Department of Transportation
Office of the Secretary
Washington, D.C.

ORDER

DOT 5660.1A

8-24-78

SUBJECT: PRESERVATION OF THE NATION'S WETLANDS

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1. PURPOSE. This order sets forth the Department of Transportation (DOT) policy that transportation facilities and projects should be planned, constructed, and operated to assure the protection, preservation, and enhancement of the nation's wetlands to the fullest extent practicable, and establishes procedures for implementation of the policy.

2. CANCELLATION. DOT 5660.1, Preservation of the Nation's Wetlands, of 5-21-75.

3. BACKGROUND AND AUTHORITY. This order is issued pursuant to the following executive order and statutes:

   a. Executive Order 11990, dated May 24, 1977, "Protection of Wetlands," establishes a national policy "to avoid to the extent possible the long- and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative." The order further provides that each agency shall provide leadership to minimize the destruction, loss, or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for (1) acquiring, managing, and disposing of federal lands and facilities, (2) providing federally undertaken, financed, or assisted construction and improvements, and (3) conducting federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

   b. Sections 2(b) and 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. 1651 et seq.) provide that it is "national policy that special effort should be made to preserve the natural beauty of the countryside and the park and recreation lands, wildlife and waterfowl refuges, and historic sites."

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c. The National Environmental Policy Act of 1969 (NEPA) as amended (42 U.S.C. 4321 et seq.) establishes a national policy to "... promote efforts which will prevent or eliminate danger to the environment and biosphere and stimulate the health and welfare of man...." NEPA requires preparation of an environmental impact statement (EIS) for any major federal action significantly affecting the quality of the human environment. Order DOT 5610.1B, "Procedures for Considering Environmental Impacts," of September 30, 1974, requires that information on impacts on fresh water and coastal wetlands be included in the EISs prepared pursuant to NEPA.

d. Section 2 of the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) provides for consultation with the U.S. Fish and Wildlife Services and the state wildlife resources agency when "... waters of any stream or other body of water are proposed to be controlled or modified..."

e. The Water Bank Act (16 U.S.C. 1301) expresses the Congressional finding that "... it is in the public interest to preserve, restore, and improve the wetlands of the nation...."

f. The Coastal Zone Management Act (16 U.S.C. 145) establishes a policy to "preserve, protect, and develop natural resources of the coastal zone and where possible to restore them."

g. The Federal Water Pollution Control Act Amendments 1972 (33 U.S.C. 1151) establish a policy to "restore and maintain the chemical, physical, and biological integrity of the nation's waters."

4. DEFINITION.

a. "Wetlands" are defined as lowlands covered with shallow and sometimes temporary or intermittent waters. This includes, but is not limited to swamps, marshes, bogs, sloughs, potholes, wet meadows, river overflows, and tidal overflows, as well as estuarine areas, and shallow lakes and ponds with emergent vegetation. Areas covered with water for such a short time that there is no effect on moist-soil vegetation are not included in the definition, nor are the permanent waters of streams, reservoirs, and deep lakes. The wetlands ecosystem

includes those areas which affect or are affected by the wetland area itself; e.g., adjacent uplands or regions up and down stream. An activity may affect the wetlands indirectly by impacting regions up or down stream from the wetland or by disturbing the water table of the area in which the wetland lies. Attachment 1 references the wetlands classification system.

b. "New construction" for purposes of this order shall include any draining, dredging, channelizing, filling, diking, impounding, and related activities, and any structures or facilities, begun or obligated after the effective date of this order. This does not include routine repairs and maintenance of existing facilities.

5. POLICY. It is the policy of DOT to assure the protection, preservation, and enhancement of the nation's wetlands to the fullest extent practicable during the planning, construction, and operation of transportation facilities and projects. In accordance with E.O. 11990, new construction located in wetlands shall be avoided unless there is no practicable alternative to the construction and the proposed action includes all practicable measures to minimize harm to wetlands which may result from such construction. In making a finding of no practicable alternative, economic, environmental and other factors may be taken into account. Some additional cost alone will not necessarily render alternatives or minimization measures impractical since additional cost would normally be recognized as necessary and justified to meet national wetland policy objectives.

6. RESPONSIBILITIES.

a. The Assistant Secretary for Policy and International Affairs (P-1) shall oversee the implementation of the policy set forth in this order, shall recommend any modifications of procedures that may be appropriate, and shall consult with the Department of the Interior, the Council on Environmental Quality, and other agencies as appropriate concerning the Department's implementation of these policies.

b. Heads of operating administrations shall distribute this order or promulgate appropriate guidance consistent with this order the the Executive Order and shall be responsible for the full implementation of the policies within their respective administrations.

c. The Assistant Secretary (P-1) and the heads of operating administrations jointly shall be responsible for preparation and/or dissemination of appropriate guidance, informational materials, training programs, and other materials necessary to comply with the Executive Order's requirement that agencies provide leadership in the field of wetland protection. Such leadership should be particularly aimed at informing and guiding the actions of state and local transportation officials operating with the assistance of or subject to permits from DOT.

7. PROCEDURES. The following procedures should be integrated into existing environmental and public participation processes to the maximum extent feasible. The policy of this order applies to any project located in or having an impact on wetlands.

a. New authorizations or appropriations transmitted to the Office of Management and Budget will indicate, if a specific action to be proposed will be located in wetlands, whether the proposed action is in accord with E.O. 11990.

b. The impacts of new construction projects on wetlands should be identified and discussed in any submissions made to state and metropolitan Clearinghouses under Office of Management and Budget Circular A-95. Submissions to A-95 will not be required solely to address wetland issues. Appropriate opportunity for early review of proposals for new construction in wetlands should be provided to the public and to agencies with special interest in wetlands. This may include early public involvement approaches.

c. Any project which will have a significant impact on wetlands will require preparation of an EIS. Prior to the preparation of an EIS, agencies with jurisdiction and expertise concerning wetland impacts (U.S. Fish and Wildlife Service, state wildlife or natural resources agencies, and the Corps of Engineers, as appropriate) should be consulted for advice and assistance concerning the proposed undertaking.

d. An EIS (or negative declaration) on a proposal for new construction in wetlands should reflect the results of early coordination and should identify specific impacts of the project on the wetlands taking into consideration the matters listed in paragraph 6(f).

e. When federally-owned wetlands or portions of wetlands are proposed for lease, easement, right-of-way, or disposal to nonfederal public or private parties, the agency with jurisdiction over the lands should either (1) reference in the conveyance those uses that are restricted under this policy and other relevant federal, state, or local wetlands regulations; or (2) attach other appropriate restrictions to the use of properties by the grantee or purchaser and any successor, except where prohibited by law; or (3) withhold such properties from disposal.

f. In carrying out any activities (including small scale projects which do not require documentation) with a potential effect on wetlands, operating agencies should consider the following factors in implementing the Department policy relevant to a proposal's effect on the survival and quality of wetland:

(1) Public health, safety and welfare, including water supply, water quality, recharge and discharge, and pollution; flood and storm hazards; and sedimentation and erosion.

(2) Maintenance of natural systems, including conservation and long-term activity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish and wildlife, timber, and food and fiber resources; and other uses of wetlands in the public interest, including recreational scientific, and cultural uses as well as transportation uses and objectives.

g. Alternatives which would avoid new construction in wetlands must be studied, giving consideration to environmental and economic factors. If use of wetlands is proposed, the alternatives analysis for major actions should have demonstrated that there is no practicable alternative to the use of the wetlands and that all practicable measures to minimize harm to the wetlands have been included.

h. For any major action which entails new construction located in wetlands, a specific finding should be made by the affected operating administration that (1) there is no practicable alternative to construction in the wetland, and (2) that all practicable measures to minimize harm have been included. The proposed finding should ordinarily be included in the final EIS or negative declaration for the proposal.

8. APPLICABILITY.

a. All programs and projects proposed for direct construction, assistance, or permit by the DOT shall be reviewed for consistency with the policy of this order.

b. This order does not apply to projects presently under construction or to projects for which all funds have been obligated through fiscal year 1977, to projects and programs for which a draft or final EIS was filed prior to October 1, 1977.

c. Nothing in this order shall apply to assistance provided for emergency work essential to save lives and protect property or public health and safety, performed pursuant to sections 305 and 306 of the Disaster Relief Act of 1974 or pursuant to other emergency operations.

FOR THE SECRETARY OF TRANSPORTATION:

Alan Butchman
The Deputy Secretary

Further information concerning the type, number, and location of wetland areas may be obtained from Circular No. 39 of the Department of the Interior, Fish and Wildlife Service, or from the wetlands inventories maintained by the various states. The classification system presently contained in Circular No. 39 is being revised to provide uniformity in concepts and terminology throughout the United States. A notice of intent to adopt the classification system was published in the December 12, 1977, Federal Register. Copies of the new classification system may be obtained from the Fish and Wildlife Service, Suite 217, Dade Building, 9620 Executive Center Drive, St. Petersburg, Florida 33702.

The Fish and Wildlife Service is also developing a National Wetlands Inventory Maps which will be complete in 1981. They will display typical wetland information on U.S. Geological Survey base maps for all of the states and U.S. territories and possessions. Maps are currently available of coastal Texas and Louisiana. On new projects, Fish and Wildlife Service should be contacted to determine whether maps have been developed for proposed project areas.