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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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MEMORANDUM

OFFICE OF  
GENERAL COUNSEL

TO: John Wilson  
Wetlands Task Force Coordinator (PM-222A)

FROM: Catherine A. Winer (CAW)  
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SUBJECT: Clean Water Act Authority Over Wetlands

Mahesh Podar has asked me to briefly summarize for the Wetlands Task Force the extent of Clean Water Act jurisdiction over wetlands.

Section 301(a) of the Clean Water Act prohibits the discharge of pollutants into "navigable waters" except in compliance with sections 402, 404, and certain other provisions. Navigable waters are defined in section 502(7) as "waters of the United States, including the territorial seas." "Waters of the United States" are in turn defined by regulation to include wetlands which are adjacent to water bodies which are themselves waters of the United States (e.g., wetlands adjacent to tidal waters, wetlands adjacent to traditionally navigable waters, wetlands adjacent to tributaries of those waters, etc.) and isolated wetlands whose use, destruction, or degradation could affect interstate commerce (e.g., bogs from which peat or cranberries are harvested and sold in interstate commerce) (40 CFR §230.3(a)). The term "wetlands" is defined by regulation to mean "those areas which are inundated or saturated at a sufficiency and duration to support, and which under normal circumstances do support, a prevalence of vegetation typically adapted to life in saturated soil conditions" (40 CFR §230.3(c)).

In addition to the prohibition of section 301(a), other Clean Water Act requirements applicable to "navigable waters," like the development of water quality standards under section 303, water quality management planning under sections 208 and 303(e), enforcement under section 309, etc., also apply to those wetlands which are "waters of the United States."

Please call me at 382-7703 if you would like me to elaborate.