

Chapter 12: State Wildlife And Wildlife Habitat Protection Laws

To preserve wildlife, most states' legislatures enacted Wildlife Preservation laws, mirroring the Federal Endangered Species Act. Under the Wildlife Preservation provisions, it is unlawful to import, transport, possess, sell, or offer for sale any species or subspecies of wildlife appearing on two particular lists. The first is the list of wildlife indigenous to a particular state and considered endangered within that state as set forth by the authoritative agency; and the second is the U.S. list of endangered species as set forth in the Federal Endangered Species Act of 1973 as endangered or threatened species, when the latter is adopted by regulations of the agency. Individuals who violate the statutory prohibition or any regulations promulgated pursuant to the statute will be guilty of a misdemeanor and upon conviction will be fined or imprisoned, or both. Different states impose different amounts of fine and periods of imprisonment.

Recognizing that maintenance of wildlife habitat is essential to the survival of wildlife species, state legislatures also enacted laws and appropriated funds to preserve and restore wildlife habitat. Under these provisions, states' authoritative agencies are required to establish wildlife management areas and promulgate rules and regulations for the protection and management of such areas.

These wildlife management areas vary in their rules and functions among the states. For example, Alabama law requires anyone who wishes to hunt game in these areas during designated hunting seasons to obtain a permit and pay a fee for this privilege. The law also gives the Commissioner of the Department of Conservation and Natural Resources the right to search without a warrant any vehicle or person to ensure that they have not seized or killed any protected animal in these designated wildlife management areas.

In Arkansas, upon petition to the State Game and Fish Commission, owners of suitable land can have the area set apart as a refuge for game and wildlife animals. The landowner must indicate that the prohibition of hunting in these areas will strictly enforced. The commission, after proper investigation of the land, enters into agreement with the landowner and declares the land a state game refuge. The commission is then responsible for public notification of the land as a wildlife refuge.

State agencies are also authorized to acquire lands, waters or interests to conserve, manage and restore wildlife habitat. However, agencies' designation is not the only way to establish wildlife habitat. Owners of agricultural lands can apply to the applicable agency to designate an area, not exceeding the specified acres of land, as wildlife habitat. As an incentive to encourage private landowners to designate their lands as wildlife habitat, some states such as Oregon offers tax exemptions for certified wildlife habitat.

Individuals who violate the provisions regarding the management of wildlife areas or any rule or regulations promulgated by the agency will be guilty of a misdemeanor and upon conviction, will be fined or imprisoned, or both. Different states impose different amounts of fine and periods of imprisonment.

Most states, by statute, agree to cooperate with Federal wildlife restoration projects, fishery restoration, and management projects, and the establishment of migratory

bird reservations. They also place certain restrictions on state lands and state, county or municipal parks. Delaware prohibits the hunting of game on such lands and Arkansas designates these lands as bird sanctuaries. Mississippi declares state lands as forest reserves and wildlife refuges and prohibits the capture or hunting of wildlife on these lands.

Delaware (region 1).—The Delaware Legislature requires the Department of Natural Resources and Environmental Control to protect, conserve, and propagate all forms of protected wildlife of the state and to enforce by proper actions and proceedings the law regarding the protection of wildlife.³¹⁸³ By statute, Delaware assents to the provisions of the Federal laws entitled "An act to provide that the United States shall aid the states in Wildlife Restoration Projects"³¹⁸⁴ and "An act to provide that the United States shall aid the states in Fish Restoration and Management Projects, and for other purposes."³¹⁸⁵

Delaware statute prohibits the importation, transportation, possession or sale of any endangered species of fish or wildlife or hides, parts or articles made therefrom. Endangered species are defined as those that are designated by the Division of Fish and Wildlife of Delaware as seriously threatened with extinction.³¹⁸⁶ The director of the division, however, is authorized to allow the importation of any species or subspecies of fish or wildlife for zoological, educational, and scientific purposes and for the propagation of such fish or wildlife in captivity for the preservation of a species, unless such importation is prohibited by any Federal law or regulations.³¹⁸⁷ It also prohibits the sale of the skins, bodies, or animals of certain species, such as leopard, snow leopard, clouded leopard, tiger, cheetah, alligators, crocodiles or caiman, vicuna, red wolf, polar bear, and harp seals.³¹⁸⁸

In Delaware to catch, kill, have in possession, purchase, sell, or transport any wild bird other than a game bird is unlawful. The prohibition extends to the plumage, skin or body, nests or eggs of such wild birds.³¹⁸⁹ All state lands, and state, county, and municipal parks will be state game refuges. Thus, no person is allowed to hunt upon such lands and parks or kill or injure any game in such lands. All wildlife refuges are under the jurisdiction of the Department and subject to all the departmental rules and regulations.³¹⁹⁰ However, the above prohibitions do not apply to individuals who hold a license giving the right to take birds and their nests and eggs for scientific purposes.³¹⁹¹

Maryland (region 1).—By statute, a State Chesapeake Bay and Endangered Species Fund was created, where the moneys expended from the fund for the Chesapeake Bay Trust and Endangered Species Conservation Programs are supplemental and are not intended to substitute the funding that would otherwise be appropriated to the Department of Natural Resources for the Trust or for those programs.³¹⁹² Of the fund, not more than 5 percent of the net proceeds may be distributed to a promotional account to promote further donations. Of the remainder, 50 percent is

³¹⁸³DELAWARE CODE ANN. Part I, ch. 1 § 102(a) (1991).

³¹⁸⁴Id. § 105. The Wildlife Restoration Project Act is compiled as 16 U.S.C. § 669 et seq.

³¹⁸⁵Id. § 106. The Fish Restoration and Management Projects Act is compiled as 16 U.S.C. § 777 et seq.

³¹⁸⁶Id. § 601.

³¹⁸⁷Id. § 604.

³¹⁸⁸Id. § 602.

³¹⁸⁹Id. § 741-742.

³¹⁹⁰Id. § 743.

³¹⁹¹Id. § 745.

³¹⁹²MD. CODE ANN., NAT. RES. § 1-702 (1989).

distributed to the Chesapeake Bay Trust and 50 percent to an endangered species account.³¹⁹³

The Chesapeake Bay Trust must use the funds to provide grants for citizen involvement projects that will enhance or promote the public education of Maryland citizens concerning the Chesapeake Bay, the preservation or enhancement of water quality and wildlife habitat, the restoration of aquatic or land resources, reforestation projects, the publication or production of educational materials on the Chesapeake Bay, or the training in environmental studies or environmental enhancement.³¹⁹⁴

The endangered species account is used to conserve nongame, threatened, and endangered species. The funds will be used to—

acquire, through absolute purchase or purchase of easements, habitats necessary to conserve, protect, or propagate nongame, threatened, or endangered species;

monitor, survey, and protect nest sites of bald eagles, Delmarva fox squirrels, peregrine falcons, and piping plovers;

promote voluntary protection of habitats for threatened and endangered species by monitoring information and management assistance to private landowners;

initiate surveys and recovery programs, including habitat restoration or protection, for other threatened or endangered species;

protect threatened or endangered species in natural heritage areas;

survey nongame species whose population status is questionable;

develop and implement urban wildlife programs to provide individuals in such areas the opportunity to observe wildlife; and

develop and implement public education and information program to educate public and school children about wildlife and habitat conservation.³¹⁹⁵

Pennsylvania (region 1).—By statute, Pennsylvania assents to the provisions of the Federal laws entitled "An act to provide that the United States shall aid the states in Fish Restoration and Management Projects, and for other purposes."³¹⁹⁶ Pennsylvania also consents to the Federal Government and its agents the right to establish fish cultural stations in Pennsylvania and to conduct fish hatching and fish culture at the hatcheries in any manner and time the Federal Government deems necessary and proper.³¹⁹⁷

The commission is authorized to make comprehensive studies of the migratory habits of fish that include the stocking and tagging of shad below and above the Safe Harbor Dam, the Holtwood Dam, and the Conowingo Dam.³¹⁹⁸ The commission determines policy pertaining to the propagation and distribution or

³¹⁹³MD. CODE ANN., NAT. RES. § 1-703.

³¹⁹⁴Id. § 1-704.

³¹⁹⁵Id. § 1-705.

³¹⁹⁶PENN. STAT. ANN. tit. 30, § 2302 (Supp. 1993). The Fish Restoration and Management Projects Act is compiled as 16 U.S.C. §§ 777 et seq.

³¹⁹⁷Id. § 2303.

³¹⁹⁸Id. § 2304.

planning of the fish produced by Pennsylvania fish hatches.³¹⁹⁹ All persons are prohibited from offering for sale or knowingly purchasing fish taken from any hatchery waters designated by the commission as nursery waters.³²⁰⁰ In addition, in its discretion, the commission is allowed to set aside such areas as it may consider best as refuge areas in which fishing or entry will be prohibited for certain periods as the commission prescribes.³²⁰¹

The Pennsylvania statute requires the executive director to establish a Pennsylvania Threatened Species List and a Pennsylvania Endangered Species List, which will be published in the Pennsylvania Bulletin. The commission is authorized to promulgate rules and regulations regarding the catching, taking, killing, importation, introduction, transportation, removal, possession, selling or purchasing of threatened and endangered species. It may also issue permits for catching, taking, or possessing any of those species if deemed appropriate.³²⁰²

Alabama (region 2).—Through the Commissioner of the Department of Conservation and Natural Resources, the department was authorized and required to establish wildlife management areas. The department is authorized to enter into agreements with the United States Department of Agriculture, Forest Service; the United States Bureau of Biological Survey; the Tennessee Valley Authority; or other owners or lessees of such lands that are necessary for the purpose of establishing wildlife management areas.³²⁰³

The agreements must—

provide for the fixing and division of the boundaries of the wildlife management area(s),

define the responsibilities of the Department of Conservation and Natural Resources and the cooperating part(ies) for restocking of wildlife species, the planting and cultivation of game and fish foods, the protection of such areas from predatory animals,

include provision for the harvesting of game and fish crops in compliance with special rules and regulations approved by the commissioner, and

provide for the collection by the department of special fees for privilege of hunting on or fishing on such areas.³²⁰⁴

The Alabama Legislature authorized the commissioner the general power to fix boundaries for wildlife management areas and promulgate special rules and regulations for the protection and management of wildlife management areas.

Moreover, the commissioner has a number of specific powers, including—

setting up for wildlife management areas special open and closed seasons on game animals,

establishing the amount of the fees to be collected for the privilege of hunting and fishing during any open season,

³¹⁹⁹PENN. STAT. ANN. tit. 30, § 2301.

³²⁰⁰Id. § 2107.

³²⁰¹Id. § 2306.

³²⁰²Id. § 2305.

³²⁰³Wildlife Management Areas, ALA. CODE § 9-11-300 (1987).

³²⁰⁴Id.

requiring individuals to obtain special permits when hunting or fishing within wildlife management areas, and
 limiting the number of permits to be issued during any open season.³²⁰⁵

The commissioner is authorized to close to all hunting and fishing on any land or water within the boundary of a wildlife management area, provided that at least 90 percent of such wildlife management area is under a cooperative wildlife management agreement with the department.³²⁰⁶ The commissioner can also search without warrant any automobile, wagon, truck, or other vehicle or any hunting sack or hunting coat within any wildlife management area and to confiscate any protected animal found killed or held in violation of the laws or regulation of the commissioner. However, the power to search without warrant does not apply to persons traveling on State and Federal highways within any wildlife management areas.³²⁰⁷

All persons, except authorized officers, are prohibited from carrying or possessing firearms within any wildlife management areas without a valid permit.³²⁰⁸ Unless provided otherwise by rules and regulations promulgated by the commissioner, dogs are not permitted, except on leash, within any wildlife management.³²⁰⁹

An individual who violates provisions of the article provided for the management of wildlife areas or any rule or regulation promulgated by the commissioner is guilty of a misdemeanor and upon conviction, will be fined not less than \$25 nor more than \$100 or imprisoned for not less than 30 days nor more than 12 months, or both.³²¹⁰

Georgia (region 2).—Georgia protects its wildlife and habitat through the enactment of the Coastal Marshlands Protection of 1970.³²¹¹ The legislature recognized that the estuarine area is the habitat of many species of marine life and wildlife, and without the food supplied by the marshlands, such marine life and wildlife cannot survive.³²¹² To protect wildlife and habitat, the legislature declared that all activities and structures in the coastal marshlands must be regulated to ensure that the vital functions of the coastal marshlands are not impaired.³²¹³

However, this act does not apply to—

activities of the Georgia Department of Transportation incident to constructing, repairing, and maintaining a public road system in Georgia;

activities of the Department of Transportation and political subdivisions in maintaining existing drainage systems and ditches as long as such activities do not impact additional marshlands;

agencies of the Federal Government and Georgia that are charged by law with the responsibility of keeping Georgian rivers and harbors open for navigation;

³²⁰⁵Wildlife Management Areas, ALA. CODE § 9-11-301.

³²⁰⁶Id. § 9-11-302.

³²⁰⁷Id. § 9-11-303.

³²⁰⁸Id. § 9-11-304.

³²⁰⁹Id. § 9-11-305.

³²¹⁰Id. § 9-11-307.

³²¹¹Coastal Marshlands Protection Act of 1970, GA. CODE ANN. § 12-5-280 et seq. (1992).

³²¹²Id. § 12-5-281.

³²¹³Id.

activities of public utility companies regulated by the Public Service Commission incident to constructing, erecting, repairing and maintaining utility lines for the transmission of gas, electricity, or telephone messages;

activities of companies regulated by the Public Service Commission incident to constructing, erecting, repairing, and maintaining railroad lines and bridges;

activities of political subdivisions incident to constructing, repairing, and maintaining pipelines that have been approved by the Department of Natural Resources or appropriate authority for the transport of drinking water and sewage; and

the building of private docks on pilings, the walkways of which are above the marsh grass not obstructing tidal flow, by the owners of detached³²¹⁴ single-family residences located on high land adjoining such docks.

The regulated coastal marshlands include any marshland intertidal area, mud flat, tidal water bottom, or saltmarsh in the State estuarine area, regardless of whether or not tidewaters reach the littoral areas through natural or artificial watercourses. The act also regulates *vegetated marshlands* that include all areas upon which grow one or more of the following: saltmarsh grass, black needlerush, saltmeadow cordgrass, big cordgrass, saltgrass, coast dropseed, bigelow grasswort, woody grasswort, saltwort, sea lavender, sea oxeye, silverling, false willow, and high-tide bush.³²¹⁵

The act creates the Coastal Marshlands Protection Committee, which is composed of three members: the commissioner of Natural Resources and two other persons. The latter two members must be residents of Camden, Glynn, McIntosh, Liberal, Bryan, or Chatham County and are to be selected by the Board of Natural Resources.³²¹⁶

The committee is authorized to do the following:

- Grant and convey to any eligible person a lease of state-owned marshland or water bottoms, or both.³²¹⁷ Eligible person is an individual who owns highland adjoining the state-owned marshland or water bottoms, or both, who seeks to lease at least 100 percent of the landward boundary of the state-owned marshland or water bottom, or both, bordered by such person's adjoining high land.³²¹⁸
- Issue an order, which is immediately effective, requiring or allowing certain action to be taken, in the event of an emergency, whether created by act of God, by actions of domestic or foreign enemies, or in circumstances where grave peril to human life or welfare exists.³²¹⁹
- Issue a cease and desist order on a person who alters the marshlands without a permit or in violation of the terms of the permit, or violates this act;³²²⁰ request the administrative law judge to impose civil penalties not exceeding \$10,000 per violation per day on a person who has failed, neglected or refused to

³²¹⁴Coastal Marshlands Protection Act of 1970, GA. CODE ANN. § 12-5-295.

³²¹⁵Id. § 12-5-282(3).

³²¹⁶Id. § 12-5-283(a).

³²¹⁷Id. § 12-5-287.

³²¹⁸Id. § 12-5-282(6).

³²¹⁹Id. § 12-5-294.

³²²⁰Id. § 12-5-291(a)(1).

comply with any provision of this act or any order of the committee or administrative law judge.³²²¹ Any person who violates any provision of this act is guilty of a misdemeanor.³²²²

Mandatory duties of the Georgia Department of Natural Resources include—

- administering and enforcing this act, all rules, regulations and orders promulgated pursuant to this act;
- accepting moneys provided by persons, government units and private organizations;
- conducting public hearings, instituting and prosecuting court actions as deemed necessary to enforce compliance; and
- exercising incidental powers necessary to carry out the purposes of this act.³²²³

The Board of Natural Resources has the authority to promulgate all rules and regulations to implement and enforce this act.³²²⁴ Moreover, the department is specifically required to make reasonable inspections of the marshlands to ascertain whether the requirements of this act, any rules, regulations, and permits promulgated or issued pursuant to this act are being faithfully complied with.³²²⁵

Before removing, filling, dredging, draining, or altering any marshlands or constructing any structure on marshlands, a person³²²⁶ must obtain a permit from the committee, or a minor alternation permit from the commissioner.³²²⁷ *Minor alteration* is a change in the marshlands that involves less than 0.10 acre or renewal of permits previously issued by the committee.³²²⁸ The permit expires 5 years after the date of issuance.³²²⁹

Before granting the permit, the committee must consider whether or not—

- unreasonably harmful obstruction to or alteration of the natural flow of navigational water will arise as a result of the proposal;
- unreasonably harmful or increased erosion shoaling of channels, or stagnant areas of water will be created; and
- unreasonable interference with the conservation of fish, shrimp, oysters, crabs, clams, or other marine life, wildlife, or other resources will be affected by completion of the proposal.³²³⁰

The permit applicant has the responsibility to show that the proposed alteration is not contrary to the public interest and that no feasible alternative sites exist.³²³¹

³²²¹Coastal Marshlands Protection Act of 1970, GA. CODE ANN. § 12-5-291(a)(2).

³²²²Id. § 12-5-296.

³²²³Id. § 12-5-284.

³²²⁴Id. § 12-5-285.

³²²⁵Id. § 12-5-289.

³²²⁶The term *person* includes an individual, partnership, corporation, municipal corporation, county, association, public, or private authority. § 12-5-282(10).

³²²⁷Id. § 12-5-286(a). The Commissioner of Natural Resource can issue permit for minor alternation of the marshlands based on recommendations of staff, past committee actions, and the results of public comments. Moreover, the Commissioner may refer the application for minor alternation to the Committee for decision. § 12-5-283(d).

³²²⁸Coastal Marshlands Protection Act of 1970, GA. CODE ANN. § 12-5-282(9).

³²²⁹Id. § 12-5-286(l).

³²³⁰Id. § 12-5-286(g).

³²³¹Id. § 12-5-286(h).

Activities and structures normally considered to be contrary to public interest when located in coastal marshlands include—

- filling of marshlands for residential, commercial, and industrial uses;
- filling of marshlands for private parking lots and private roadways;
- construction of dump sites and depositing of any waste materials or dredge spoil;
- dredging of canals or ditches for the purpose of draining coastal marshlands;
- mining;
- construction of lagoons or impoundments for waste treatment, cooling, agriculture, or aquaculture which would occupy or damage coastal marshlands or life forms therein;
- construction of structures that constitute an obstruction of view to adjoining riparian landowners, including signs and enclosures; and
- occupying a live-aboard for more than 30 days during any calendar year (commissioner may grant extensions of time beyond 30 days to persons making a request).

However, the final decision as to whether or not any activity or structure is considered to be in the public interest is based on sound discretion of the committee.³²³²

The committee cannot issue the permit if the project is not water related, dependent on waterfront access, or can be satisfied by the use of an alternative nonmarshland site or by use of existing public facilities.³²³³ If permit is granted, the amount of marshlands to be altered must be minimum in size. Moreover, if a permit holder sells, leases, rents, or conveys the land for which the permit was issued and if the permit holder has notified the department within 30 days of the transfer or conveyance, such permit will be valid in favor of the new owner, lessee, tenant, or assignee as long as there is no change in the use of the land as set forth in the original permit application.³²³⁴

Upon petition, any individual who is aggrieved or adversely affected by the committee's decision is entitled to a hearing before an administration law judge.³²³⁵ Although the administrative law judge's decision constitutes the board's final decision, any party to the hearing has a right to seek judicial review.³²³⁶

Arkansas (region 3).—Under the Wildlife Preservation law, in general, the Arkansas State Game and Fish Commission can enter into licensing agreements for a period not less than 10 years for approved projects on privately owned lands to encourage wildlife habitat conservation on private lands.³²³⁷ However, the Wildlife Preservation Chapter is divided into two subchapters: Game and Fish Refuges and Nongame Preservation. A discussion of each follows.

³²³²Coastal Marshlands Protection Act of 1970, GA. CODE ANN. § 12-5-288(b).

³²³³Id. § 12-5-288(a).

³²³⁴Id. § 12-5-294.

³²³⁵Id. § 12-5-283(b). Administrative law judge is appointed by the Board of Natural Resources. Id.

³²³⁶Id. The Board of Natural Resources cannot review the committee's decision. *Department of Natural Resources v. American Cyanamid Co.*, 239 Ga. 740, 238 S.E.2d 886 (1977).

³²³⁷Wildlife Preservation law, ARK. CODE ANN. § 15-45-101 (1987).

Game and Fish Refuges.—Owners of suitable lands of a total of not less than 640 acres can petition the commission to have the lands set apart as a refuge for game and wildlife animals. However, the owners must indicate in the petition that they are willing to vest in the State all rights to prohibit hunting upon the lands and to make every effort to protect the refuge from hunting and from violations of any nature.³²³⁸

Upon investigation, the commission will determine whether such lands are appropriate for the purpose mentioned in the petition and decide whether the establishment of such game refuge is advisable. If the commission decides that it is, the commission enters into agreement with the persons owning the property and declares the lands a State game refuge.³²³⁹ The commission posts notices, not more than 200 yards apart, on the border of the game refuge and notifies its action declaring land to be a State game refuge through publication in the appropriate newspaper.³²⁴⁰ However, the commission cannot establish State game refuge within a radius of 2 miles from any other game refuge.³²⁴¹

Under the Wildlife Preservation law, because the entire state of Arkansas is designated a sanctuary for all species of wild fowl, except black birds, crows, and starlings, no individuals can catch, kill, injure, pursue, or have in his or her possession, sale, transport, or receive or deliver for transportation any of such fowls. However, this prohibition does not apply to sparrows and pigeons, except Birmingham roller pigeons.³²⁴² Nor this prohibits individuals or institutions from collecting wild birds or their nests or eggs for scientific study, school instruction or other educational uses, except birds that are specifically protected by Federal or State game laws. Such individuals or institutions may apply to the director of the Arkansas State Game and Fish Commission for a scientific collecting permit, which is issued without charge and for 1 year.³²⁴³ In addition, all State parks are designated and established as bird sanctuaries.³²⁴⁴

Money spent by the commission in procuring, improving, or policing any State game or fish refuge will be paid out of the Game Protection Fund.³²⁴⁵

Nongame Preservation.—In addition to the interest of promoting sound management, conservation, and public awareness of Arkansas' rich diversity of native plant and non-game animals, where many of which are rare, threatened, or endangered, the Arkansas Legislature also provides for the protection of natural areas harboring significance or having unusual importance to the survival of the state native plants and animals in their natural environments.³²⁴⁶

To carry out this legislative intent, the State legislature allows such protection to be financed through a voluntary check-off designation on State income tax return forms, whereby each individual taxpayer may designate a portion or all of the income tax refund to be withheld and contributed for the protection of nongame species of animals and native plants. Such voluntary check-off income tax program

³²³⁸ARK. CODE ANN. § 15-45-202 (1987).

³²³⁹Id. § 15-45-203(a). Upon declaration, such game refuge is considered as a public state refuge. Id. § 15-45-203(g).

³²⁴⁰Id. § 15-45-203(b), (f).

³²⁴¹Id. § 15-45-203(e).

³²⁴²Id. § 15-45-210(a).

³²⁴³Id. § 15-45-210(b).

³²⁴⁴Id. § 15-45-211(a).

³²⁴⁵Id. § 15-45-212.

³²⁴⁶Id. § 15-45-301(a) (1987 & Supp. 1991).

is only supplemental, not in substitution, to any funding designated to carry out such purposes.³²⁴⁷ Moreover, no expenditure can be made without the approval and authorization of the Governor upon recommendation of the Nongame Preservation Committee by majority vote.³²⁴⁸

The Nongame Preservation Committee consists of five members, including the director of the Arkansas State Game and Fish Commission, the director of the State Parks Division of the Department of Parks and Tourism, the director of the Arkansas Natural Heritage Commission, and two members appointed by the Governor from nominations from private conservation organizations.³²⁴⁹

If purchase of land by State agencies is deemed as a suitable strategy for the protection of certain nongame species, such purchase is allowed but restricted to—

natural communities (terrestrial and aquatic) that exhibit the highest degree of integrity and least evidence of disturbance, and

habitats of Arkansas' rarest and most severely endangered or threatened native organisms. In addition, decisions for land purchase must consider the availability and preservation status of all Arkansas lands.³²⁵⁰

Mississippi (region 3).—In Mississippi, all State lands are declared forest reserves and wildlife refuges and no wildlife can be taken except under regulations of the State Game and Fish Commission.³²⁵¹ Board of supervisors of any counties can add additional territory to any bird and game preserve or sanctuary.³²⁵² It is unlawful to hunt on preserve.³²⁵³ Furthermore, it is unlawful in Mississippi to pursue, take, wound, kill, capture, possess, or export any wild bird, dead or alive, other than a game bird. The prohibition extends to the plumage, skin or body, nests, or eggs of such wild birds.³²⁵⁴

The commission has the authority to adopt rules and regulations governing public hunting and fishing in any wildlife conservation management projects or wildlife conservation hunting and fishing refuges.³²⁵⁵

By statute, Mississippi assents to the provisions of the Federal laws entitled "An act to provide that the United States shall aid the states in Wildlife Restoration Projects"³²⁵⁶ and "An act to provide that the United States shall aid the states in Fish Restoration and Management Projects, and for other purposes."³²⁵⁷ In addition, Mississippi also consents to the acquisition by the United States by purchase, gift, devise, or lease of such areas of land or water, or water, as the United States finds necessary for the establishment of migratory bird reservation.³²⁵⁸

³²⁴⁷ARK. CODE ANN. § 15-45-301(b).

³²⁴⁸Id. § 15-45-303.

³²⁴⁹Id. § 15-45-302 (1987).

³²⁵⁰Id. § 15-45-304.

³²⁵¹MISS. CODE § 49-5-1 (1972).

³²⁵²Id. § 49-5-3.

³²⁵³Id. § 49-5-5.

³²⁵⁴Id. § 49-5-7.

³²⁵⁵Id. § 49-5-13.

³²⁵⁶Id. § 49-5-25. The Wildlife Restoration Project Act is compiled as 16 U.S.C. § 669 et seq.

³²⁵⁷Id. § 49-5-27. The Fish Restoration and Management Projects Act is compiled as 16 U.S.C. § 777 et seq.

³²⁵⁸Id. § 49-5-29.

Like other states, Mississippi Legislature also enacted provisions regarding nongame and endangered species conservation.³²⁵⁹

Wisconsin (region 4).—The owner of any tract of land comprising in aggregate not less than 160 acres can apply to the department to establish such lands as a wildlife refuge. Upon investigation, if the department is satisfied that the establishment of such lands as wildlife refuge will promote the conservation of species, it will designate and establish such lands as a wildlife refuge. Within any wildlife refuge, state park or state fish hatchery lands, it is unlawful to hunt or to trap.³²⁶⁰ Moreover, by statute, a wildlife refuge, game preserve, and fur farm is established on the Horicon marsh in Dodge county.³²⁶¹

The department is required to assist counties in developing and administering the wildlife damage abatement and wildlife damage claim programs. The department must provide such assistance via technical aid, program guidance, research, demonstration, funding, plan review, audit, and evaluation services. In addition, the department must promulgate rules for eligibility and funding requirements for the programs to maximize cost-effectiveness of such programs. However, in no circumstances can the department administer a wildlife damage abatement program or wildlife damage claim program on behalf of or instead of a county.

A number of limitations are under these programs:

First, to receive claim payment, the payment must be approved by a participating county.

Second, each individual can receive a payment of the actual amount of the wildlife damage or \$5,000, whichever amount is less.

Third, no person can receive any payment for the first \$250 of each claim for wildlife damage.

Fourth, the payment will be reduced by \$2,000 if the applicant fails to file the claim statement within the proper time period, fails to comply with recommended wildlife damage abatement measures or does not permit hunting in conformance with the law.

Finally, the payment to any person will be reduced by an amount equal to any payments or reimbursements received from persons hunting on the land where wildlife damage occurred. The department will pay participating counties the full amount of wildlife damage claim payments.³²⁶²

The department is also required to designate habitat restoration areas to enhance wildlife-based recreation in Wisconsin. However, it may not designate an area a habitat restoration area if such area is located within the boundaries of a project established by the department before August 9, 1989. Whenever the department designates an area a habitat restoration area, it must prepare a plan, based upon specific qualities of the designated area, that is designed to enhance the features of that area by the restoration of wildlife habitat. After such preparation, the department must encourage landowners to use specific management practices that are designed to implement the plan. The department has the option to share the

³²⁵⁹MISS. CODE § 49-5-101 et seq.

³²⁶⁰WIS. STAT. ANN. § 29.57 (1989 & Supp. 1993).

³²⁶¹Id. § 29.571 (1989).

³²⁶²Id. § 29.598 (1989 & Supp. 1993).

costs of implementing land management practices with landowners or with nonprofit organizations. This option becomes effective on or after July 1, 1990. In addition, the department cannot expend more than \$1,500,000 for fisheries, for habitat restoration areas, and for grants for this purpose in each fiscal year.³²⁶³

To be administered by the department, a streambank protection program is created to protect the water quality and the fish habitat of the streams in Wisconsin. The department is required to identify as priority streams those streams that are in most need of protection from degradation of water quality caused by agricultural or urban runoff. In identifying the priority, the department is required to give higher priority to those streams that are affected by a Federal or State program or plan that protects water quality or fish habitat. For streams identified as a priority stream, the department can acquire land adjacent to the stream that must include the area within at least 66 feet from either side of the stream and to acquire a permanent streambank easement.³²⁶⁴

Iowa (region 5).—The owner of agricultural land is allowed to designate not more than 2 acres of land for use as a wildlife habitat. Upon investigation, if such land satisfies the standards established by the Natural Resource Commission for a wildlife habitat, the Department of Natural Resources must certify the designated land as a wildlife habitat and send a copy of the certification to the appropriate assessor. However, the department can subsequently withdraw certification if the land fails to satisfy the established standards for a wildlife habitat. Land certified as a wildlife habitat is exempted from taxation.³²⁶⁵

Nebraska (region 5).—In Nebraska, the Game and Park Commission is allowed to participate with the natural resources districts and other public agencies, pursuant to the Interlocal Cooperation Act, to acquire, lease, take of easements, develop, manage, and enhance wildlife habitats.³²⁶⁶ For the purpose of developing public recreation areas and promoting the conservation of natural resources, the commission is also authorized to acquire real estate bordering on the shore of any lake or artificial reservoir constructed for the storage of water.³²⁶⁷

Like many other states, Nebraska assents to the provisions of the Federal laws entitled "An act to provide that the United States shall aid the states in Wildlife Restoration Projects"³²⁶⁸ and "An act to provide that the United States shall aid the states in Fish Restoration and Management Projects, and for other purposes."³²⁶⁹ In addition, Nebraska also consents to the acquisition by the United States by purchase, gift, devise, or lease of such areas of land or water, or both, as the United States finds necessary for the establishment of a migratory bird reservation.³²⁷⁰

³²⁶³WIS. STAT. ANN. § 23.092 (Supp. 1993).

³²⁶⁴Id. § 23.094. The Federal or State programs or plans include the Federal conservation reserve program, the State erosion control planning program, the State soil and water conservation plan, the State soil and water resource management program, and the State nonpoint source pollution abatement grant program.

³²⁶⁵IOWA CODE ANN. § 427.1 (1990).

³²⁶⁶NEB. REV. STAT. § 37-109 (1988).

³²⁶⁷Id. § 37-424.

³²⁶⁸Id. § 37-422. The Wildlife Restoration Project Act is compiled as 16 U.S.C. § 669 et seq.

³²⁶⁹NEB. REV. STAT. § 37-423.01. The Fish Restoration and Management Projects Act is compiled as 16 U.S.C. § 777 et seq.

³²⁷⁰Id. § 37-423.

New Mexico (region 6).—Under its Wildlife Conservation act,³²⁷¹ New Mexico is committed to maintain and enhance endangered or suspected to be endangered species and subspecies of wildlife indigenous within the carrying capacity of the habitat.³²⁷²

Provided that species or subspecies of wildlife appearing on the lists are transported into or across New Mexico, a person is prohibited from taking, possessing, transporting, exporting, processing, selling or offering for sale, or shipping any species or subspecies of wildlife appearing on the following lists—

the list of wildlife indigenous to New Mexico as determined to be endangered within the State as set forth by regulations of the commission; and

the U.S. list of endangered native and foreign fish and wildlife as set forth in the Endangered Species Act of 1973 as endangered or threatened species, when such lists are adopted by regulations of the commission.³²⁷³

Anyone who violates this statutory prohibition or any regulations promulgated pursuant to this section, is guilty of a misdemeanor and upon conviction, will be fined \$1,000 or imprisoned, or both, for a term of not less than 30 days but not more than 1 year.³²⁷⁴

However, the director can authorize by permit the taking, possessing, transporting, exporting, or shipping regulated species or subspecies so long as such use is for scientific, zoological, or educational purposes, for propagation in captivity of such wildlife or to protect private property.³²⁷⁵ Moreover, endangered species may be removed, captured, or destroyed where necessary to alleviate or prevent damage to property or to protect human health. Such removal, capture or destruction can only be carried out by prior authorization by permit from the director.³²⁷⁶ However, any person who fails to obtain the permit, or fails to abide by the terms of the permit, is guilty of a misdemeanor and upon conviction, will be fined not less than \$50 and not more than \$300 or be imprisoned, or both, for not more than 90 days.³²⁷⁷

By regulations, the State Game Commission is required to develop a list of those species and subspecies of wildlife indigenous to the State that are determined to be endangered within the State.³²⁷⁸ The commission is authorized to establish regulations that are deemed necessary to carry out all of the provisions and purposes of this act.³²⁷⁹

In addition to the authority to acquire lands, waters, or interests for the conservation, management, restoration, propagation, and protection of endangered species,³²⁸⁰ the director of the Department of Game and Fish has the following mandatory duties:

³²⁷¹Wildlife Conservation Act, NEW MEXICO STAT. ANN. § 17-2-37 et seq. (1988).

³²⁷²Id. § 17-2-39.

³²⁷³Id. § 17-2-41(C).

³²⁷⁴Id. § 17-2-45(B).

³²⁷⁵Id. § 17-2-42(C).

³²⁷⁶Id. § 17-2-42(D).

³²⁷⁷Id. § 17-2-45(A).

³²⁷⁸Id. § 17-2-41(A).

³²⁷⁹Id. § 17-2-43.

³²⁸⁰Id. § 17-2-44(A).

- Conduct a review of the State list of endangered species biennially and recommend to the commission appropriate additions to or deletions, if there are any, from the list.³²⁸¹
- Conduct investigations concerning all endangered and suspected of being endangered species of wildlife to develop information regarding population, distribution, habitat needs, and other biological and economical data to determine management measures and requirements necessary for their survival.³²⁸²
- Conduct studies to determine the status and requirements for survival of endangered species.³²⁸³
- Establish management programs, including programs for research and the acquisition of land or aquatic habitat, as authorized and deemed necessary by the commission for the management of endangered species.³²⁸⁴
- Hold public hearings and include the participation of the public in the preparation and adoption of State plan for all endangered species to carry out the provisions of this act.³²⁸⁵

The act requires the director, each conservation officer, each sheriff in his or her respective county, and each member of the New Mexico State Police to enforce this act. With probable cause, each of these individuals must—

seize any wildlife, including mammal, bird, amphibian, reptile, fish, mollusk, or crustacean held in violation of the act;

arrest any person who violates the act; and

open, enter, and examine all camps, cars, vehicles, tents, packs, boxes, barrels, and packages upon belief that game or fish is taken or held in violation of the act and seize it.³²⁸⁶

Texas (regions 6 & 7)—Species are considered endangered if listed on—
the United States List of Endangered Native Fish and Wildlife, or
the list of fish or wildlife threatened with statewide extinction as filed by
the director of the department.³²⁸⁷

The director must file with the secretary of state a list of fish or wildlife threatened with statewide extinction that may be amended or petitioned to be reclassified.³²⁸⁸

Texas Endangered Species law prohibits individuals from possessing, selling, distributing, or offering or advertising for sale endangered fish or wildlife unless such fish or wildlife have been lawfully born and raised in captivity for commercial purposes. The prohibition extends to goods made from endangered fish or wildlife.³²⁸⁹

³²⁸¹Wildlife Conservation Act, NEW MEXICO STAT. ANN. § 17-2-41(B).

³²⁸²Id. § 17-2-40.

³²⁸³Id. § 17-2-44(C).

³²⁸⁴Id. § 17-2-42(A).

³²⁸⁵Id. § 17-2-44(B).

³²⁸⁶Id. § 17-2-46.

³²⁸⁷TEX. CODE ANN., PARKS & WILDLIFE CODE § 68.002 (1991).

³²⁸⁸Id. § 68.003-68.005.

³²⁸⁹Id. § 68.015.

No sale of endangered fish or wildlife or goods made from such species are permitted unless they are tagged or labeled in a manner in compliance with applicable laws.³²⁹⁰ It is unlawful to possess, take or transport endangered fish or wildlife for zoological gardens or scientific purposes or to take or transport such species from their natural habitat for propagation for commercial purposes, unless allowed under a permit issued by the department.³²⁹¹ Enforcement officers are authorized to seize fish or wildlife taken, possessed, or made in violation of the statute.³²⁹²

However, the endangered species provisions do not apply to coyotes, cougars, bobcats, prairie dogs, or red foxes. Neither of these provisions applies to the possession of mounted or preserved endangered fish or wildlife that were acquired before August 31, 1973, by public or private nonprofit educational, zoological, or research institutions.³²⁹³

The Texas Wildlife Conservation Act of 1983 was also enacted³²⁹⁴ with the primary purpose of providing comprehensive methods for the conservation of an extensive supply of wildlife resources on a statewide basis.³²⁹⁵

The Texas Legislature is authorized to designate two or more contiguous tracts of land as a wildlife management association area if—

each owner of the land applies for the designation,

the land is inhabited by wildlife,

the department determines that observing wildlife and collecting information on the wildlife will serve the purpose of wildlife management in the State, and

the landowners agree to provide the department with information pertaining to the wildlife.³²⁹⁶

However, before the department approves an application for designation of a wildlife management association area, applicants must prepare a wildlife management plan according to department guidelines for wildlife management plans. The department can also acquire, develop, maintain, operate, and manage wildlife management areas.³²⁹⁷

Idaho (region 8).—By statute, Idaho assents to the provisions of the Federal laws entitled "An act to provide that the United States shall aid the states in Wildlife Restoration Projects"³²⁹⁸ and "An act to provide that the United States shall aid the states in Fish Restoration and Management Projects, and for other purposes."³²⁹⁹

³²⁹⁰TEX. CODE ANN., PARKS & WILDLIFE CODE § 68.016.

³²⁹¹Id. § 68.006-68.011.

³²⁹²Id. § 68.017.

³²⁹³Id. § 68.020.

³²⁹⁴Id. § 61.001 et seq.

³²⁹⁵Id. § 61.002.

³²⁹⁶Id. § 81.301 (Supp. 1996).

³²⁹⁷Id. § 81.401 (1991).

³²⁹⁸IDAHO CODE ANN. § 36-1801 (1994). The Wildlife Restoration Project Act is compiled as 16 U.S.C. § 669 et seq.

³²⁹⁹Id. § 36-1802. The Fish Restoration and Management Projects Act is compiled as 16 U.S.C. § 777 et seq.

In addition, Idaho consents to the acquisition by the United States by purchase, gift, devise, or lease of such areas of land or water, or both, as the United States finds necessary for the establishment of migratory bird reservation.³³⁰⁰

Wildlife preserves are created in the Idaho statute to better protect wild animals and birds, to establish breeding places for and to preserve such species.³³⁰¹ Under the wildlife preserves provisions, individuals cannot take any wild animals or wild birds in any of the wildlife preserves unless provided otherwise.³³⁰²

By statute, a number of preserves are created, including the Myrtle Creek preserve,³³⁰³ the David Thompson preserve,³³⁰⁴ the Lewiston preserve,³³⁰⁵ and the Springfield bird preserve.³³⁰⁶

Utah (region 8).—In Utah, wildlife is statutorily declared property of the State.³³⁰⁷

However, the Division of Wildlife Resource is authorized to take any kind of wildlife from any place or in any manner deemed by the director as appropriate for wildlife conservation.³³⁰⁸ The Division of Wildlife Resource is created within and under the administration of the Department of Natural Resources. The division is required to protect, propagate, manage, conserve, and distribute protected wildlife throughout Utah.³³⁰⁹

By statute, a Wildlife Board is created. It consists of seven appointed members who must be experts in areas such as wildlife management or biology, habitat management, business, and economics.³³¹⁰

The board's main responsibilities include—
 establishing policies best designed to accomplish the purposes; and
 fulfilling the intent of all laws pertaining wildlife and the preservation and management of wildlife.³³¹¹

Among other factors, in establishing policy, the board must—
 recognize that wildlife and its habitat are essential part of a healthy, productive environment; and
 seek to balance the habitat requirements of wildlife with social and economic activities of mankind.³³¹²

In addition, the board is authorized to exercise its powers by making rules and issuing proclamations pursuant to state laws.³³¹³

³³⁰⁰IDAHO CODE ANN. § 36-1806.

³³⁰¹Id. § 36-1901.

³³⁰²Id. § 36-1902.

³³⁰³Id. § 36-1905.

³³⁰⁴Id. § 36-1906.

³³⁰⁵Id. § 36-1908.

³³⁰⁶Id. § 36-1911.

³³⁰⁷UTAH CODE ANN. § 23-13-3 (Supp. 1995).

³³⁰⁸Id. § 23-13-6.

³³⁰⁹Id. § 23-14-1.

³³¹⁰Id. § 23-14-2.

³³¹¹Id. § 23-14-3(2)(a).

³³¹²Id. § 23-14-3(2)(b).

³³¹³Id. § 23-14-18.

To protect wildlife, the Utah Legislature requires residents and nonresidents to obtain licenses after paying certain fees to fish, hunt or trap.³³¹⁴ Effective from January 1, 1996, a person must purchase an annual wildlife habitat authorization before purchasing a wildlife heritage certificate or any license or permit required by the laws. However, only one wildlife habitat authorization is required regardless of the number of license or permits purchased during that year.³³¹⁵

Within the General Fund, the Wildlife Habitat Account is created, consisting of revenue from sale of wildlife habitat authorization, the balance of any money remaining in the Upland Game Habitat Account and Upland Game Account upon their closures, any money deposited as dedicated credits for the waterfowl program, and interest and earnings on account moneys.³³¹⁶ The division is authorized to use the revenue of the sale of wildlife habitat authorizations, but only after appropriation by the legislature.³³¹⁷

Acquisition of real property held in private ownership is permitted for wildlife preservation purposes. However, Governor's approval is required. The Governor may approve the acquisition in whole or in part or disapprove such acquisition.³³¹⁸ Moreover, before purchasing such property, the division must first submit the proposition to the county legislative body in a regular open public meeting in the county where the property is located.³³¹⁹

Utah also gives consent to acquisition by the United States of such areas of land or water in Utah as the United States deems necessary to establish and maintain the migratory waterfowl refuges in accordance with the Migratory Bird Conservation Act (amended as the Migratory Bird Hunting Stamp Act).³³²⁰

Oregon (region 9).—In carrying out the provisions regarding the management of endangered or threatened species, the State Fish and Wildlife Commission has the following duties:³³²¹

- To conduct investigations of native wildlife species and to determine whether any of such species are endangered or threatened species.
- By rule, to establish, publish, and revise a list of wildlife species that are endangered or threatened.
- To work cooperatively with State agencies to determine their roles within their statutory obligations in the conservation of endangered species.
- By rule, to establish a system of permits for scientific taking of endangered and threatened species and a system of State permits for incidental taking of State-designated endangered and threatened species not listed by the Federal Government.
- To adopt administrative rules to carry out the provisions regarding the conservation of endangered or threatened wildlife species.

³³¹⁴UTAH CODE ANN. § 23-19-40, 23-19-44.

³³¹⁵Id. § 23-19-42.

³³¹⁶Id. § 23-19-43(2).

³³¹⁷Id. § 23-19-43(3). For specific appropriation for conservation activities, see Id. § 23-19-43(4)-(6).

³³¹⁸Id. § 23-21-1.5.

³³¹⁹Id. § 23-21-2.

³³²⁰Id. § 23-21-6.

³³²¹Threatened or Endangered Wildlife Species, OREGON REV. STAT. § 496.172 (1995).

The lists of endangered or threatened species must include those wildlife species listed as of May 15, 1987, as an endangered or threatened species pursuant to the Federal Endangered Species Act of 1973 (ESA) and those species determined as of May 15, 1987, by the State Fish and Wildlife Commission to be endangered or threatened species. A determination of whether a species is endangered or threatened must be based on documented and verifiable scientific information about the species' biological status and other factors such as the danger to the species' natural productive potential. Moreover, by rule, the commission may add or remove any wildlife species from either list, or change the status of any species on the lists.³³²²

However, the commission may determine not to list a species as endangered or threatened if the species—

has already been listed pursuant to the ESA;

is currently on the list as a sensitive species or is a candidate species or has been petitioned for listing pursuant to the ESA; or

has been determined pursuant to the ESA to not qualify as an endangered or threatened species.³³²³

The commission is required to take emergency action to add a species to the list of endangered or threatened species if the commission determines that a significant threat to the continued existence of the species exists. Furthermore, the commission must periodically review the status of endangered or threatened species.³³²⁴

If an Oregon State agency determines that a proposed action on land it owns or leases has the potential of violating the guidelines established by the commission, it must notify the State Department of Fish and Wildlife. Within 90 days, the department must recommend a reasonable and prudent alternative, if any, to the proposed action that is consistent with the guidelines. If the agency fails to adopt the recommendation, after consulting with the department, it must demonstrate that—

the potential public benefits of the proposed action outweigh the potential harm from failure to adopt the recommendation; and

reasonable mitigation and enhancement measures will be taken, to the extent practicable, to minimize the adverse impact of the action on the affected species.³³²⁵

Moreover, within 4 months of the listing of the endangered species, in consulting and cooperating with the State land owning or managing agency, the commission must determine if State land will play a role in the conservation of endangered species. The commission and the land owning or managing agency must consider species biology and geography of the land base to determine if the species or its habitat is found on State land. If the species or its habitat is not found on State land, the commission must decide that State land plays no role in the conservation of the species.

³³²²OREGON REV. STAT. § 496.176.

³³²³Id. § 496.172 (1995).

³³²⁴Id.

³³²⁵Threatened or endangered wildlife species. OREGON REV. STAT. § 496.182.

On the other hand, if the species or its habitat is found on State land, after consulting with the department, the land owning or managing agency must determine the role its State land will serve in the conservation of endangered species. After such determination, the land owning or managing agency must develop and approve an endangered species management plan, which is subject to review and modification by the commission.³³²⁶ For State agencies other than the land owning or managing agency, in consultation and cooperation with the agency, the commission must determine whether the agency can serve a role in the conservation of endangered species.³³²⁷

In addition, the Oregon Legislature established the Access and Habitat Board within the State Department of Fish and Wildlife. The board consists of seven appointed members who serve for a term of 4 years and are eligible for reappointment.³³²⁸

The board's main duty is to make access and habitat programs, which are reviewed by the commission. In recommending such programs, the board must—

- recommend a mix of projects that provides a balance between access and habitat benefits;

- recommend projects that are to be implemented by volunteers engaged in approved access and habitat activities;

- recommend programs that recognize and encourage the contributions of landowners to wildlife programs which minimize the economic loss to those landowners;

- encourage agreements that have landowners who request damage control hunts to insure public access to those hunts; and

- encourage projects that result in obtaining matching funds from other sources.³³²⁹

In addition, persons who live in different regions created for administration of the wildlife resources can form advisory councils to discuss and consider access and habitat programs and projects and to make recommendations to the Access and Habitat Board. Whenever the board considers proposals affecting a region, it must consult with the advisory council for that region if one exists.³³³⁰

In addition to the Access and Habitat program, the Oregon Legislature also enacted provisions to improve fish habitat. It allows individuals to apply to the State Department of Fish and Wildlife for preliminary certification of a fish habitat improvement project. However, such certification does not qualify an applicant for tax credit nor exempt the project from any State or Federal law or local ordinance. After completing the construction or installation of a fish habitat improvement project preliminarily certified, such individual can apply to the department for final certification of the project. If the department determines that the project conforms to the plans approved during the preliminary certification, it must provide the applicant a written notice of final certification of the project, which includes the certification of the actual cost of the project for purposes of the income tax credit

³³²⁶Threatened or endangered wildlife species. OREGON REV. STAT. § 496.182.

³³²⁷Id.

³³²⁸Id. § 496.228.

³³²⁹Id. § 496.232.

³³³⁰Id. § 496.232.

relief. However, the department cannot certify an amount for tax credit purposes that is more than 10 percent in excess of the amount approved in the preliminary certificate issued for the project.³³³¹

Moreover, there are two limitations on amount eligible for tax credit. First, in any calendar year, the department cannot certify a fish habitat improvement project that costs in excess of \$100,000. Second, the department cannot grant preliminary certification for a fish habitat improvement project unless it is filed with the department on or before January 1, 1998.³³³²

Furthermore, an operator or landowner is immune from liability for damages resulting from an improvement project that is done in cooperation and consultation with the department, unless such damages were caused by willful, wanton, or intentional conduct or by gross negligence of the operator or landowner. However, the limitation of liability does not apply to claims for death or personal injuries.³³³³

California (region 10).—After acknowledging that the "fundamental requirement for health, vigorous populations of fish and wildlife is habitat,"³³³⁴ the California Legislature enacted the Fish and Wildlife Habitat Enhancement Act of 1984³³³⁵ with the purpose of providing "the financial means to correct the most severe deficiencies in fish and wildlife habitat . . . through a program of acquisition, enhancement, and development of habitat areas that are most in need of proper conservation and management."³³³⁶ From the Fish and Wildlife Habitat Enhancement Fund, the legislature appropriates as follows:³³³⁷

- Forty million dollars for expenditure by the Wildlife Conservation Board pursuant to the Wildlife Conservation Law of 1947; \$30 million are to be used for the acquisition, enhancement or development of lands for habitat for wildfowl and other wildlife benefited by a marsh or aquatic environment; and \$10 million are for the restoration of waterways for the management of fisheries and the enhancement or development, or both, of habitat for other wildlife.
- Five million dollars for the Wildlife Conservation Board pursuant to the Wildlife Conservation Law of 1947 for the acquisition, enhancement, or development, or both, of lands for habitat for rare, endangered, and fully protected species.
- Thirty million dollars for the State Coastal Conservancy for the acquisition, enhancement or development, or both, of marshlands and associated and adjacent land and the development of associated facilities and for grants to local public agencies.
- Ten million dollars for the Wildlife Conservation Board pursuant to the Wildlife Conservation Law of 1947 for the acquisition, enhancement, or development, or both, inside the coastal zone of marshlands and adjacent lands for habitat for wildlife benefited by a marsh or aquatic environment.

³³³¹Threatened or endangered wildlife species. OREGON REV. STAT. § 496.260.

³³³²Id. § 496.265.

³³³³Id. § 496.270.

³³³⁴CA. CODE ANN., FISH & GAME CODE § 2601 (Supp. 1996).

³³³⁵Id. § 2600 through 2650 (Supp. 1996).

³³³⁶Id. § 2601.

³³³⁷Id. § 2620.

- In addition, the legislature authorizes bonds in the total amount of \$85 million, or in the amount necessary, to be issued and sold to provide a fund to be used for carrying out the purposes of the act.³³³⁸

Under the Wildlife Conservation Law of 1947, the board must determine what areas, lands, or rights in lands or waters are to be acquired to effectuate a coordinated and balanced program resulting in the maximum restoration of wildlife.³³³⁹

The State legislature also enacted the California Riparian Habitat Conservation Act³³⁴⁰ after recognizing that "the state rivers, wetlands, and waterways and the fisheries and wildlife habitat they provide are valuable and finite resources that benefit the people of the state."³³⁴¹ With this recognition, the legislature requires the board to establish and administer the California Riparian Habitat Conservation Program, the purpose of which is to protect, preserve, and restore riparian habitats throughout the State.³³⁴²

The legislature also enacted the Wildlife and Natural Areas Conservation Act.³³⁴³ The Wildlife and Natural Areas Conservation Fund was created; \$41 million are for the preservation of highly rare examples of the State's natural diversity; \$6 million for the acquisition, enhancement, restoration, or protection of critical habitat areas for fish, game mammals, and game birds; and \$3 million for acquisition, enhancement, restoration, or protection of land providing habitat for threatened, endangered, or fully protected species.³³⁴⁴

In addition, the legislature provides for Fish and Wildlife Protection and Conservation laws³³⁴⁵ and enacted the Kenne-Nielsen Fisheries Restoration Act of 1985.³³⁴⁶

Tennessee (regions 11 & 12).—The Wildlife Resources Agency is authorized to establish, with the consent of the property owner, public hunting areas, refuges, or wildlife management areas to protect and manage wildlife.³³⁴⁷ To perform its duties, the agency can acquire property for the purposes of wildlife preservation.³³⁴⁸

Except the properties operated by the Department of Conservation and the Division of Parks and Recreation, the Tennessee Legislature declared all lands owned in fee simple by Tennessee or by condemnation, surrounded by or surrounding the waters of Reelfoot Lake to be designated as a State wildlife management area.³³⁴⁹ To preserve, protect, and manage Reelfoot Lake or its fish, waterfowl, and wildlife populations and habitats, unless provided otherwise, all activities, practices, or projects that have or are likely to have the effect of diverting surface or subsurface

³³³⁸CA. CODE ANN., FISH & GAME CODE § 2640.

³³³⁹Id. § 1347.

³³⁴⁰Id. § 1385 to 1391.

³³⁴¹Id. § 1386.

³³⁴²Id. § 1387.

³³⁴³Id. § 2700 et seq.

³³⁴⁴Id. § 2720.

³³⁴⁵Id. § 1601 et seq.

³³⁴⁶Id. § 2760 et seq.

³³⁴⁷TENN. CODE ANN. § 70-5-101 (Supp. 1993).

³³⁴⁸Id. § 70-5-102 (1987).

³³⁴⁹Id. § 70-5-107(d) (Supp. 1993).

water that would otherwise flow into Reelfoot Lake are prohibited.³³⁵⁰ Moreover, the water level management plan for Reelfoot Lake is also established.³³⁵¹

By statute, Tennessee assents to the provisions of the Federal laws entitled "An act to provide that the United States shall aid the states in Wildlife Restoration Projects"³³⁵² and "An act to provide that the United States shall aid the States in Fish Restoration and Management Projects, and for other purposes."³³⁵³ In addition, Tennessee also consents to the acquisition by the United States by purchase, gift, devise, or lease of such areas of land and/or water as the United States finds necessary for the establishment of a migratory bird reservation.³³⁵⁴

In addition to the provisions regarding wildlife law, the Tennessee Legislature also enacted provisions dealing with Nongame and Endangered Species.³³⁵⁵ The legislature requires the executive director to conduct investigations on nongame wildlife to develop information regarding the population, distribution, habitat, needs, limiting factors, and other biological and ecological data to determine management measures necessary for their continual sustainability.³³⁵⁶ It also requires the Wildlife Resources Commission, by regulations, to establish proposed limitations regarding habitat, alteration, taking, possession, transportation, exportation, or sale as deemed necessary to manage such nongame wildlife.

Furthermore, the legislature prohibits all persons from taking, possessing, transporting, exporting, processing, selling or shipping nongame wildlife.³³⁵⁷ However, endangered or threatened species may be removed, captured or destroyed only if it is necessary to alleviate damage to property or to protect human health and safety.³³⁵⁸

On the basis of this investigation and after consultation with other state and Federal wildlife agencies, the Wildlife Resources Commission must, by regulation, propose an endangered or threatened species list, which will be made available to the public. The commission is required to conduct a review of the State list every 2 years and make additions or deletions as deemed necessary.³³⁵⁹ Furthermore, by regulation, the executive director can treat any species as an endangered species or threatened species even though it is not listed.³³⁶⁰

The executive director is required to establish programs, including acquisition of land or aquatic habitat, as are deemed essential for management of nongame and endangered or threatened wildlife.³³⁶¹ The commission is authorized to issue regulations as necessary to carry out the purposes of this act.³³⁶²

³³⁵⁰TENN. CODE ANN. § 70-5-112 (1987 & Supp. 1993).

³³⁵¹Id. § 70-5-113 (Supp. 1993).

³³⁵²Id. § 70-5-111(b) (1987). The Wildlife Restoration Project Act is compiled as 16 U.S.C. §§ 669 et seq.

³³⁵³Id. § 70-5-111(c). The Fish Restoration and Management Projects Act is compiled as 16 U.S.C. §§ 777 et seq.

³³⁵⁴Id. § 70-5-111(a).

³³⁵⁵Tennessee Non-game and Endangered or Threatened Wildlife Species Conservation Act of 1974, TENN. CODE ANN. § 70-8-101 et seq. (1987 & Supp. 1993).

³³⁵⁶Id. § 70-8-104 (1987).

³³⁵⁷Id.

³³⁵⁸Id. § 70-8-106.

³³⁵⁹Id. § 70-8-105.

³³⁶⁰Id. § 70-8-112.

³³⁶¹Id. § 70-8-106.

³³⁶²Id. § 70-8-107.

Under the Nongame and Endangered Species provisions, the cost of the nongame and endangered or threatened wildlife programs are born by the general fund or other sources. However, the Federal cost share of approved programs for endangered species cannot exceed $66 \frac{2}{3}$ percent of the costs stated in the cooperative agreement. The Federal share may be increased to 75 percent when two or more states having a common interest in one or more endangered or threatened species enter jointly into an agreement with the executive director.³³⁶³

³³⁶³TENN. CODE ANN. § 70-8-110 (Supp. 1993).

