Chapter 9

Capabilities of the States in Managing the Use of Wetlands

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CHAPTER SUMMARY

Almost all 30 coastal States (including those bordering the Great Lakes) have programs that directly or indirectly regulate the use of their coastal wetlands. These programs often rely on Federal funding from the Department of Commerce's Office of Ocean and Coastal Resource Management (OCRM). Only a few inland States have specific wetland programs. Through a combination of the program to enforce section 404 of the Clean Water Act (CWA) and State programs, most coastal wetlands are regulated reasonably well; inland wetlands generally are not regulated by the States.

Representatives from most States with wetland programs feel that State and Federal programs complement one another. Corps districts often let State agencies take the lead in protecting wetlands, using the 404 program to support their efforts. Other States rely on Federal programs, State influence on Federal programs, local regulation, and State programs that may indirectly affect the use of wetlands in the course of performing other primary functions.

States can assume the legal responsibility for administering that portion of the 404 program that does not cover traditionally navigable waters if certain Environmental Protection Agency (EPA) requirements are met. Twelve States have evaluated or are evaluating this possibility, and four are administering pilot programs to gain practical experience prior to possible program assumption. In general, most States have neither the capability nor the desire to assume sole responsibility for regulating wetland use without additional resources from the Federal Government; some States would be reluctant to do so even with resources.

GENERAL STATE WETLAND CAPABILITIES

States may assume the legal responsibility for administering portions of the 404 program if certain requirements established by EPA are met. The administration and the leadership of the U.S. Army Corps of Engineers have also stressed the desirability of transferring a large proportion of the responsibility for regulating the use of wetlands to the States. This could be done by decreasing the area regulated by the Corps to historically navigable waters, thereby de facto increasing the State role; increasing funding for State regulatory programs; granting additional powers to States to regulate broad areas under general permits without formal assumption of the 404 program; and easing the standards for such assumption.

During the course of this study, OTA examined the capabilities of the States in managing the use of wetlands. Although a thorough review of the capabilities of individual States was beyond the scope of this study, OTA did examine many State programs through a State survey, to which 48 States responded, and 10 regional case studies, which commented on 21 State programs.

Of all 30 coastal States (including States bordering the Great Lakes), the majority claimed high State coverage of coastal *wetlands.* About 20 indicated that their programs are more dominant than the 404 program in their State; half of these States said the 404 program was completely redundant.

Other coastal States indicated that 404 plays an important role in protecting coastal wetlands.

The coverage of inland *wetlandsby* coastal States is varied: 17 coastal States indicated that their inland wetlands are not well protected by State programs; 7 indicated that they provide protection for most such wetlands. For the 20 inland States, programs provide little coverage to wetlands outside of small areas under direct State management. Isolated wetlands generally are not well regulated in most States.

Even for States with wetland regulatory programs, there may be gaps in wetlands coverage. State programs often exempt some activities from permitting requirements, such as agriculture, mosquito control, public utility projects, and actions of local government (8). Florida provides a good example of a State that does not regulate some of the activities that threaten wetlands the most. Although the Florida dredge-and-fill laws do not regulate drainage activities, the South Florida Water Management District does have some control over drainage activities by requiring permits for the construction and operation of surface water management systems. However, exemptions are provided for agricultural and silvicultural activities. Drainage of lands for agriculture is often the first step in destroying wetlands that are used eventually for urban development (l).

Some State laws encourage the conversion of wetlands. In particular, some drainage programs are carried out by State agencies and some private drainage is subsidized (by Kentucky, Ohio, and Nebraska). For example, although State law in Nebraska charges one agency to protect wildlife habitats and another to protect water quality, a third agency is required by law to plan for draining wetlands and county boards are required to drain areas upon petition by owners. The 1975 Nebraska Groundwater Management Act also states that all irrigation runoff must be retained on the irrigator's property. This stipulation has increased the use of dugouts and reuse pits in the Rainwater Basin, leading to wetland flooding and creating opportunities for wetland drainage (6).

Expenditures and staffing for wetland-related State regulatory activities are highly variable. Agency personnel with wetland responsibilities often carry out other duties as well, although personnel from other agencies may assist in monitoring wetland areas for unpermitted activities in the course of other work. Asked by the OTA survey to list numbers and types of personnel and budgetary allocations devoted to State wetland-protection efforts, most States listed programs and budgets without breaking out wetland-related components. The number of employees working part time or full time on wetland matters ranged from 1 to over 20. Of States listing budgets that can be traced to wetlands, figures range from $12,000 to over $100,000 in 10 States. Six States indicated almost no staffing and budget allocations for wetland management.

Most States do not have permitting programs solely concerned with wetlands. Instead, they rely on Federal programs, State influence on some Federal programs, State wetland-acquisition programs, and other State programs that incidentally cover some development activities on some wetlands and cover those activities that occur beyond the boundaries of wetlands yet may have an adverse effect on them. State standard-setting for local regulation also is present in many States.

Roughly half of the States without wetland programs listed State influence on Federal actions as their most important means of controlling wetland use. In some cases, State certification of projects through section 401 of CWA and comments on 404 applications are used as substitutes for the creation of State programs that would create political controversies. Requirements for Federal consistency with State coastal-management programs are also an important tool. For example, although South Carolina does not regulate development activities in freshwater wetlands, it does have a policy for their protection in its Coastal Zone Act. Federal actions in the coastal zone, including all 404 permitting, must be consistent with this policy (10).

States may also influence Federal actions (and actions of other State agencies) by developing resource information and preparing management plans and guidelines. For example, the Resource Agency in California prepared the Delta Master Recreation Plan and Waterways Use Program, Although the agency has no direct authority to implement the plan, the management guidelines for natural tidal and nontidal marshes and riparian

areas are used by the Corps in administering its permitting programs (4).

A few States listed other State programs not directed specifically toward wetlands as being most important for controlling wetland use, Such programs address water pollution control, endangered species or game species protection, and natural-area acquisition programs. These programs vary greatly in the extent of protection they provide. In some States, one or more of these programs appear to have far-reaching effects on wetland protection. For example, State flood plain regulations may limit construction in large areas of wetlands located in flood plains. However, flood plain regulations in many States do not specifically consider the impact of flood plain development on wetlands. Fill is generally permitted, provided flood elevations are not increased. On the other hand, in New Jersey, the State Flood Hazard Area Control Act is used to protect environmental values in some areas (e. g., trout streams and State wild and scenic rivers) (7).

State acquisition programs targeted at wetlands are present in a few States. However, acquisition may be expensive and can protect only a limited number of wetlands. In addition, acquisition programs have been hit hard by the financial pressures besetting State legislatures. Some States emphasize nonwetlands in their acquisition programs out of preference for upland values because of Federal wetland-acquisition programs in the State (3).

The 20 States with programs specifically directed at wetlands, whether programs stand alone or are subsumed under other programs such as coastal zone management, almost without exception assert that their programs are better than the 404 program in protecting wetlands in the areas covered. However, the OTA study indicated that some State programs may look good on paper but have problems with implementation (3, 11). In other cases, a State may have granted the authority to an agency or local government to provide protection to wetlands, but the authority may have not been used (6,7). Case study information also revealed that even where there is regulatory overlap between the State and Federal programs, the 404 program may provide an important regulatory backup for a few projects where the State has neither the authority nor the political will to deny actions that will adversely impact wetlands.

OVERLAPPING OF STATE/FEDERAL WETLAND REGULATORY PROGRAMS

States differ greatly in the types of wetlands they have, the wetland policies they employ, the problems they experience, and their attitudes toward wetlands and the 404 program. It is difficult therefore to generalize about the relative overlap of State and Federal programs. Tables 25 and 26 illustrate this point for State wetland-regulatory programs in New England. State and Federal programs often overlap or differ in the coverage of activities and areas and procedures used. Some States have nonwetland programs that may indirectly protect wetlands. In those States with strong wetland programs, Corps district offices do not always take an active role in enforcing 404 regulations. Instead, State agencies become the primary parties regulating the use of wetlands, and the Corps usually supports their efforts. Of those States with wetland programs, most believe that State and Federal wetland programs complement one another.

Activities and Areas

Some States regulate more wetland-related activities than the Corps does. For example, *over* 70 percent of the wetlands under the New Jersey Pinelands Preservation Commission's jurisdiction are not subject to Corps individual permit review because flows are less than 5 ft^3/s (7). Many States regulate less area than the Corps but exempt fewer activities from regulation. For example, the North Carolina Dredge and Fill Act does not exempt agricultural or silvicultural activities; however, the law

Table 25.—Values Protected by State Wetlands Regulatory Programs in New England

	Connecticut		Maine		Massachusetts		New Hampshire		Rhode Island	
	Salt	Fresh	Salt	Fresh	Salt	Fresh	Salt	Fresh	Salt	Fresh
Flood control	P	P	P	NA	P	P	P	P	P	P
Water quality	—	P	–	NA	P	P	–	–	–	–
Recreation	P	P	P	NA	–	–	P	P	–	P
Fish	P	P	P	NA	P	P	P	P	P	P
Wildlife	P	P	P	NA	–	–	P	P	P	P
Esthetics	P	P	–	NA	–	–	P	P	P	–
Water supply	–	P	P	NA	P	P	–	–	P	P
Erosion	P	P	–	NA	–	–	–	–	P	–
Sediment capture	P	P	–	NA	–	–	P	P	—	—
Shellfish production	P	—	P	NA	P	P	P	P	P	P
Navigation	P	—	P	NA	–	–	–	–	–	–
Ground water	—	—	—	NA	P	P	P	P	—	P
Vegetation	—	—	—	NA	–	–	P	P	P	–

P= Protected.
— - Not protected.
NA = Not applicable.

SOURCE: Data from OTA's New England case study.

Table 26.–Exemptions by State Wetland Regulatory Programs in New England

	Connecticut		Maine		Massachusetts		New Hampshire		Rhode Island	
	Salt	Fresh	Salt	Fresh	Salt	Fresh	Salt	Fresh	Salt	Fresh
Farm ponds	—	•	•	NA	?	?	—	—	—	—
Farming	—	•		NA	•	•	—	—	—	—
Boat moorings	—	•	•	NA	—		—	—	—	—
Municipal water supply	—	•		NA	—		—	—	—	—
Uses incidental to residential property	—	•		NA			—	—	—	—
Navigation aids	•			NA			—	—	—	—
Public health emergencies	•	—	—	NA	—	—	—	—	—	—
Mosquito control	•	—	—	NA	•	•	—	—	—	—
Snow dumping	—		•	NA			—	—	—	—
Maintenance and repair			•	NA			•	•	—	—
Some requirements for sewage disposal	—		•	NA			—	—	—	—
Utility maintenance	—	—		NA	•	•	—	—	—	—
Emergency work	—	—		NA	•	•	—	—	—	—
Silviculture	—	—		NA	•	•	—	—	—	—
Small wetlands (size limits vary by State)	—			NA			•	•	—	•
Riverbank cut and fill with conditions	—	—	—	NA	—	—			—	•

•= Exempted activities.
— = Activities regulated.
NA = Not applicable.

SOURCE: Data from OTA's New England case study.

does not apply to forested wetland species (10). Policies of New Jersey's Hackensack Meadowlands Development Commission are less stringent than the 404 program. For example, the commission allows nonwater-dependent uses of wetlands. It is only because of the 404 program that such projects may be denied or mitigation measures may be required (7). Projects that are smaller than a specified size often are not regulated by State programs, thereby providing convenient loopholes for developers who scale their projects just outside of regulatory control.

In another case, the provisions of the New Jersey Coastal Area Facilities Review Act (CAFRA) generally are similar to section 404 but have some features that are more, or less, stringent. For example, this act prohibits major development in wet-

lands unless the project is water-dependent, there is no practical alternative on a nonwetland site, or the project involves only minimum alteration of natural tidal circulation, natural contour, or wetland vegetation. This law applies to all activities, not just the disposal of dredged and fill material as does section 404. CAFRA also prohibits development that adversely affects white cedar stands; the 404 program doesn't have such specific prohibitions. However, projects less than a certain size in nontidal marsh wetlands are not regulated under CAFRA, although the Corps might regulate some of these activities (7).

Some State programs have provisions to regulate activities that occur outside of the wetlands but still have some impact on them, The NewJersey Pinelands Preservation Commission program prohibits residential, commercial, and industrial development on wetlands, or within 300 ft of wetlands, unless extraordinary hardship and a demonstrated public need can be shown (7).

State definitions of wetlands and procedures for identifying wetland boundaries may be more restrictive, leaving many wetlands to be regulated only by the Corps. For example, the wetland vegetation list used in Florida is less comprehensive than that of the Corps. Also, the Florida procedure for identifying contiguous wetlands is more restrictive than the Corps'. Any break in the continuity of contiguous, dominant species, even an illegal fill, limits the extent of State jurisdiction (l).

Wetland ***values*** protected under some State laws are less comprehensive than those of the Corps. For example, Florida restricts its consideration to water-quality impacts under its dredge and fill law (ch. 403), while the Corps considers the broader public interest, including fish and wildlife values (l). Massachusetts wetland permit programs do not consider wildlife values (12).

A few States have more stringent standards for mitigation than does the Corps, requiring developers to provide some sort of compensation or mitigation for all wetlands lost due to development in certain areas—e. g., California and Oregon both have a no-net-wetland-loss standard. California also is committed to increasing wetland acreage by 50 percent by the year 2000 (4).

Broad language in many State laws can be used to provide either strong or weak protection for wetlands. For example, the Nebraska Environmental Protection Act has a pollution prohibition. Water pollution, as defined in the act, could include any human activity affecting wetlands, including wetland drainage due to lowering the water table. The definition of wastes could include fill material disposed of in wetlands. However, these authorities have not yet been used by the State to protect wetlands (6).

In some States, courts have supported broader State authority over development activities that may have implications for wetland protection. For example, the California Supreme Court in 1981 expanded the boundary of the public trust to include the area between the seasonal high and low watermark of all nontidal waters (4). However, in other States, protection for wetlands may be limited by judicial interpretations of past State actions. For example, Florida cannot deny permits to fill submerged lands that were originally sold by the State with the expectation that the area would be developed (1 1). Other States may lack authority to regulate tidelands that were granted to private landholders prior to statehood (4, 10). In Nebraska, agricultural water use is given constitutional preference over all other non-domestic uses. Attempts to reserve water for wetlands may result in constitutional challenges (6).

Some State programs may encourage the protection of wetlands but lack the authority to require protection or mitigation of potential impacts. For example, the California Department of Fish and Game reviews proposals for projects that may alter streambeds and impact fish and wildlife. The department proposes modifications and encourages the applicant to incorporate them into the project. The State does not have the authority to stop any projects (4). The California 1977 Policy for Preservation of Wetlands in Perpetuity also has no direct mechanism for implementation. The policy limits the actions of State agencies in approving projects that will harm wetlands and exempts some wetlands from the policy. However, acre-for-acre compensation still is required (4). In another case, the South Florida Water Management District is authorized to protect water resources and to ensure that con-

struction of surface-water management systems do not adversely affect water resources. The district has authority to designate conservation areas; however, since it can only obtain easements for waterflow, damage to wetlands from development still can occur (l).

Implementation Procedures

The implementation procedures of some State programs ensure better compliance with wetland regulations than do some aspects of the Corps' 404 program. For example, the Mississippi program has a reporting requirement for exempted activities. In addition, exempted activities must be granted an exemption and must still comply with the public purpose of the wetlands law, which is to preserve coastal wetlands except where a higher public interest is served that is consistent with the public trust (2). The Mississippi program also has a mechanism to eliminate unnecessary wetland alteration from activities of State agencies. Four agencies must approve State activities (2).

The State general permit program of the South Florida Water Management District has notification requirements that differ from those of the Corps (l). To obtain a general permit, an applicant must have the project reviewed to ensure that certain standards will be met.

Some States administer programs on a regional level. This practice is thought to provide greater opportunities for monitoring and enforcement, to ensure that decisions are made with a better understanding of local circumstances, to reduce travel time and other costs, and to provide applicants with better access to regulatory personnel (l).

State and Federal procedures for making decisions about wetland use may not be the same, although a similar decision may give the impression that the programs are duplicative. For example, Alaska requirements for oil and gas activities on State lease sale tracts of wet tundra often duplicate requirements on the activities imposed through the 404 program. The State review of operational plans for these activities is conducted by four State agencies. But the review process does not involve the general public or local governments; the 404 review of the same project application may. Critics of the State review process note that the State agency with responsibility for decisions on these operational plans also has primary responsibility for developing State oil and gas resources and for accounting for State revenues (5).

Several Corps districts have been working with State program officials to reduce regulatory overlap and permit processing delays. For example, the Wilmington District's efforts include (10):

- ***Joint applications:*** the Corps and North Carolina Office of Coastal Management (NCOCM) developed a single permit application for obtaining necessary State and Federal approvals for regulated projects.
- ***Joint public notice:*** a single public notice was prepared to meet both State and Federal requirements.
- *Joint preapplication meetings and onsite visits:* applicants meet with Federal and State officials to review potential projects. For nonroutine projects, a joint onsite meeting is held prior to the submission of a permit application.
- *Joint postapplication meetings:* when review agencies have objections to a proposed project, the Wilmington District typically will call a meeting to work out the differences between the Federal and State agencies and the applicant. The Corps acts as an arbitrator and has full knowledge of the decisions that are made.
- *Joint enforcement meetings:* since 1972, the Wilmington District and NCOCM have met regularly with other interested Federal and State agencies to discuss policies, regulations, procedures, specific problem permits, and violations.
- *State-program general permit:* perhaps the most far-reaching effort by the Wilmington District and the State of North Carolina to reduce regulatory overlap is the State general permit. This type of permit covered 80 percent of all major projects in 1981. If a permit application qualifies for this general permit, the application is processed by the State, and the Corps and other Federal agencies are given the opportunity to comment. The Corps coor-

dinates the collection of comments of the Federal agencies and determines the Federal conditions that must be included if the State recides to issue the permit. If Federal agencies have objections that cannot be resolved or if they recommend denial, the general-permit processing is terminated, and the application is processed as an individual permit.

STATE-PROGRAM IMPLEMENTATION PROBLEMS

While a large number of States actively regulate at least some of their wetlands, many face problems that significantly hamper their efforts. These problems are described below in approximate order of importance, according to State responses to the OTA survey. The following discussion should not be taken as characterizing all States, yet all but three States indicated that at least one of the problems was of major concern. Additonal problems that were noted in the case studies also are presented.

Funding

For most of those States with wetland programs, the major implementation problem is inadequate funding for hiring a sufficient number of staff with appropriate expertise and for monitoring and enforcement of permitted activities. * For example, the Florida pay scale is lower than that of the Corps, and there is significant personnel turnover. Also, enforcement budgets at the State level may be inadequate to provide experienced attorneys and expert witnesses. For this reason, Florida often relies on the Corps to pursue enforcement and will settle for after-the-fact permits rather than try to seek penalties and restoration (l).

Difficulties often are related to reduced Federal funding for wetland programs and coastal-zone management activities. Federal assistance has been important to States, for example, in developing inventories, in setting up coastal programs, and in acquiring wetlands. Cutbacks in Federal programs directly affect the capabilities of many States and localities. For example, OCRM is phasing out its grants to States with approved coastal-zone programs. In several cases, funding will be lost for half to all of State staff dealing with coastal wetlands. State acquisition efforts also have been hampered by the elimination of funding from the Land Water Conservation Fund. *

Even more serious than Federal cutbacks is the budgetary crisis confronting many State governments. * * Wetland-program budgets generally have not kept pace with inflation, and in most cases, have been static. They have even been projected to decline in the future. Few States have come up with replacements for the Federal funding that will be lost, and few programs, whether dependent on Federal funding or not, are likely to fare well when making funding requests from financially strapped State legislatures. A major factor behind low funding is the absence of legislative and public support for wetland protection, especially when such protection appears to conflict with development activities.

General Attitudes Toward Wetlands

States and regions within States differ radically in the awareness and attitudes of legislators and residents toward wetland values and wetland-protection programs. Unlike coastal wetlands, which in many cases are of great importance to industries such as fishing and tourism, inland wetlands, especially those outside of flyways for waterfowl, have not been as firmly connected in the public mind with functional services and economic benefits. Based on State responses to OTA'S questionnaire,

"Massachusetts, responding to the request on the survey to rank problems in importance, responded ' 'funding, funding, and funding, in that order of priority.

*A few States also have received grants from EPA to study the feasibility of assuming the 404 program. States receiving grants have said that such funding is essential if assumption eventually is to take place.

•● Michigan, for example, stated that owing to budget cutbacks, it does not have enough personnel to administer "most effectively' all aspects of the program. Applications for permits are getting processed in a timely fashion, but other important aspects of the program are not being implemented.

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lack of support of wetlands programs apparently is due to many factors, including:

- ***Lack of awareness of wetland values.*** A few States (e. g., Tennessee, West Virginia, Kansas) commented that most residents are unfamiliar with wetland values and are unaware of wetland-protection programs such as 404.
- *Opposition to land use controls.* In some States (e.g., Colorado, Wisconsin, Arkansas, Tennessee), there is strong objection to wetland programs that appear to create de facto land use controls on private property.
- ***Sensitivity to regulatory costs and the desire to promote development.*** In many States, especially ones in which agriculture is an important industry (e. g., Florida), legislative and public sentiment tends to place a higher priority on development than on wetland preservation when the two goals conflict. Agencies in some States may be forced to bow to political pressure and to allow development that they otherwise would deny or modify.

A few quotes from State responses are indicative of general attitudes:

> Agriculture still remains top priority with Iowa. Wetland alterations are generally accepted by public as well as elected officials.
>
> Iowa

> Any program that was solely designed to protect wetlands is not politically feasible in Wyoming.
>
> Wyoming

> Although the intrinsic values of wetlands are recognized by all State agencies whose functions impinge on wetlands, and a few are strong advocates of wetland protection, the entire question of whether wetlands should be protected or regulated by government has not been addressed by the State (Arkansas) and there is little enthusiasm for doing so now.
>
> Arkansas

To illustrate further, the California Coastal Commission regulates some wetland-alteration activities in the coastal zone where the boundary is subject to political manipulation. The California Legislature has changed the boundary several times (4). The only statewide protection given to wetlands is provided indirectly through water-quality authorities who require permits for the discharge of pollutants into State waters. However, the effect of discharges upon wetlands usually is not a separate consideration in the permit process, which focuses on water quality, especially the quality of water used by people. Wetland habitat values are rarely considered.

Monitoring and Enforcement

Monitoring and enforcement was mentioned as a problem by 14 States and was ranked first in importance by 3; other sources also have concluded that this is a serious problem for many States. Some States undertake site inspections for all permitted development activities at least once during construction and after project completion. In other States, monitoring is less comprehensive. Inland wetlands are particularly neglected (9).

States experience even greater difficulties with enforcement. According to one source, agencies seeking administrative action in case of violations are limited in some States to seeking injunctions or issuing temporary cease-and-desist orders, with the assistance of State or local prosecutors. Agencies in such cases do not have the power to impose fines or criminal citations; where penalties are available, they may be too low to constitute effective deterrents (9). It is also sometimes difficult to get State attorneys general to prosecute wetland violators. Some States turn prosecution over to local authorities, who are often subject to political pressure. At both State and local levels, prosecutors are reluctant to prosecute small violations and even in cases of large violations have more pressing priorities than wetland cases. Although compliance with some State laws generally may be good, some States have difficulty in obtaining restoration for those illegal fills that do take place (1 1).

Inadequate Technical Information and Expertise

A major problem hampering many States is the lack of information regarding the wetland resources of their area. Most States have little data on such things as the location, size, vegetation types, and wildlife habitat values of wetland areas covered under State programs. Some States say they have

insufficient technical expertise to determine wetland boundaries and values and insufficient funds to hire additional staff. Many States expressed the hope that the Fish and Wildlife Service (FWS) inventory effort will be accelerated and that increased aid be given to States for their own inventories.

Agency Fragmentation

In many States, more than one agency handles programs that protect wetlands. In some States, there may be four or more agencies involved. Inconsistency in policy often results. Another sort of fragmentation takes place within single agencies: agencies and their personnel with wetland-protection responsibilities often have other duties as well. Divided responsibilities between State and local governments also can cause problems for wetland protection. For example, the North Dakota Drainage Law is implemented at the State and local level. Complaints about illegal drains are reported to the State, but the local water board is responsible for forcing closure. The J. Clark Salyer National Wildlife Refuge requested closure of over 200 illegal private drains in 1978. The State Water Commission informed the local boards and sent 200 violation letters. None of these drains had been closed as of August 1982 (3).

State Interest in Assuming 404 Permitting

Somewhat less than a third of the 48 States responding to OTA's survey are interested in the possibility of assuming responsibility for a portion of the 404 program. Through such assumption, some States hope to get a stronger regulatory program; some a weaker program. However, almost none of these States is willing to assume the program without major changes in one or more of the following: current EPA regulations governing assumption, the scope of areas that States would be allowed to administer, and, most importantly, financial assistance. In fact, only four States have accepted responsibility for 404 permitting on an experimental basis. If the Federal Government reduced its involvement in wetland protection, wetlands would receive mixed levels of protection from the States, owing to States' budgetary and political constraints. In response to cutbacks in the 404 program, few States would be willing at this time to increase the current level of wetland protection without additional resources from the Federal Government; even with resources some States would be reluctant.

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