature of the asserted violation; and

''(iii) specify a period for compliance, not to exceed 30 days, that the Secretary determines is reasonable (taking into account the seriousness of the asserted violation and any good faith efforts to comply with applicable requirements).

''(C) TIME LIMIT ON ORDER AND ESTOPPEL.—

''(i) IN GENERAL.—Not later than 150 days after the date of service under subparagraph (B), the Secretary shall—

''(I) take such action as is necessary for the prosecution of a civil action in accordance with paragraph (3); or

''(II) rescind the order issued under paragraph (1) and be estopped from any further enforcement proceeding for the same asserted violation.

''(ii) DISPUTED ORDERS.—If a person receiving service under subparagraph (B) disputes the finding described in paragraph (1) and notifies the Secretary in writing not later than 90 days after the service, the Secretary shall, not later than 60 days after receiving the notification of the dispute—

''(I) take such action as is necessary for the prosecution of a civil action in accordance with paragraph (3); or

''(II) rescind the order and be estopped from any further enforcement proceeding for the same asserted violation.

''(3) CIVIL ACTIONS.—The Secretary may commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation for which the Secretary may issue an order under paragraph (1). An action commenced under this paragraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and the court shall have jurisdiction to restrain the violation and to require compliance. Notice of the commencement of the action shall be given immediately to the Governor of any affected State.

''(4) PENALTIES.—

''(A) IN GENERAL.—Any person who violates this section or a condition or limitation in a permit issued by the Secretary under subsection (b), or who violates an order issued by the Secretary under paragraph (1), shall be subject to a civil penalty not to exceed $25,000 per day for each violation involved, commencing on the day following expiration of the period allowed for compliance.

''(B) DETERMINATION OF AMOUNT.—The amount of the penalty imposed per day shall be in proportion to the scale or scope of the project that results in the violation. In determining the amount of a civil penalty under this paragraph, the Secretary or the court, as appropriate, shall consider the seriousness of the violation, the economic benefit (if any) resulting from the violation, any history of a previous violation, any good-faith effort to comply with applicable requirements, the economic impact of the penalty on the violator, and any other matter that justice may require.

''(k) STATE AUTHORITY TO CONTROL DISCHARGES.—Nothing in this section shall affect or impair the right of a State or interstate agency to control activity, including activity of a Federal agency, in waters of the United States within the jurisdiction of the State or interstate agency. Each Federal agency shall comply with a State or interstate requirement, whether substantive or procedural, to the same extent that a person is subject to the requirement. This section shall not affect or impair the authority of the Secretary to maintain navigation.

''(l) STATE REGULATION OF WETLANDS AND WATERS.—

''(1) APPLICATION FOR STATE REGULATION.—The Governor of a State desiring to administer an individual and general permit program for an activity in wetlands or waters of the United States within the jurisdiction of the State shall submit to the Secretary—

''(A) a description of the program proposed to be established and administered under State law; and

''(B) a statement from the chief legal officer of the State that the State law provides adequate authority to carry out the described program.

''(2) DETERMINATION BY SECRETARY.—Not later than 1 year after the date of receipt by the Secretary of a program description and statement under paragraph (1), the Secretary shall determine whether the State has the authority to—

''(A) issue permits that—

''(i) apply, and ensure compliance with, each applicable requirement of this section; and

''(ii) can be terminated or modified for cause, including—

''(I) a violation of any condition or limitation in the permit;

''(II) evidence that the permit was obtained by misrepresentation or failure to disclose fully all relevant facts; or

''(III) a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted activity;

''(B)(i) issue permits that apply, and ensure compliance with, all applicable requirements of section 308; or

''(ii) inspect, monitor, enter, and require reports to at least the same extent as required under section 308;

''(C) ensure that the public, and any other State in which the wetlands or waters of the United States may be affected by the issuance of a permit under this subsection, receive notice of each application for a permit under this subsection and provide an opportunity for a public hearing before a ruling on the application;

''(D) ensure that the Secretary receives notice of each application for a permit under this subsection and, prior to any action by the State, ensure that both the applicant for the permit and the State receive from the Secretary information with respect to any advance classification under subsection (h) applicable to wetlands or waters of the United States that are the subject of the application;

''(E) ensure that each State (other than the State seeking to issue permits under this subsection) in which the wetlands or waters of the United States may be affected by the issuance of a permit under this subsection may submit a written recommendation to the permitting State with respect to any permit application and, if any part of the written recommendation is not accepted by the permitting State, ensure that the permitting State will notify the affected State (and the Secretary) in writing of the failure by the permitting State to accept the recommendation together with the reason for the failure by the permitting State to accept the recommendation of the affected State; and

''(F) abate a violation of the permit or the permit program, through a civil or criminal penalty or other means of enforcement.

''(3) APPROVAL OR MODIFICATION OF PROGRAM.—

''(A) APPROVAL OF PROGRAM.—If, with respect to a proposed State program for which a description and statement were submitted under paragraph (1), the Secretary determines that the State has the authority set forth in paragraph (2), the Secretary shall approve the program, notify the State, and suspend the issuance of permits under subsection (b) for each activity with respect to which a permit may be issued pursuant to the State program.

''(B) MODIFICATION OF PROGRAM.—If, with respect to a proposed State program for which a description and statement were submitted under paragraph (1), the Secretary determines that the State does not have the authority set forth in paragraph (2), the Secretary shall notify the State and provide a description of any revision or modification necessary so that the State may resubmit the program for another determination by the Secretary under this subsection.

''(4) FAILURE OF SECRETARY TO MAKE DETERMINATION.—If, with respect to a proposed State program for which a description and statement were submitted under paragraph (1), the Secretary fails to make a determination within 1 year after the date of receipt of the description and statement, the proposed program shall be deemed to be approved pursuant to paragraph (3)(A) on the day that is 1 year after that date, the Secretary shall notify the State of the approval, and the Secretary shall suspend the issuance of permits under subsection (b) for each activity with respect to which a permit may be issued pursuant to the State program.

''(5) TRANSFER OF APPLICATIONS.—After approval of a State permit program under this subsection, the Secretary shall transfer to the State for appropriate action any application for a permit pending before the Secretary for an activity with respect to which a permit may be issued pursuant to the State program.

''(6) SUSPENSION OF ENFORCEMENT.—If the Secretary is notified that a State with a permit program approved under this subsection intends to administer and enforce the terms and conditions of a general permit issued by the Secretary under subsection (e)(6), the Secretary shall, with respect to each activity in the State to which the general permit applies, suspend the administration and enforcement of the general permit.

''(7) CORRECTIVE ACTION.—If the Secretary determines after a public hearing that a State administering a program approved under this subsection is not administering the program in accordance with this section, the Secretary shall notify the State and, if appropriate corrective action is not taken within a reasonable time (not to exceed 90 days after the date of the receipt of the notification), the Secretary shall—

''(A) withdraw approval of the program until the Secretary determines appropriate corrective action has been taken; and

''(B) resume the program for the issuance of permits under subsections (b) and (e)(6) for all activities with respect to which the State was issuing permits, until such time as the Secretary makes the determination described in paragraph (2) and approves the State program again.

''(8) REGULATION BY AN INTERSTATE AGENCY.—For purposes of this subsection:

''(A) GOVERNOR.—The term 'Governor' includes the head of an interstate agency.

''(B) STATE.—The term 'State' includes an interstate agency.

''(C) STATE LAW.—The term 'State law' includes an interstate compact.

''(m) COPIES AVAILABLE TO PUBLIC.—A copy of each permit application submitted, and each permit issued, under this section shall be available to the public. Each permit application or portion of a permit application shall also be available on request for the purpose of reproduction.

''(n) COMPLIANCE WITH PERMIT SATISFIES REQUIREMENTS.—Compliance with a permit issued pursuant to this section, including carrying out an activity pursuant to a general permit issued under this section, shall be deemed, for purposes of sections 309 and 505, to be compliance with sections 301, 307, and 403.

''(o) EFFECTIVE DATE FOR PERMIT PROVISIONS.—After the 90th day after the date of enactment of the Comprehensive Wetlands Conservation and Management Act of 1995, no permit for an activity in wetlands or waters of the United States may be issued except in accordance with this section. Any permit for an activity in wetlands or waters of the United States issued prior to the 90th day shall be deemed to be a permit under this section and shall continue in force and effect for the term of the permit unless revoked, modified, or suspended in accordance with this section. An application for a permit pending under this section on the 90th day shall be deemed to be an application for a permit under this section.

''(p) LIMIT ON FEES.—Any fee charged in connection with—

''(1) the delineation or classification of wetlands;

''(2) an application for a permit authorizing an activity in wetlands or waters of the United States; or

''(3) any other action taken in compliance with the requirements of this section (other than a penalty for a violation under subsection (j));

shall not exceed the amount of the fee in effect on January 1, 1990.''.

SEC. 4. DEFINITIONS.

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

''(21) WETLANDS.—The term 'wetlands' means lands, such as swamps, marshes, bogs, and similar areas, that have a predominance of hydric soils and that are inundated by surface water at a frequency and duration sufficient to support, and that under normal circumstances support, a prevalence of vegetation typically adapted for life in saturated soil conditions.''.

SEC. 5. TECHNICAL AND CONFORMING AMENDMENTS.

(a) Section 119(c)(2)(E) of the Federal Water Pollution Control Act (33 U.S.C. 1269(c)(2)(E)) is amended by striking ''wetland'' and inserting ''wetlands''.

(b) Section 208(b)(4)(B)(iii) of the Act (33 U.S.C. 1288(b)(4)(B)(iii)) is amended by striking ''the guidelines established under section 404(b)(1), and'' and inserting ''section 404, and with the guidelines established under''.

(c) Section 309 of the Act (33 U.S.C. 1319) is amended—

(1) in subsection (a)—

(A) in the first sentence of paragraph (1), by striking ''or 404''; and

(B) in paragraph (3), by striking ''or in a permit issued under section 404 of this Act by a State'';

(2) in the first sentence of subsection (d), by striking ''or in a permit issued under section 404 of this Act by a State,,''; and

(3) in subsection (g)—

(A) by striking paragraph (1) and inserting the following new paragraph:

''(1) VIOLATIONS.—If the Administrator finds, on the basis of any information available, that a person has violated section 301, 302, 306, 307, 308, 318, or 405, or has violated any permit condition or limitation implementing any of the sections in a permit issued under section 402 by the Administrator or by a State, the Administrator may, after consultation with the State in which the violation occurred, assess a class I civil penalty or a class II civil penalty under this subsection.'';

(B) in the third sentence of paragraph (2)(B), by striking ''and the Secretary'';

(C) in paragraph (6)(A)(iii), by striking '', the Secretary,'';

(D) by striking ''or Secretary, as the case may be,'' and ''or the Secretary, as the case may be,'' each place they appear; and

(E) by striking ''or Secretary'', ''or the Secretary'', and ''or Secretary's'' each place they appear.

SEC. 6. EFFECTIVE DATE.

The amendments made by this Act shall become effective 90 days after the date of enactment of this Act.

THE COMPREHENSIVE WETLANDS CONSERVATION AND MANAGEMENT ACT OF 1995

The protection of America's wetlands is a crucial public issue that deserves significant national priority. The Pressler bill is designed to conserve true wetlands and balances wetlands protection with protection of private property rights. More important the bill contains provisions that would require fair and just compensation to the owners for the loss of or use of land classified as wetlands.

The Pressler bill would:

Assure that functionally important wetlands are protected.

Classify wetlands by value and function. Certain wetlands would be classified as wetlands with critical significance to the long-term conservation of the ecosystem of which they are a part. Others would be classified as providing habitat for significant wildlife populations, protection water quality or significant natural flood control, and others as marginal wetlands.

Provide safeguards so that large amounts of land with little or no true wetland characteristics will be classified as wetland.

Require compensation be provided to landowners for the loss of economic use of private lands.

Clarify and reinforce current law that provides an exemption from individual permit requirements for normal farming and ranching activities on farmed wetlands.

Exempt from regulation all prior converted agricultural land since this land no longer exhibits any wetland characteristics.

Establish three criteria in designating wetlands. Criteria to be met and verified would be presence of water, hydric soils and hydrophytic vegetation.

Under the Pressler bill, prairie potholes would receive same treatment as all wetlands and not be kept under stricter rules and regulations.

Exclude man-made or artificial wetlands such as farm ponds and irrigation ditches.

NO HARM, NO FOUL?

(By Rick Mooney)

A few words to the wise wetland owner: If you're ever charged with violating Swampbuster rules, don't count on good intentions or the adage about no harm, no foul to bail you out.

Just ask Brian Odden, a grain and beef producer from Lake Preston, S.D. In November 1993, after an extremely wet summer, Odden plowed up 25 acres of rented ground that was overrun with weeds. ''I had corn on it the year before,'' he says. ''But [in 1993] we never got in the field because it was so wet. I was afraid the weed board would be after me.''

The field was bordered on the north by a 14-acre slough that Odden's landlord had placed under perpetual easement with the U.S. Fish and Wildlife Service (FWS). After Odden finished plowing the field, he laid a single diagonal plow furrow across it, following a natural drainage pathway.

''I was just trying to put things back the way I found them,'' he says.

The following April Odden was notified by the Soil Conservation Service (SCS) that his plow furrow violated Swampbuster rules for converting a wetland. At the same time FWS notified Odden that he had violated easement provisions for ''burning, draining or filling'' a wetland.

In an attempt to rectify the situation, Odden immediately filled in the plow furrow. He claims local SCS officials told him that would qualify him for a minimal-effect post-approval ruling. Filling the furrow also seems to have appeased FWS, which notified Odden in a May 9 letter that they were ''closing the file on the matter.'' In the same letter, FWS thanked Odden for his ''timely restoration.''

But at a field hearing two months later, state SCS officials ruled that Odden's furrow had led to substantial water loss in the wetland. To qualify for minimal effect, Odden was told, he would have to file an appeal with national SCS in Washington, D.C. He did that on July 25 and was still waiting for the outcome in December.

Big Brother watching. State SCS spokesmen claim the agency is simply following the letter of the law. But Don Parrish, policy analyst with the American Farm Bureau Federation, says Odden's case appears to be one more example of federal overreach on wetlands regulation. ''Everyone talks about local solutions to local problems,'' he says. ''But here you have a case where the locals had it all resolved and yet the feds get involved.''

Even more unsettling to Odden is uncertainty about what he'll face if his appeal to Washington is turned down. Under the strictest interpretation of the law, he stands to forfeit all federal farm program benefits, including crop insurance and disaster payments, that he received during the year of the violation and the following year. An outstanding loan with FmHA could be called and an additional fine based on the size of the wetland he allegedly converted could also be levied.

Three others who are part of a family farm corporation with Odden, and the corporation itself, could each pay equal fines and penalties. ''Early on, we were told that total fines and penalties could be as high as $515,000,'' says Odden. ''It would finish us. With the kind of years we've been having, there's no way we could climb out of a hole like that.''

By Mr. SIMON:

S. 353. A bill to clarify the circumstances under which a senior circuit court judge may cast a vote in a case heard en banc; to the Committee on the Judiciary.

SENIOR CIRCUIT JUDGES LEGISLATION

• Mr. SIMON. Mr. President, I introduce a bill that is neither controversial nor monumental, but highly important to the operation of our U.S. circuit courts of appeal.

Under our current law, there is a real question as to whether a circuit judge who hears an en banc case, but then takes senior status prior to the decision of that case, is eligible to participate in that decision. This situation creates the potential for significant confusion within an en banc court: If judges who participated, and cast initial votes, in an en banc case were to become suddenly ineligible to decide the case by virtue of taking senior status, the initial determination as to how a case should be decided would possibly have to be revisited. Moreover, though unlikely, the current situation also creates the potential for manipulation of the system by circuit judges unhappy with an en banc decision: Conceivably a judge could hold up the release of a particular en banc opinion in order to render a judge who heard the case as an active judge ineligible to participate in the case's decision, and thereby to force a change in the outcome of the case.

The bill I introduce today would simply clarify that circuit judges who hear an en banc case as active judges may participate in the ultimate decision of the case even if they take senior status between the time the case is argued and the time it is decided. I believe this technical change to be consistent with what Congress would have done had it been aware of this problem when it enacted the law governing circuit judges, and hope that my colleagues will facilitate its passage.

Finally, let me say that I am indebted to Chief Judge Richard Posner of the seventh circuit for bringing this problem to my attention. Judge Posner is a stellar member of the Federal judiciary, and I am very appreciative of his

concerns about the technical management of our Federal courts.●

By Mr. BREAUX (for himself, Mr. JOHNSTON, Mr. SIMON, and Mr. BUMPERS):

S. 354. A bill to amend the Internal Revenue Code of 1986 to provide tax incentives to encourage the preservation of low-income housing; to the Committee on Finance.

THE LOW-INCOME HOUSING PRESERVATION ACT

● Mr. BREAUX. Mr. President, I am introducing a bill today that charts a promising new way to enlist the private sector's help in preserving and improving the country's stock of affordable housing. I urge my colleagues to join me in cosponsoring this bill, entitled the ''Low-Income Housing Preservation Act.''

All of us are aware from our trips home that there is a serious shortage of affordable housing in this country. All one has to do is look at the number of homeless in towns throughout the country to know this, but the statistics tell the story as well. A 1992 Harvard study estimated that there were 4.1 million units of HUD or privately owned, publicly assisted units, while there are 13.8 million households eligible to receive HUD-funded housing assistance if the assistance were available.

Clearly we need a new approach, one that does a better job of leveraging private resources, and bringing the discipline of the marketplace to bear, while recognizing that the resources that the Federal Government can expend are severely limited. The bill I am introducing today does this by encouraging the investment of private capital to improve the condition of the Nation's stock of existing rental housing for low-income tenants. By relying largely on the private sector, rather than HUD, for the necessary funding it reduces the necessary level of Government involvement to a minimum. It is very cost-effective, because of the way the bill's tax proposals have been drafted. At the same time, it will save the Government a great deal of money that otherwise would have to be expended to fund existing or new HUD-grant programs to achieve the same end.

This is the problem. Much of the rental housing that is currently occupied by low-income tenants is not public housing, but privately owned apartment houses. HUD assistance reduces the amount of monthly rent paid by eligible tenants. This stock of affordable housing is in crisis. Many of these projects are 10 to 25 years old, or more. Their continued physical and financial stability is threatened, as the projects age and private investors have no incentive to invest additional capital to rehabilitate them.

While the needs of these projects have been widely recognized for some time by both the Federal Government and the private sector, little has been done to address the problem. If these projects disappear because the private owners are no longer able to maintain the units, the already short supply of affordable housing will be further reduced. It is therefore vital to preserve and improve this important source of housing for low-income tenants. This is especially so in light of the considerable interest in Congress this year in making major changes in the way HUD operates. These proposals would place greater reliance on private-sector alternatives to public housing, while at the same time reducing the size and number of HUD's traditional programs to assist privately owned housing.

The private sector cannot continue to provide the low-income housing needed unless Congress corrects some of the current disincentives in the tax laws that discourage the preservation of this inventory of affordable housing. The value of these projects has been severely depressed by the 1986 changes to the tax laws. As a result, the current owners have no way to raise additional capital to rehabilitate the structures, as has become inevitably necessary with time. Because the projects' market values are so depressed, the current owners cannot receive enough cash upon sale to pay the capital gains taxes they would owe. Nor is there interest among new investors under current conditions in purchasing the projects and investing needed capital in them. As a result, these aging projects are locked into a long, slow, downward spiral. It is essential that something be done before more of these projects go into bankruptcy or fall altogether out of the Nation's stock of affordable housing.

I believe that the bill I am introducing provides a solution to the problem that will work and that is very cost-effective. Except for some technical refinements to tighten the bill's provisions, the bill is the same as the legislation I introduced last year as S. 1986.

In the first place, the bill targets the projects which are most at risk. These are projects assisted by HUD under the old section 221(d)(3) below market rate interest rate program or the section 236 program, or projects insured under the section 221(d)(3) market rate or section 221(d)(4) programs, and assisted under section 8. In all cases, the projects must be at least 10 years old and at least a majority of the units in the projects must be occupied by tenants whose income was no more than 80 percent of the area median income when they first became tenants.

According to HUD, there are almost 1 million units in the affordable housing projects that meet the bill's criteria. These projects are located in every State in the country.

The bill offers special tax benefits to new investors who agree to buy these affordable housing projects, invest the necessary capital to fix them up, and maintain them for low-income tenants. It will be the responsibility of HUD in each case to determine how much new capital must be invested in the project to make it financially and physically sound, but in no event may the capital improvements equal less than 10 percent of the adjusted basis of the rental property. In exchange, the bill reduces from 27½ years to 15 years the depreciation schedule for eligible projects purchased after the bill's effective date. It also provides that any investor in the project may claim annually up to $50,000 of losses from such projects without regard to the passive loss rules. Any project will lose its special tax benefits if it ceases to serve low-income tenants.

The Low-Income Housing Preservation Act specifically provides that any project claiming benefits under its provisions could not also benefit from the low-income housing tax credit, which provides tax credits and limited passive loss relief to those investing in low-income housing. As a practical matter, the tax credit has not been widely used to preserve the existing projects targeted by the bill I am introducing today. Under the low-income housing tax credit, the amount of tax credits available to each State is limited by law and I understand that State and local authorities have chosen as a general matter to use their credits on the construction of new projects rather than the preservation of existing projects. This bill will compliment the low-income housing tax credit by providing a deduction specifically for those investing in existing projects.

Mr. President, it is clearly in the public interest to help ensure the continued existence of these projects. The tenants will benefit as the existing owners are replaced with new owners with new capital, and a new willingness to preserve and improve the projects. The local community and the local economy will benefit from the work done in the neighborhood improving the projects, from the general improvement in the appearance of the neighborhood, and by the lower crime rates that go along with refurbished buildings. The taxpayer benefits because the number of projects that go into bankruptcy and end up in HUD's portfolio will be reduced, and because HUD will find it earlier to dispose of projects already in its portfolio. Over the longer run, the taxpayers will save the cost of directly funding the needed capital improvements to the existing projects, or the cost of constructing new units that must be built when the existing projects are lost from lack of financial support.

I hope my colleagues will support this important legislation.●

By Mr. ABRAHAM:

S. 355. A bill to provide that the Secretary and the Clerk of the House of Representatives shall include an estimate of Federal retirement benefits for each Member of Congress in their semiannual reports, and for other purposes; to the Committee on Rules and Administration.

THE CONGRESSIONAL PENSION DISCLOSURE ACT OF 1995

• Mr. ABRAHAM. Mr. President, I introduce S. 355 which would require the Secretary of the Senate and the Clerk of the House of Representatives to make publicly available information relating to the pensions of Members of Congress. Under this legislation, these officers would be required in the course of their semiannual reports to the Congress to clearly set forth information relating to the following:

First, the individual pension contributions of Members;

Second, an estimate of annuities which they would receive based on the earliest possible date they would be eligible to receive annuity payments by reason of retirement; and

Third, any other information necessary to enable the public to accurately compute the Federal retirement benefits of each Member based on various assumptions of years of service and age of separation from service by reason of retirement.

The purpose of this legislation is simply to afford citizens their rightful opportunity of learning how public funds are being utilized. The taxpayers are not only entitled to know the various forms of compensation being paid to their elected officials, they are also entitled to make decisions about the reasonableness of such compensation.

My bill, S. 355, would make this information conveniently available to the public. The public does not begrudge Members of Congress reasonable pensions. Before that assessment can intelligently be made, however, the public needs to have better access to information than they currently have.•

ADDITIONAL COSPONSORS

S. 55

At the request of Mr. INOUYE, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 55, a bill to amend title 38, United States Code, to deem certain service in the organized military forces of the Government of the Commonwealth of the Philippines and the Philippine Scouts to have been active service for purposes of benefits under programs administered by the Secretary of Veterans Affairs.

S. 91

At the request of Mr. COVERDELL, the name of the Senator from Maine [Mr. COHEN] was added as a cosponsor of S. 91, a bill to delay enforcement of the National Voter Registration Act of 1993 until such time as Congress appropriates funds to implement such act.

S. 216

At the request of Mr. INOUYE, the name of the Senator from Delaware [Mr. ROTH] was added as a cosponsor of S. 216, a bill to repeal the reduction in the deductible portion of expenses for business meals and entertainment.

S. 218

At the request of Mr. MCCONNELL, the name of the Senator from Virginia [Mr. WARNER] was added as a cosponsor of S. 218, a bill to repeal the National Voter Registration Act of 1993, and for other purposes.

S. 252

At the request of Mr. LOTT, the name of the Senator from Michigan [Mr. ABRAHAM] was added as a cosponsor of S. 252, a bill to amend title II of the Social Security Act to eliminate the earnings test for individuals who have attained retirement age.

S. 253

At the request of Mr. LOTT, the name of the Senator from Oklahoma [Mr. INHOFE] was added as a cosponsor of S. 253, a bill to repeal certain prohibitions against political recommendations relating to Federal employment, to reenact certain provisions relating to recommendations by Members of Congress, and for other purposes.

S. 254

At the request of Mr. LOTT, the names of the Senator from Alabama [Mr. SHELBY], the Senator from Louisiana [Mr. BREAUX] and the Senator from Pennsylvania [Mr. SANTORUM] were added as cosponsors of S. 254, a bill to extend eligibility for veterans' burial benefits, funeral benefits, and related benefits for veterans of certain service in the U.S. merchant marine during World War II.

S. 256

At the request of Mr. DOLE, the name of the Senator from Kansas [Mrs. KASSEBAUM] was added as a cosponsor of S. 256, a bill to amend title 10, United States Code, to establish procedures for determining the status of certain missing members of the Armed Forces and certain civilians, and for other purposes.

S. 287

At the request of Mrs. HUTCHISON, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of S. 287, a bill to amend the Internal Revenue Code of 1986 to allow homemakers to get a full IRA deduction.

S. 299

At the request of Mr. COCHRAN, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 299, a bill to amend the Federal Power Act to modify an exemption relating to the territory for the sale of electric power of certain electric transmission systems, and for other purposes.

S. 303

At the request of Mr. LIEBERMAN, the names of the Senator from New Hampshire [Mr. GREGG] and the Senator from Hawaii [Mr. INOUYE] were added as cosponsors of S. 303, a bill to establish rules governing product liability actions against raw materials and bulk component suppliers to medical device manufacturers, and for other purposes.

S. 304

At the request of Mr. SANTORUM, the names of the Senator from Arizona [Mr. KYL] and the Senator from North Dakota [Mr. DORGAN] were added as cosponsors of S. 304, a bill to amend the Internal Revenue Code of 1986 to repeal the transportation fuels tax applicable to commercial aviation.

S. 326

At the request of Mr. HATFIELD, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of S. 326, a bill to prohibit U.S. military assistance and arms transfers to foreign governments that are undemocratic, do not adequately protect human rights, are engaged in acts of armed aggression, or are not fully participating in the United Nations Register of Conventional Arms.

S. 328

At the request of Mr. SANTORUM, the names of the Senator from Delaware [Mr. ROTH], the Senator from Mississippi [Mr. LOTT] and the Senator from Michigan [Mr. ABRAHAM] were added as cosponsors of S. 328, a bill to amend the Clean Air Act to provide for an optional provision for the reduction of work-related vehicle trips and miles traveled in ozone nonattainment areas designated as severe, and for other purposes.

SENATE JOINT RESOLUTION 18

At the request of Mr. HOLLINGS, the names of the Senator from Nevada [Mr. REID] and the Senator from Kentucky [Mr. FORD] were added as cosponsors of Senate Joint Resolution 18, a joint resolution proposing an amendment to the Constitution relative to contributions and expenditures intended to affect elections for Federal, State, and local office.

AMENDMENTS SUBMITTED

MURKOWSKI (AND LOTT) AMENDMENT NO. 230

(Ordered referred to the Committee on Energy and Natural Resources.)

Mr. MURKOWSKI (for himself and Mr. LOTT) submitted an amendment intended to be proposed by them to the bill (S. 333) to direct the Secretary of Energy to institute certain procedures in the performance of risk assessments in connection with environmental restoration activities, and for other purposes; as follows:

At the end of the bill add the following:

SEC. 11. AMENDMENT OF TITLE 5, UNITED STATES CODE.

(a) IN GENERAL.—Chapter 6 of title 5, United States Code, is amended by adding at the end the following:

''SUBCHAPTER II—RISK ASSESSMENTS

''§ 621. Definitions

''In this subchapter—

''(1) AGENCY.—The term 'agency' has the meaning stated in section 551(1).

''(2) BENEFIT.—The term 'benefit' means the reasonably identifiable significant benefits, including social and economic benefits,