



National Park Service

[Electronic copy. Original on file in Office of Policy]

DIRECTOR'S ORDER #77-1: WETLAND PROTECTION

Approved: /s/ Fran P. Mainella
Director

Effective Date: October 30, 2002

Sunset Date: This Order will remain in effect until amended or rescinded

1.0 Background and Purpose of this Director's Order

The purpose of this Director's Order is to establish National Park Service (NPS) policies, requirements, and standards for implementing [Executive Order \(E.O.\) 11990: "Protection of Wetlands"](#) (42 Fed. Reg. 26961). E.O. 11990 was issued by President Carter in 1977 in order "...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...."

Section 6 of E.O. 11990 directed federal agencies to issue procedures to implement the Executive Order. NPS wetland protection procedures were originally adopted together with E.O. 11988 (Floodplain Management) procedures in the 1980 "NPS Floodplain Management and Wetland Protection Guidelines" (45 Fed. Reg. 35916, minor revisions in 47 Fed. Reg. 36718). Experience with implementing the wetland procedures, and changes in wetland management concepts since they were first published, necessitated updating, streamlining, and clarifying NPS wetland policies and procedures in Director's Order #77-1: Wetland Protection (issued October 22, 1998). The 1998 Director's Order and the accompanying Procedural Manual #77-1 superseded and replaced the 1980 NPS wetland guidance. Included in Director's Order #77-1 were: 1) adoption of a "no net loss of wetlands" goal, which was first proclaimed in 1989 by President George Bush and has been sustained by subsequent Administrations; and 2) adoption of the Cowardin et al. (1979) wetland classification system as the NPS standard for defining, classifying, and inventorying wetlands.

The four-year sunset provision for NPS Director's Orders now requires that Director's Order #77-1 be re-issued. The NPS has operated under the 1998 version of Director's Order #77-1 for the last four years with excellent success. Therefore, the following sections of that document are re-issued without substantive change.

In addition to the requirements of this Director's Order, NPS activities that involve the discharge of dredged or fill material into wetlands or other "waters of the United States" must also comply with Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (regulations and permit process are described in 33 CFR 320-331).

This Director's Order is intended only to improve the internal management of the NPS, and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

2.0 Policies, Requirements, and Standards

Executive Order 11990 directs the NPS: 1) to provide leadership and to take action to minimize the destruction, loss, or degradation of wetlands; 2) to preserve and enhance the natural and beneficial values of wetlands; and 3) to avoid direct or indirect support of new construction in wetlands unless there are no practicable alternatives to such construction and

the proposed action includes all practicable measures to minimize harm to wetlands.

In carrying out the NPS's responsibilities related to:

- acquiring, managing, and disposing of NPS lands and facilities;
- construction and related development activities;
- permitting activities as provided for under NPS regulatory authorities; and
- conducting activities, programs, or planning efforts affecting use of NPS lands,

in a manner consistent with E.O. 11990 and with the "no net loss of wetlands" goal, the NPS will take the following actions:

2.1 The NPS adopts a goal of "no net loss of wetlands." In addition, the NPS will strive to achieve a longer-term goal of net gain of wetlands Servicewide.

2.2 NPS units will conduct parkwide wetland inventories (or will obtain such inventories from appropriate sources such as the National Wetlands Inventory) to help assure proper planning with respect to management and protection of wetland resources. Additional large-scale (more detailed) wetland inventories will be conducted in areas that are proposed for development or are otherwise susceptible to degradation or loss due to human activities.

2.3 For purposes of compliance with Executive Order 11990, the NPS will use "Classification of Wetlands and Deepwater Habitats of the United States" (FWS/OBS-79/31; Cowardin et al. 1979) as the standard for defining, classifying, and inventorying wetlands.

2.4 For proposed new development or other new activities, plans, or programs that are either located in or otherwise have the potential for direct or indirect adverse impacts on wetlands, the NPS will employ a sequence of:

- a) avoiding adverse wetland impacts to the extent practicable,
- b) minimizing impacts that could not be avoided, and
- c) compensating for remaining unavoidable adverse wetland impacts via restoration of degraded wetlands.

Consistent with 2.1 above, compensation for wetland degradation or loss will be at a minimum 1:1 ratio. Actions that may be excepted from the compensation requirement are identified in [Procedural Manual #77-1](#), which was developed by the Associate Director, Natural Resource Stewardship and Science to implement this Director's Order.

2.5 Actions proposed by the NPS that have the potential to have adverse impacts on wetlands will be evaluated through the National Environmental Policy Act (NEPA) planning and compliance process. Regardless of the associated NEPA compliance pathway (environmental assessment, environmental impact statement, or categorical exclusion), a Wetland Statement of Findings documenting compliance with this Director's Order and Procedural Manual #77-1 will be completed for proposed actions that would result in adverse impacts on wetlands. Actions that may be excepted from this Statement of Findings requirement are identified in the Procedural Manual.

2.6 Superintendents will oversee preparation of Statements of Findings and will recommend their approval to Regional Directors. The Chief of the NPS Water Resources Division or, alternatively, a certified Professional Wetland Scientist (Society of Wetland Scientists Certification Program, Inc.) from within the NPS with working knowledge of this Director's Order and Procedural Manual #77-1, will certify: 1) the adequacy of wetland-related technical analyses; and 2) consistency with Servicewide implementation of this Director's Order and Procedural Manual #77-1. Regional Directors have final approval authority for Statements of Findings.

2.7 Where natural wetland characteristics or functions have been degraded or lost due to previous or ongoing human activities, the NPS will, to the extent appropriate and practicable, restore them to pre-disturbance conditions.

2.8 Where appropriate and practicable, the NPS will not simply protect, but will seek to enhance natural wetland values by using them for educational, recreational, scientific, and similar purposes that do not disrupt natural wetland functions.

3.0 Responsibilities

The **Director** is responsible for ensuring NPS compliance with E.O. 11990 in accordance with provisions of 520 DM 1. In performing this duty, the Director approves NPS policies and directives for complying with the Executive Order.

The **Deputy Directors and Associate Directors** are responsible for general supervision of the Divisions and Offices under their jurisdictions to ensure compliance with E.O. 11990 as outlined in this Director's Order and Procedural Manual #77-1.

The **Associate Director, Natural Resource Stewardship and Science** is responsible for: 1) issuing and updating NPS procedures for implementing this Director's Order; and 2) revising relevant portions of the NPS Management Policies and NPS natural resources management and NEPA procedures to ensure compliance with E.O. 11990 as outlined in this Director's Order and Procedural Manual #77-1.

The **Associate Director, Park Planning, Facilities, and Lands** is responsible for revising NPS planning procedures as necessary to satisfy the requirements of E.O. 11990 as outlined in this Director's Order and Procedural Manual #77-1.

The **Superintendents** oversee the planning/NEPA process, identify preferred alternatives, assure that appropriate wetland permits have been obtained (e.g., Section 404 of the Clean Water Act), and oversee preparation of Statements of Findings as outlined in this Director's Order and Procedural Manual #77-1, utilizing the wetland technical information developed during the planning process. Superintendents sign the "Recommended" line on Statement of Findings cover sheets.

The **Chief, Water Resources Division** (or a certified Professional Wetland Scientist from within the NPS as described in this Director's Order and Procedural Manual #77-1) signs the "Certification of Technical Adequacy and Servicewide Consistency" line on Statement of Findings cover sheets, assuring both technical adequacy of wetland analyses and Servicewide consistency in implementation of this Director's Order and Procedural Manual #77-1.

The **Regional Directors** are responsible for ensuring compliance with E.O. 11990 within their respective Regions as outlined in this Director's Order and Procedural Manual #77-1. They are responsible for final approval of Statements of Findings after recommendation by Superintendents and certification of technical adequacy and Servicewide consistency as described in Section 2.6.

-----End of Director's Order-----

As authorized by section 6.1 of Director's Order #1, the Chief, Office of Policy, has made minor corrections or clarifications to sections 1 and 2.5 of this Order. (3-23-12)