Appendix D. Most Important Laws, Regulations, Directives, and Program Incentives Affecting Refuge Management and Land Protection in the Analysis Areas

Federal Programs

Clean Water Act.—This Federal law, particularly section 404, regulates activities in wetlands. It requires permits for the discharge of dredged or fill materials into the waters of the United States, including wetlands. Primary regulatory responsibility falls to the U.S. Army Corps of Engineers and the Environmental Protection Agency. Both are responsible for permit review and enforcement.

Two types of permits exist: individual and general. Individual permits are issued on a project-by-project basis, while general permits are issued without reference to a particular proposal, but cover a variety of similar activities that have "only minimal adverse environmental effects." Section 401 of the Clean Water Act gives states and eligible Indian tribes the authority to review and approve, condition, or deny, permits or licenses for any Federal activity that may violate a state's water quality standards, including Federal section 404 permitting for activities in wetlands. Section 401 also provides guidance on water quality standards for wetlands.

Coastal Zone Management Act of 1972 (CZMA) and **Coastal Zone Act Reauthorization Amendments of 1990** (CZARA).—CZMA and CZARA were enacted to protect, develop, and restore the natural resources of the coastal zone while balancing the need for "reasonable" growth. CZMA directs states to protect wetlands, floodplains, estuaries, beaches, dunes, barrier islands, fish and wildlife, and their habitat. Maryland's coastal zone includes the Chesapeake Bay, the Atlantic coast, and the Coastal Bays. Primary regulatory organizations are the National Oceanic and Atmospheric Administration (NOAA) Office of Ocean and Coastal Resource Management, and the Maryland Department of Environment (MDE).

NOAA and MDE oversee Coastal Zone Management programs developed by the State. These programs consider the protection of natural resources, management of development, siting of major facilities, commercial and industrial development, and coordination of State and Federal actions. They ensure that local governments and the public have a say in the coastal decision-making process.

Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA, pronounced "ice tea").—This act provides a greatly expanded role for local government in setting transportation goals and priorities. Wetlands can be significantly affected by transportation decisions and investments made with federal agency support and funding. Not only do highways and other forms of infrastructure often follow riparian corridors or cross wetland areas, but they also have

indirect effects on stimulating growth that can itself lead to impairment of wetland areas if care is not taken to identify and protect these areas.

ISTEA imposes detailed planning requirements on local and state governments, working primarily through regional planning organizations comprised of local officials. ISTEA has also significantly increased the involvement of local government and private citizens. At least 20 percent of ISTEA funding must be used for transportation enhancements and safety. The remaining 80 percent may be used by state and local governments for activities such as mitigating damage to ecosystems, habitat, and wildlife; wetlands banking; and planning activities.

National Environmental Policy Act (NEPA).—Passed in 1970, this act establishes a national environmental policy and goals for the protection, maintenance, and enhancement of the environment, and provides a process for implementing these goals within Federal agencies. NEPA requires the Federal Government to use all practicable means to create and maintain conditions under which people and nature can exist in productive harmony.

Section 102 of the act requires Federal agencies to incorporate appropriate and careful consideration of the environmental effects of proposed actions and analysis of the potential environmental effects and alternatives of the proposed actions.

NEPA also requires all Federal agencies to prepare detailed statements assessing the environmental impact of and alternatives to "major federal actions significantly affecting the quality of human environment." These documents may take the form of an Environmental Impact Statement (EIS) or an Environmental Assessment (EA). Both are made available for public comment in draft form; the result of an EA is either a Finding of No Significant Impact (FONSI), or a full EIS before proceeding with the action under consideration.

Endangered Species Act of 1973 (ESA).—This act requires Federal agencies to protect endangered and threatened species and strictly prohibit any person from harassing or harming any federally listed threatened or endangered species. The regulatory responsibility for this program rests with the Service and the National Marine Fisheries Service, which administer the program in cooperation with other Federal agencies. As of June 1997, 864 species were listed as endangered and 226 species were listed as threatened. Approximately 35 percent of those threatened and endangered animal species are either found exclusively in wetlands, or are dependent upon wetlands during part of their life cycle. In addition, many threatened and endangered plant species are dependent on wetland habitat.

Section 7 of the ESA requires all Federal agencies to insure that their actions are not likely to jeopardize the continued existence of any endangered or threatened (listed) species, or cause harm to their habitat. Thus, any proposed activities involving wetlands that are carried out, funded, or regulated by a Federal agency are subject to the provisions of the ESA.

The State of Maryland

The Maryland Department of the Environment (MDE) is responsible for administering the State's regulatory wetlands program. Within MDE, the Water Management Administration Wetlands and Waterways Program is divided into the Nontidal Wetlands and Waterways Division and the Tidal Wetlands Division.

The Maryland Wetlands Act of 1970 establishes the State's regulatory program to control proposed activities in tidal wetlands. MDE's Water Management Administration Tidal Wetlands Division issues permits for activities in privately owned tidal wetlands (tidal wetlands that are landward of the mean high water mark).

The Maryland Nontidal Wetlands Protection Act of 1989 regulates activities in the State's many nontidal wetlands. The act parallels many aspects of the Federal regulatory program under section 404 of the Clean Water Act, but also protects 25-foot buffer zones around wetlands or 100 feet around nontidal wetlands of Special State Concern. It regulates the alteration of wetland vegetation and hydrology. The goal of this act is to achieve no net loss of the acreage or function of nontidal wetlands.

Under the act, county governments may assume delegation of the regulatory program by developing nontidal wetlands protection programs. It also provides that counties and local governments may prepare watershed plans that, if adopted by the MDE, can be used to guide State permitting and decision-making.

The Maryland Chesapeake Bay Critical Areas Law (MD Code Ann. S8-1801 et seq.) was enacted in 1984 to minimize adverse water quality impacts and protect the Chesapeake Bay. The law seeks to protect water quality, conserve valuable habitat, and accommodate future growth in the least polluting manner by regulating activities and land use planning in what are defined as Critical Areas. It charges the Chesapeake Bay Critical Areas Commission with developing criteria to guide planning and actions in those designated areas.

Local governments are responsible for developing and implementing their own Critical Area resource protection programs, based on the requirements developed by the commission. The Maryland Department of Natural Resources Watershed Restoration Division identifies, prioritizes, implements, and evaluates watershed management initiatives. Those can include wetlands restoration, enhancement, and protection.

State Water Quality Certification S401.—The Wetlands and Waterways Program within the Maryland Department of the Environment is responsible for administering the State's water quality certification program. That program covers activities in tidal and nontidal wetlands.

Water quality certifications for Maryland are generally not included in the nontidal wetlands permit process, or in tidal wetland permit applications. As a result, usually there is not a separate notification process.

Maryland State Programmatic General Permit.—The USACOE has issued a State Programmatic General Permit (SPGP) recognizing Maryland's wetlands permitting process for many activities in tidal and nontidal wetlands as sufficient to satisfy § 404 of the Clean Water Act without further action by the Corps. Activities authorized by the Maryland SPGP may include activities that will result in fewer than 5 acres of impact, both direct and indirect, to nontidal wetlands, and activities that will result in fewer than 3 acres of impact, both direct and indirect, to tidal wetlands.

Economic Incentives, Cost-share, and Technical Assistance to Landowners

Department of Agriculture Farm Programs

The Federal Agriculture Improvement and Reform Act (FAIRA), or 1996 Farm Bill.—The conservation provisions of this act contain many new programs and revise several existing conservation programs. They provide economic incentives, cost-share, and technical assistance to landowners to encourage them to participate in land stewardship and wetlands protection in a manner that can be tailored to suit their own needs.

The Natural Resources Conservation Service (NRCS) oversees the *Environmental Qaulity Incentive Program* (EQIP), the *Wetlands Reserve Program* (WRP), the *Wildlife Habitat Incentives Program* (WHIP), and the *Farmland Protection Program*. The Farm Services Agency is the lead agency for the *Conservation Reserve Program* (CRP) and the *Flood Risk Reduction Program*. The Department of Agriculture also supports technical assistance programs through its Cooperative State Research, Education, and Extension Service, affiliated with land grant institutions in every state and territory.

The Wetlands Reserve Program is a financial incentive program to restore and protect wetlands on private agricultural property. Landowners receive financial incentives to enhance wetlands in exchange for voluntarily retiring marginal agricultural land. The benefits to landowners include receipt of financial compensation, enhancement of wetlands values that benefit the landowner and society, reduction of problems associated with farming potentially difficult areas, and the opportunity to practice conservation stewardship and provide recreational opportunities. Interested landowners may sell a conservation easement or enter into a cost share restoration agreement with USDA to restore and protect wetlands. Their voluntary participation in this program allows landowners to continue to control access to their land.

Flood Risk Reduction Program.—The 1996 Farm Bill established this program to offer voluntary contracts to landowners. The contracts provide one lump sum payment to producers who farm land with high flood potential to take their land out of production. The payment equals 95 percent of what farmers would have received over 7 years from their market transition payments, in order to offset the estimated amount of money the Federal Government would have spent supporting farmers who farm frequently flooded land. In return, the farmers agree to comply with applicable wetlands and highly erodible land requirements, and to forego commodity loans, crop insurance, conservation program payments, and disaster payments.

The Emergency Watershed Protection Program was established by the 1996 Farm Bill. It was designed to reduce threats to life and property in the wake of natural disasters. It provides technical and cost sharing assistance to landowners who have been affected by floods. Assistance includes removing or establishing vegetative cover, controlling gullies, installing stream bank protection devices, removing debris and sediment, and stabilizing levees, channels, and gullies. Its projects protect homes, businesses, highways, and public facilities from further damage. Under this program, the DOA may purchase flood plain easements to reduce the risk of future damage caused by floods.

The Environmental Quality Incentives Program was established by the 1996 Farm Bill to provide a single, voluntary conservation program for farmers and ranchers to address significant natural resource needs and objectives. Nationally, it provides technical, financial, and educational assistance to livestock-related natural resource problems and to more general conservation priorities. The program is available primarily in priority areas where there are significant natural resource needs and objectives. High priority is given where state or local governments offer financial or technical assistance, and where agricultural improvements will help meet water quality and other environmental objectives. As a result, local governments have the opportunity to greatly influence how its funds are allocated.

Under this program, landowners enter into 5- to 10-year contracts with the Natural Resource Conservation Service. The payment provides incentive payments and cost sharing for up to 75 percent of the costs of conservation practices such as filter strips, manure management systems, pest management, and erosion control. Eligible land must be agricultural land that poses a serious problem to soil, water, or related resources.

The Conservation Reserve Program offers landowners annual payments for 10 years in return for placing environmentally sensitive crop land into easement, and implementing a conservation plan for the easement. Program goals include reducing soil erosion, reducing sedimentation, improving water quality, and providing fish and wildlife habitat. Operators must implement a conservation plan, approved by local conservation districts, that converts sensitive lands to a less intensive use. The program's participants get 50-percent cost share for the required structural work and establishment of permanent cover. Any crop land where a wetland (shallow water area for wildlife) can be restored or constructed, including farmed wetlands, is eligible.

Federal and State Forestry Programs

The U.S. Forest Service Forest Stewardship Program encourages long-term stewardship of nonindustrial private forest land by assisting owners to actively manage their forest for multiple resource benefits. The program provides technical planning and management assistance to landowners to help them enhance and protect timber, fish and wildlife habitat, water quality, wetlands, and recreational and aesthetic values on their property. The program will develop a Stewardship Plan geared toward multiple resource management and tailored to the economic needs of the landowner.

The U.S. Forest Service Stewardship Incentive Plan provides an incentive to landowners to implement the Landowner Forest Stewardship Plan developed under the Forest Stewardship Program. The program is administered by state forestry departments and the U.S. Department of Agriculture Farm Service Agency. Its goal is to enhance forest management on private lands through a long-term commitment to stewardship. One of its objectives is to protect and restore forest wetlands. This program is available to landowners participating in the Forest Stewardship Program who have approved Landowner Forest Stewardship Plans.

The U.S. Department of Agriculture Forestry Incentives Program.—The purpose of this program is to increase the Nation's supply of timber from private nonindustrial forest lands, including forested wetlands. The Natural Resources Conservation Service administers the program, which provides financial assistance to private landowners for planting trees and improving stands of timber. Private landowners with forested wetlands on their property can receive cost-share assistance for planting trees, and assistance in developing a forest management plan for their property. The state forestry service provides technical advice throughout the process, and will help locate experts to perform the work.

The Maryland State Forestry Program.—The mission of the Maryland Department of Natural Resources Forest Service is to conserve and enhance the quality, quantity, productivity, and biological diversity of the forest and tree resources of Maryland. It also provides leadership and technical and financial support to inform, involve, and empower citizens, local governments, and private organizations to take actions necessary to accomplishing those goals. Under the Riparian and Wetland Protection and Improvement category, most of the applications for SIP cost-share funding are to establish riparian buffers, but most of the SIP applications in Maryland are for Wildlife Enhancement.

The Maryland Woodland Incentives Program provides technical assistance and up to 50-percent cost-share payments to private, nonindustrial woodlandowners for managing their woodlands, including forested wetlands. Its goals include enhancing the environmental, aesthetic, and wildlife benefits provided by private woodlands. The program covers activities

such as planting trees, improving stands of timber, and reforesting open land or cut-over woodland.

The Maryland Buffer Incentives Program provides technical and financial assistance for planting and maintaining forested buffers around the Bay and its tributaries as a means of reducing nutrient loading to the Bay. It is a grant program, rather than a cost share program. Buffers must be at least 50 feet wide, and must be maintained for 10 years. The minimum eligible buffer is 1 acre; the maximum is 50 acres.

The Maryland Nonstructural Shore Erosion Control Act is administered by Maryland Forest Service and county soil conservation district offices. Project foresters provide technical and cost share assistance to property owners and local governments on shoreline and bank erosion problems. Both structural and nonstructural stabilization techniques that use bioengineering to solve erosion problems are employed. Cost share payments may cover up to 50 percent of the design and project construction costs for approved activities.

Maryland State and Local Programs

The Wildlife Habitat Improvement Program enhances waterfowl habitat on private farmland by paying farmers to leave certain crops unharvested in the field to provide food for wildlife. This program can also fund wildlife enhancement projects on public lands, and can provide certain types of farm equipment for use on habitat projects.

The Maryland Greenways Program is run by Maryland Department of Natural Resources Chesapeake and Coastal Watershed Service. Its goal is to establish a Statewide network of greenways. More than 900 miles of greenway corridors have been established. This project identifies corridors with multiple ecological benefits and targets land conservation in those areas.

The Rural Legacy Program was enacted in 1997 as part of the Governor's "Smart Growth" initiative to protect Maryland's best remaining landscapes and natural areas from sprawl development. Its goals are to establish greenbelts of forests and farms around rural communities, preserve critical habitat, support natural resource based economies, and protect riparian forests, wetlands, and other buffer zones of the Bay and its tributaries. A minimum of $71.3 million in grants has been designated for this program's first 5 years. The Maryland Program Open Space and the Maryland Agricultural Land Preservation Foundation can provide interested individuals, organizations, and local governments with additional information on the program.

Back to Volume 2 titles