

A Study on the Statutory and Regulatory Framework
Protecting the Marine Ecosystem related to the
Decision of Public Water Reclamation Licence
Authority Transfer to the Local Government.

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Abstract : Last May, the government decided to go ahead with the controversial reclamation project in Saemangeum, North Jeolla Province. The national attitude toward public waters(including tidal flat) reclamation has changed dramatically over the past ten years. Even though Ministry of Maritime Affairs and Fisheries(MOMAF) has struggled to keep pace as the public image of tidal flat has evolved from worthless swamps to priceless wetlands, approximately 810km² tidal flat disappeared during the same period. That loss was alarming because of the enormous ecological significance of wetlands. They provide wildlife habitat, store flood water, control erosion, purify water, and recharge groundwater. Biologically, they comprise some of the richest and most diverse ecosystems on earth.

Last October, a Presidential Committee decided to transfer reclamation

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licence authority to the local government. This paper discusses the problems of current authority transferring system from central government to local government. The author argues that it should avoid simultaneous authority transferring to the local government. This paper suggest that the Governor of any local government desiring to administer its own public waters reclamation program within its jurisdiction may submit to the Minister a full description of reclamation plan. After taking into account any comments submitted by the Ministers of relevant ministries, the Minister of MOMAF shall determine whether such local government has the authority with respect to the issuance of licences pursuant to such program. Section III discusses the U.S. statutory and regulatory framework protecting wetlands. Especially, section 404 of the CWA authorizes the Corps' regulation of wetlands filling through a permit system. The EPA may veto any of the Corps' section 404 permit decisions. This section examines the three important issues related to the scope of the EPA's veto: (1) the criteria upon which the EPA may rely when conducting a veto proceeding, (2) the parameters of a "practicable alternative" to wetland development, and (3) whether mitigation measures, including the creation of artificial wetlands, can compensate for the destruction of a natural swamp. This paper concludes in section IV that Korea should adopt many procedural aspects of CWA clauses such as notice, public hearing, copies of applications for permits to be transmitted to Minister. Finally, it addresses a few issues that may require special consideration.

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1) The Rivers and Harbors Act of 1899

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15) Steven Ferrey, *Environmental Law, Aspen Law & Business*, 1997, p 423.
 16) The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq

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17) The Federal Water Pollution Control Act Amendments of 1972, 33. U.S.C. 1251 et seq.

18) Reclamation Public waters reclamation
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가 .
 19) 33 U.S.C. § 1311(a). Except as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title, the discharge of any pollutant by any person shall be unlawful. 가 () 가
 CWA 1344 () 가
 . 33 U.S.C. § 1344(a). The Secretary may issue permits for the discharge of fill material into the navigable waters at specified disposal sites.

20) 33 C.F.R. § 323.2(e)

21) 33 U.S.C. § 1362(7). The term “navigable waters” means the waters of the United States, including the territorial seas.

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22) *Natural Resources Defense Council v. Calloway*, 392 F. Supp. 685(D.D.C. 1975).

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<<http://wetlands.fws.gov/bha/SandT/SandTSummaryFindings.html>>
 24) CWA wetland 208 (i)(2) .
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 Percival et al. *Environmental Regulation, Law, Science, and Policy*, Aspen Law & Business 2d ed.(1996)
 25) *United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121(1985)

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26) *Hoffma Homes, Inc. v. Administrator, United States Environmental Protection Agency*, 999 F2d 256 (7th Cir.1993).

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27) Ferrey 10,000

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28) *Deltona Corp. v. Alexander*, 504 F. Supp. 1280 (M.D. Fla. 1981)

29) *Ibid*

30) 42 U.S.C. § 4332 (C). 102

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31) 16 U.S.C. § § 1451- 1465.

32) 16 U.S.C. § 1536(a)-(p)

33) 16 U.S.C. § § 1361- 1406, § § 1411- 1421.

34) 33 U.S.C. § 1341

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35) 33 U.S.C. § 1344(a).

36) NEPA 가 가

37) 33 U.S.C. § 1344(q).

38) Ferrey, p 425

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41) (f) Non-prohibited discharge of dredged or fill material

(1) Except as provided in paragraph (2) of this subsection, the discharge of dredged or fill material (A) from normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices.

42) 33 U.S.C. § 1344(f)(2)

43) 33 U.S.C. § 1344(b)(1) Each disposal site shall be specified for each such permit by the Secretary (1) through the application of guidelines developed by the Administrator.

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44) 33 U.S.C. § 1344(c). The Administrator is authorized to prohibit, deny or restrict the use of any defined area for specification as a disposal site, whenever he determines that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.

45) EPA/Department of Defense, Memorandum of Understanding on Geographic Jurisdiction of the § 404 Program (MOU), 45 Fed. Reg. 45,018(July 2, 1980)

46) Ferrey p 431.

47) Ibid

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 .48) EPA 가 가

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48) *Bersani v. U.S. EPA*, 850 F.2d 36 (2d Cir. 1988)

49) *Ibid*

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50) 33 C.F.R. §230.10(a). Except as provided under section 404(b)(2), no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.

51) Stevens, Panel Urges Big Wetlands Restoration Project, N.Y. Times, 1991. 12. 12, B16.

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52) Ibid

53) Ibid

54) White House Office of Environmental Policy, Protecting America's Wetlands, A Fair, Flexible and Effective Approach, 1993

55) Blumm, "The Clinton Wetlands Plan, No Net Gain in Wetlands Protection", 9 J. Land Use & Envtl. L. 203, 225 (1994)

56) Blumm 227

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57) Ibid

58) Houck and Rolland, "Federalism in Wetlands Regulation: A Consideration of Delegation of Clean Water Act Section 404 and Related Programs to the States", 54, Md. L. Rev. 1242 (1995).

59) 33 U.S.C. § 1344(g)(1)

60) Ibid

61) 33 U.S.C. § 1344(j)

62) Ibid

63) 33 U.S.C. § 1344(i)

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64) 33 U.S.C. § 1344(g)(1)

65) Ibid

66) Ibid § (2)

67) Ibid § (3)

68) 33 U.S.C. § 1344(h)(1)

69) Ibid § (2)(A)

70) Ibid § (B)

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71) Ibid § (3)
 72) Ibid § (4)
 73) Ibid § (A)
 74) Ibid § (C)
 75) Ibid § (E)
 76) Ibid § (F)
 77) Ibid § (i)

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80) 33 U.S.C. § 1344(t). Nothing in this section shall preclude or deny the right of any State or interstate agency to control the discharge of dredged or fill material in any portion of the navigable waters within the jurisdiction of such State, including any activity of any Federal agency, and each such agency shall comply with such State or interstate requirements both substantive and procedural to control the discharge of dredged or fill material to the same extent that any person is subject to such requirements.

81) Ibid. This section shall not be construed as affecting or impairing the authority of the Secretary to maintain navigation.

82) M.G.L. c.131

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83) M.G.L. c91

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85) Ibid p. 35
 86) Ibid
 87) 16 U.S.C. § 1452(4). The Congress finds and declares that it is the national policy (4) to encourage the participation and cooperation of the public, state and local governments, and interstate and other regional agencies, as well as of the Federal agencies having programs affecting the coastal zone, in carrying out the purposes of this title.

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89) 33 U.S.C. § 1344(a).

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91) 33 U.S.C. § 1344(m)

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93) 33 U.S.C. § 1344(a). The Secretary may issue permits, after notice and opportunity for public hearings for the discharge fill material into the navigable waters at specified disposal sites. 가

, 33 U.S.C. § 1344 (e)

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94) 33 U.S.C. § 1344(e)

95) 33 U.S.C, § 1344(o). A copy of each permit application and each permit issued under this section shall be available to the public.

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<p>第4條 (埋立基本計劃) 海洋 水産部長官 國土 全體的 機 能 用途</p> <p>10年 沿岸管理法 第22 條 規定 中央沿岸管理審 議會(“審議會”) 審 議 公有水面埋立基本計劃 (“埋立基本計劃”)</p> <p>海洋水産部長官 第1項 規定 埋立基本計劃</p> <p>中央 行政機關 長 協議 特別市長・廣域市長 道知事 (“市・道知事”)</p>	<p>4 ()</p> <p>5</p> <p>22 (“ ”) (“ ”)</p> <p>(“ ”) 5</p>
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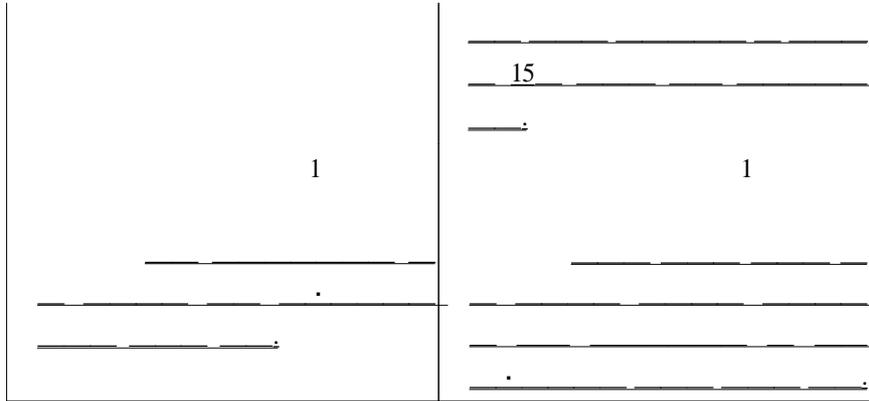
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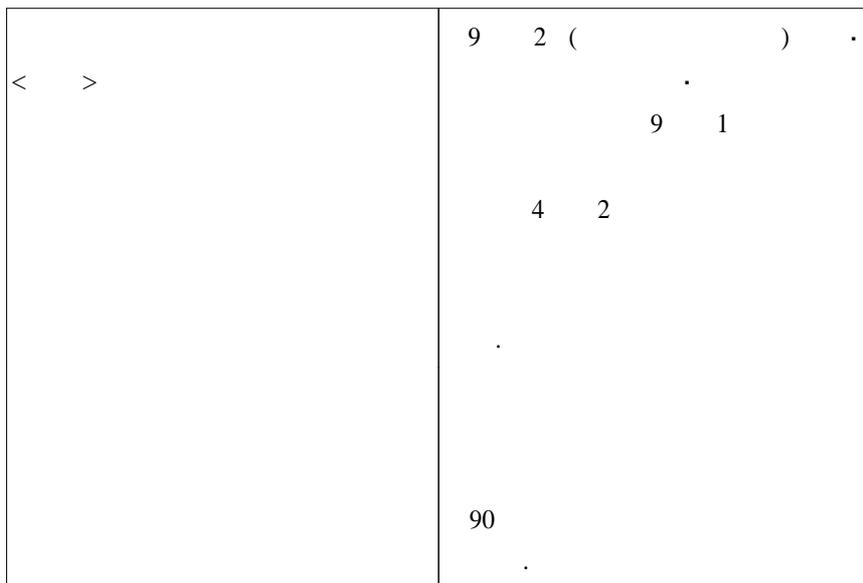
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<p>第32條 (免許 取消)< ></p> <p>1. - 2.()</p> <p>3. 公有水面 狀況 豫想</p> <hr/> <p>公益</p> <hr/> <p>4. - 5. ()</p>	<p>32 ()< ></p> <p>1. - 2.()</p> <p>3.</p> <hr/> <hr/> <hr/> <p>4. - 5. ()</p>
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<p>第43條 (過怠料) 第36條第1項 規定</p> <p>公務員 檢査 者 者 200萬 過怠 料 處</p>	<p>43 () 1 200</p> <p>1. 32</p> <hr/> <hr/> <hr/> <p>2. 36 1</p>
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4. EPA/Department of Defense, *Memorandum of Understanding on Geographic Jurisdiction of the § 404 Program (M O U)*, 45 Fed. Reg. 45,018(July 2, 1980)
5. Percival et al. *Environmental Regulation, Law, Science, and Policy*, 6. Aspen Law & Business 2d ed.(1996)
6. Steven Ferrey, *Environmental Law*, Aspen Law & Business, 1997.
7. *Selected ENVIRONMENTAL LA W STA TUTES*, West Group, 1998-99 Educational Ed.
8. White House Office of Environmental Policy, *Protecting America's Wetlands, A Fair, Flexible and Effective Approach*, 1993.

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1. Blumm, "The Clinton Wetlands Plan, No Net Gain in Wetlands Protection", 9 J. Land Use & Env'tl. L. 203, 225 (1994)
2. Houck and Rolland, "Federalism in Wetlands Regulation: A Consideration of Delegation of Clean Water Act Section 404 and Related Programs to the States", 54, Md. L. Rev. 1242 (1995).
3. Stevens, "Panel Urges Big Wetlands Restoration Project", N.Y. Times, 1991. 12. 12, B16.
4. United States Service Fish and Wildlife Web site
<<http://wetlands.fws.gov/bha/SandT/SandTSummaryFindings.html>>

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1. *Natural Resources Defense Council v. Calloway*, 392 F. Supp. 685(D.D.C. 1975).

2. *United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121(1985)
3. *Hoffma Homes, Inc. v. Administrator, United States Environmental Protection Agency*, 999 F2d 256 (7th Cir.1993).
4. *Deltona Corp. v. Alexander*, 504 F. Supp. 1280 (M.D. Fla. 1981)
5. *Bersani v. U.S. EPA*, 850 F.2d 36 (2d Cir. 1988)