

Wetlands Reform Bill Is All Wet, Say Scientists

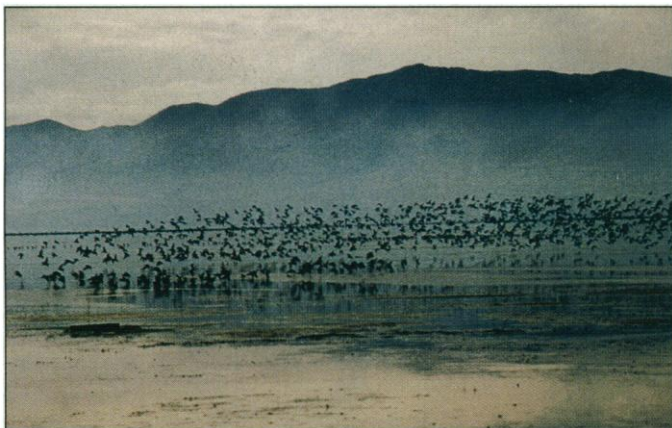
Ecologist Terry Huffman admits he's no environmentalist: He spends much of his time helping developers figure out which wetlands can become parking lots and which must be set aside. But when the U.S. House of Representatives last week began debating a major overhaul of the federal wetlands program that promises to free up millions of acres to developers, even Huffman shook his head in disbelief. "It's asinine," says Huffman, who runs a consulting firm in San Francisco. "Congress is trying to impose a policy without consideration of science."

The size of the gap between science and the legislation—a bill (HR 961) that proposes sweeping changes to the Clean Water Act—became clear just hours before the House began debating the measure on 10 May. On that date, the National Research Council (NRC) released a report* on the definition of ecologically viable wetlands that is at odds with the approach taken in HR 961. The House bill says "wetlands" must be covered with surface water for 21 consecutive days during warm months, among other restrictions, to merit the designation.

But that excludes millions of acres of bogs, prairie potholes, and other wetlands with variable water levels included in the NRC report—areas that are stomping grounds for thousands of species of birds and other wildlife. If the bill's definition is adopted, "we would necessarily exclude from protection many true wetlands," says NRC panel chair William Lewis Jr., director of the Center for Limnology at the University of Colorado.

For many supporters of HR 961, that seems to be the goal. The bill, in the view of sponsor Bud Shuster (R-PA) and other advocates, redresses an overzealous federal effort that often sequesters valuable land for minimal ecological gain. In debate last week, Shuster vented his frustration by recounting the story of an 80-year-old Indiana farmer who broke a pipe, flooding a field, and was no longer able to farm his land because

federal regulators deemed it a wetland. "There are thousands of horror stories of the excessive regulation of wetlands, and this bill attempts to cure that," he told the House. Outraged private property owners have been clamoring for such a cure for years. "One of our reasons for writing this legislation was to make it easier for landowners," says Kim Putens, executive director of the National Wetlands Coalition, a lobbying organization in Washington, D.C., supported



Not wet enough. This Utah wetland isn't covered by water for 21 consecutive days, so it would lose federal protection under the reform bill.

by farmers, oil companies, and other commercial interests.

To qualify as a wetland under the new bill, a swath of land must meet the 21-day surface water condition during "the growing season," a period the bill defines as spanning "the average date of last frost in spring and the average date of first frost in autumn." The land must also be home to obligate hydrophytes, a class of plants that exists only in very wet areas.

If an area passes these tests, it still would not be guaranteed protection; instead, it would then be rated according to its "relative ecological significance." Type A wetlands—limited by the bill to no more than 20% of a given county or district—would have to be at least 10 acres in size and "of critical significance to the long-term conservation of the aquatic environment," such as providing crucial habitat for wildlife. Type B wetlands perform "significant" functions but could be developed if the Army Corps of Engineers deems development to be in the "public interest." The last category—Type C—is reserved for wetlands serving marginal functions; the new legislation states that these lands could be developed "without authorization."

These guidelines could remove 60% to 80% of the 105 million acres of currently designated wetlands in the contiguous United States and 175 million acres in Alaska, according to the Association of State Wetland Managers (ASWM). The restrictions ignore decades of wetlands research, argues Barbara Bedford of Cornell University, a wetlands vegetation expert who served on the NRC panel. And many of them, such as the 21-day water period and hydrophyte requirement, are completely arbitrary, says microbiologist Barbara D'Angelo, wetlands section chief for the Environmental Protection Agency's (EPA's) mid-Atlantic office. Wetlands failing to qualify under the bill include red maple swamps and some evergreen forests in New England, saline meadows and sandhills in the Midwest, and montane marshes and meadows in the Pacific Northwest.

Just about all landlocked wetlands wouldn't make the grade. Under the current law, says Greg Peck, who heads the EPA's wetlands regulatory branch, the federal government must demonstrate a "connection to interstate commerce" in order to assert jurisdiction. For coastal wetlands that's easy, he says—they are connected to navigable waters, which the federal government maintains. But for landlocked wetlands, regulators have had to assert that they're used by migratory birds. The House bill, however, specifically prohibits federal officials from delineating a wetland "based solely on the fact that migratory birds use or could use" it. "This bill is like an onion," says Peck. "Every time you peel back a layer you find another way to remove protection."

The NRC panel takes a far more general definition of wetlands—"an ecosystem that depends on constant or recurrent, shallow inundation or saturation at or near the surface of the substrate"—and many supporters of this approach hope a counterpart reform bill from Senator Bennett Johnston (D-LA) will include it. "We need a dialogue that will produce a reform bill," says NRC panel member Constance Hunt of the World Wildlife Federation. "Even most people in the development community don't want to see the wetlands program made completely unworkable."

But that dialogue has been sorely lacking in the past. Reform bills in the Senate over the last few years have sought to simplify the labyrinthine administration of the wetlands program, which is currently handled by the EPA, the Army, and the U.S. Department of Agriculture. But those bills died, says Hunt, because Congress has for the most part been polarized into two camps: Gut the program or leave it as it is. "It's surprising to none of us that farmers and developers are outraged," says Jon Kusler, ASWM executive director. "Things have just festered and festered."

—Richard Stone

* "Wetlands: Characteristics and Boundaries," NRC, May 1995.