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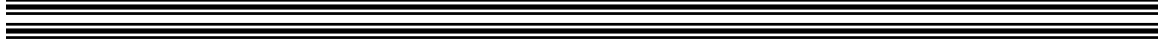
CIVIL WORKS  
ENVIRONMENTAL  
DESK  
REFERENCE



IWR Report 96-PS-3  
July 1996







*Civil Works*

# Environmental Desk Reference



Prepared by the

Institute for Water Resources

U.S. Army Corps of Engineers

IWR Report 96-PS-3  
January 2002 (update)



**U.S. Army Institute for Water Resources  
Planning and Policy Studies Programs**

*The Institute for Water Resources (IWR) is a Corps of Engineers Field Operating Activity, located in Alexandria Virginia. It was created in 1969 to analyze and anticipate changing water resources management conditions, and to develop planning methods and analytical tools to address economic, social, institutional, and environmental needs in water resources planning and policy. Since its inception, IWR has been a leader in the development of tools and strategies to plan and execute Corps water resources planning.*

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## PREFACE

This intended to serve as a desk top reference on environmental statutes and environmental executive policy for Corps of Engineers Civil Works personnel. It is an update of the version originally published in 1996, and updated in 1997. It contains summary profiles of environmental laws, and full text of a number of environmental executive orders. The information in this document is for reference purposes, and is not intended as a substitute for HQUSACE policy or implementation guidance, nor is this reference intended to replace the advice of Corps counsel. Implementation of the laws in the Civil Works program may be affected by changes in policy, and by amendments to the laws. Federal case law may also determine how the laws are interpreted and influence policy development and implementation. Users should check the latest HQUSACE guidance for details regarding Corps policy on implementing and complying with these statutes. Users should also consult Corps counsel regarding assistance in applying legislative information in light of the context of the project, circumstances, or action that defines their need for this information.

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## Acknowledgments

This Civil Works Environmental Desk Reference was prepared by Lynn R. Martin of the Planning, Policy and Special Studies Division of the Institute for Water Resources (IWR). The Chief of the Division is Eugene Z. Stakhiv. The Director of IWR is Robert Pietrowsky. The update of this document was funded as part of the Corps Planning Capability Improvement initiative, Planning and Policy Division, Directorate of Civil Works, Headquarters, U.S. Army Corps of Engineers (HQUSACE). Terrance Breyman, and Ellen Cummings of the Planning and Policy Division, (HQUSACE), provided helpful review comments. John Wright of the North Atlantic Division was the field proponent for updating the Environmental Desk Reference as part of the Planning Capability Improvement initiative. R. Anne Sudar, visiting scholar, is acknowledged for her research support on this project.



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# CIVIL WORKS ENVIRONMENTAL DESK REFERENCE (2002 Revision)

## INTRODUCTION

Numerous environmental laws and executive orders influence and guide water resources planning, development and management within the Civil Works program of the U.S. Army Corps of Engineers. Many of these laws identify compliance requirements, and several establish regulatory programs that the Corps of Engineers implements in support of National environmental objectives. These directives also support Federal responsibility for environmental quality and Corps participation in the restoration and protection of ecological resources and other aspects of the environment.

**The Environmental Desk Reference IS** a document intended to serve as a desk top reference on environmental statutes and executive policy for Corps of Engineers personnel. It contains summary profiles of environmental laws applicable to the Civil Works program. Included in these profiles are legal citations, common names and summaries of the statutes and the Corps implementation guidance. Each profile also identifies the general requirements for environmental compliance. It also contains copies of environmental Executive Orders, two reference tables related to laws and regulations. (See Document Organization below.)

**The Environmental Desk Reference is NOT** the authority on Corps policy regarding implementation of these laws. The information in this document is for reference purposes, and is not intended as a substitute for HQUSACE policy or implementation guidance. Nor is this reference intended to replace the advice of Corps counsel. Implementation of the laws in the Civil Works program may be affected by changes in policy, and by amendments to the laws. In some instances, Federal case law may also determine how the laws are interpreted and influence policy development and implementation. Users should check the latest HQUSACE guidance for details regarding Corps policy on implementing and complying with these statutes. Users should also consult Corps counsel regarding assistance in applying legislative information in light of the context of the project, circumstances, or action that defines their need for this information.

**Why this document?** While many Corps water resources staff are familiar with the more popular laws (e.g., NEPA, Clean Water Act, WRDAs), other laws are less frequently encountered and less well known. In many instances, copies of environmental laws and their implementing regulations, as well as information on citations, are not easily or readily accessible to working staff on a day to day basis.

Corps Civil Works staff have frequently asked for a ready reference that includes the information contained in this desk reference (e.g., summaries of laws, basic lists of citations, and a cross-reference to available Corps guidance.) From the onset of the development of this document, it was recognized that numerous sources of information on environmental laws exist. It was also recognized that it may be difficult to assure that this document is kept up-to-date, given the dynamics of legislation and the uncertainty of future funding and personnel resources. These are additional reasons to consult HQUSACE or Corps Counsel when users require information on the latest Corps policies and guidance concerning environmental directives.

A number of existing references were examined in the early stages of developing this document. It was found that a number of good references are available that describe environmental laws, their citations and history. However, few references include information in the context of the Civil Works program.

**Applicability of the Laws and Executive Orders.** This desk reference includes numerous laws and Executive Orders of varying relevance to the Civil Works program. Some are routinely applicable to every study or project. Others may only occasionally apply to Corps studies, projects or programs, depending on specific circumstances. Some establish national policy and environmental goals to which the Corps can contribute, not solely through compliance but through contributions of Civil Works programs and activities. A few of the laws and Executive Orders may never apply to the Civil Works program, but they are included in the reference to help users assess their applicability should it be questioned in the course of a study or project activity.

***Compliance Checklist for Planning Documents.*** Compliance with the following eight statutes is required prior to the signing of a PCA, and is therefore a prerequisite to the construction of any Corps project. These essential eight laws are: 1) the National Environmental Policy Act; 2) the Endangered Species Act; 3) the Coastal Zone Management Act; 4) the Clean Water Act (Sections 401, 404r, 404b(1)); 5) the Marine Protection, Research, and Sanctuaries Act (Section 103); 6) the National Historic Preservation Act (Section 106); 7) the Fish and Wildlife Coordination Act; and 8) the Clean Air Act.

## **Document Organization.**

- Part I contains summaries of the environmental laws in the context of the Corps' Civil Works program.
- Part II contains full text copies of a number of executive orders relevant to the environment and environmental resources. Users should check with HQUSACE regarding implementation policy and guidance on these orders.
- Appendix A is a "cross reference" table to help users find citations for laws using common names. This table uses the most "popular" names and Public Law citations for the environmental laws, however users should note that these popular names often differ from the legislative titles of the parent laws, or the amendments. It is critical to note that new legislation frequently amends existing environmental laws, and that often these amendments are included in laws that are not typically or intuitively related to the original legislation. Users should also be aware that most environmental legislation must be implemented in conjunction with other laws.
- Appendix B provides a summary of the Corps' guidance identified in the summary profiles. The table is organized by Civil Works functional area, and identifies guidance issued by or relevant to the functional area. It also includes references to relevant Army and Department of Defense guidance.
- The remainder of this Introduction contains:
  - Information about useful electronic resources, including websites.
  - An explanation of the legal citations used in this desk reference
  - A summary of the various types of Corps guidance documents that pertain to the implementation of environmental laws.

**Electronic Resources.** A number of electronic resources are available for readers to locate and read the published versions of environmental laws, regulations and case law, and the number of these resources continue to increase. Several web pages relevant to laws and regulations are identified below. Note however, that web pages are dynamic, links change, and, like any other data base, these sources are only as current as the most recent update.

**Web Sites:**

- **United States Code:** <http://www.access.gpo.gov/congress/cong013.html>  
or [http://www4.law.cornell.edu/#SECTIONS](http://www4.law.cornell.edu/uscode/#SECTIONS)
- **Public Laws:** <http://www1.access.gpo.gov/GPOAccess/docssitesearch/nara/nara005.html>
- **Code of Federal Regulations:** <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1>  
or <http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html>
- **Thomas** (text of pending legislation, Congressional Record): <http://thomas.loc.gov/>
- **Executive Orders:** <http://www.nara.gov/fedreg/eo.html>
- **Corps of Engineers Regulations:** <http://www.usace.army.mil/inet/usace-docs/eng-regs>
- **Corps Civil Works Planning and Policy Division Homepage:**  
<http://www.usace.army.mil/inet/functions/cw/cecwp/>
- The Defense Environmental Network & Information eXchange (DENIX). DENIX was designed to provide DoD personnel in the environmental security arena, timely access to environmental legislative, compliance, restoration, cleanup, safety & occupational health, security, and DoD guidance information. DENIX is accessible from: <https://www.denix.osd.mil/>. Environmental compliance information such as the Environmental Review Guide for Operations (ERGO) Manual and The Environmental Assessment and Management (TEAM) guide are also available on DENIX. The TEAM guide, published in 1994 by a DoD working group, provides compilations of applicable Federal regulations, synthesizes environmental regulations and describes management actions to be used in conducting environmental compliance assessment.

**Subscription Services:** There are two electronic resources used within the Corps primarily by attorneys:

- LEXIS - is an electronic database that provides information on statutes, executive orders, and regulations, which can be searched using key words. It is available by subscription through LEXIS-NEXIS Services. Subscriber and hourly access fees vary depending upon the service and subscription option selected. Within the Corps, this service is usually used by offices of counsel.
- WESTLAW - is an electronic database that provides access to the USCA, Federal regulations, case law, and administrative materials, as well as other law information and specialized data bases. West Publishing Company has a contract with the Library of Congress through the Federal Library and Information Center Committee (FLICC). The Army Corps of Engineers has an agreement with FLICC which has contracted with West Publishing Company for WESTLAW under a network arrangement. Corps offices can subscribe to WESTLAW; subscriber and hourly access fees vary depending upon the subscription option selected. Within the Corps, this service is usually used by offices of counsel.

## CITATIONS USED IN THIS ENVIRONMENTAL DESK REFERENCE

**1. Why are citations for laws provided as United States Code (U.S.C.) in the profiles of this desk reference, instead of as Public Law (P.L.) numbers?** A description of the two different systems of citation will help answer this question.

The Public Law is a general classification of law. Public Laws are acts which relate to the public as a whole. When passed, they are given a Public Law number and then given a **Statutes at Large** number. Then the law is codified in the **United States Code** (U.S.C.).

Subsequent laws, with new Public Law numbers, may amend the original law. Sometimes the amendment is an extensive revision of the entire law, and other times only minor changes are made. Also, the legislative title of the amending laws may be the same or different. In each instance however, a new Public Law number is assigned to the law. In addition, some of the amendments to a given law appear as parts of other laws not related to the "parent" law. This makes it particularly difficult to obtain up-to-date information on an environmental law by using Public Law citations. For example, in developing this desk reference, over a dozen Public Laws were identified that amend the "Clean Water Act" (the Clean Water Act is just one of the amendments to the Federal Pollution Control Act which was originally passed in 1948). Usually, amendments contain only the modified portion(s) of the law. Special printings of a law, with the cumulative amendments, at the time of printing, are sometimes available, but not always.

Another system, the **United States Code, Annotated** (U.S.C.A.), is a more practical source of the text of laws that includes amendments to date. The Code contains a consolidation and codification of the general laws of the United States. The laws are organized by subject matter under 50 title headings. These titles are shown in **Table 1**. The U.S.C.A. provides the current status of the laws, as amended. It is intended to present the laws in a concise form so that one does not have to go to the many volumes of the Statutes at Large containing the individual amendments.

In the U.S.C.A., a statute is found under a designated title, chapter and section number in the principal volume, and any recent amendments or changes will be found under the same title, chapter and section number in the supplementary pocket part. The U.S.C.A. is kept up to date via Cumulative Annual Pocket Parts, also known as Supplemental Pamphlets. *Citations from the U.S.C.A. are usually presented as U.S.C., with the "annotated" being implied. The U.S.C. citations in this desk reference are actually from the annotated volumes.*

**2. What are other citations that are sometimes used to refer to a law or the implementing regulations of a law?**

**Statutes at Large (STAT)** is an official compilation of the acts and resolutions of each session of Congress. It is published by the Office of the Federal Register in the National Archives and Records Service. The Statutes at Large are a chronological arrangement of the laws exactly as they have been enacted; the laws are not arranged according to their subject matter, and the Statutes at Large do not show the current status of an earlier law that has been amended one or more times.

**Code of Federal Regulations (C.F.R.)** is the annual accumulation of executive agency regulations published in the daily Federal Register, combined with regulations issued earlier that are still in effect. The C.F.R. is divided into 50 titles, each representing a broad subject area. The C.F.R. titles are shown in **Table 2**. The C.F.R. contains the general body of regulatory laws

governing practice and procedure before Federal administrative agencies. Some of the regulations developed by HQUSACE, that affect the general public or other agencies, are codified in the C.F.R. A number of the codified regulations of other agencies that affect the Corps Civil Works program are identified in this desk reference. Citation format is: “§33 C.F.R. 325”, where 33 is the title number, and 325 is the section number.

**Federal Register (F.R.):** Federal agencies publish documents in the Federal Register. The F.R. and the C.F.R. publications must be used together to determine the latest version of any given rule. The F.R. is published daily and includes texts of new agency rules and regulations, proposed rules and regulations, and a calendar of the meetings and proceedings of rule-making bodies. The F.R. also publishes the texts of executive orders and publications. The F.R. groups documents under 5 headings: Presidential Documents, Rules and Regulations, Proposed Rules, Notices, and Sunshine Meetings. The section on Rules contains a summary of each rule, and cites the title and chapter numbers that are affected. After final rules are published in the F.R., they are eventually codified in the C.F.R.

**Table 1. TITLES OF UNITED STATES CODE and UNITED STATES CODE ANNOTATED**

| <b>Title Number</b> | <b>Title</b>   | <b>Title Number</b> | <b>Title</b>                                    |
|---------------------|--|---------------------|---|
| 1.                  | General Provisions,                                      | 26.                 | Internal Revenue Code.                          |
| 2.                  | The Congress.  | 27.                 | Intoxicating Liquors.                           |
| 3.                  | The President.   | 28.                 | Judiciary and Judicial Procedure.               |
| 4.                  | Flag and Seal, Seat of Government, and the States.       | 29.                 | Labor.  |
| 5.                  | Government Organization and Employees.                   | 30.                 | Mineral Lands and Mining.                       |
| 6.                  | Surety Bonds ( <i>See Title 31, Money and Finance</i> ). | 31.                 | Money and Finance.                              |
| 7.                  | Agriculture.   | 32.                 | National Guard.                                 |
| 8.                  | Aliens and Nationality.                                  | 33.                 | Navigation and Navigable Waters.                |
| 9.                  | Arbitration.   | 34.                 | Navy ( <i>See Title 10, Armed Forces</i> ),     |
| 10.                 | Armed Forces.  | 35.                 | Patents.  |
| 11.                 | Bankruptcy.  | 36.                 | Patriotic Societies and Observances.            |
| 12.                 | Banks and Banking.                                       | 37.                 | Pay and Allowances of the Uniformed Services.   |
| 13.                 | Census.  | 38.                 | Pensions, Bonuses and Veterans Relief Benefits. |
| 14.                 | Coast Guard.   | 39.                 | Postal Service.                                 |
| 15.                 | Commerce and Trade.                                      | 40.                 | Public Buildings, Property, and Works.          |
| 16.                 | Conservation.  | 41.                 | Public Contracts.                               |
| 17.                 | Copyrights.  | 42.                 | The Public Health and Welfare.                  |
| 18.                 | Crimes and Criminal Procedure.                           | 43.                 | Public Lands.                                   |
| 19.                 | Customs Duties.  | 44.                 | Public Printing and Documents.                  |
| 20.                 | Education.   | 45.                 | Railroads.                                      |
| 21.                 | Food and Drugs.  | 46.                 | Shipping.                                       |
| 22.                 | Foreign Relations and Intercourse.                       | 47.                 | Telegraphs, Telephones, and Radiotelegraphs.    |
| 23.                 | Highways.  | 48.                 | Territories and Insular Possessions.            |
| 24.                 | Hospitals and Asylums.                                   | 49.                 | Transportation.                                 |
| 25.                 | Indians.   | 50.                 | War and National Defense.                       |



**Table 2. TITLES OF THE CODE of FEDERAL REGULATIONS**

| <b>Title Number</b> | <b>Title</b>                              | <b>Title Number</b> | <b>Title</b>                             |
|---------------------|---|---------------------|--|
| 1.                  | General Provisions                        | 26.                 | Internal Revenue                         |
| 2.                  | The Congress (reserved)                   | 27.                 | Alcohol, Tobacco Products and Firearms   |
| 3.                  | The President                             | 28.                 | Judicial Administration                  |
| 4.                  | Accounts                                  | 29.                 | Labor                                    |
| 5.                  | Administrative Personnel                  | 30.                 | Mineral Resources                        |
| 6.                  | Economic Stabilization (reserved)         | 31.                 | Money and Finance: Treasury              |
| 7.                  | Agriculture                               | 32.                 | National Defense                         |
| 8.                  | Aliens and Nationality                    | 33.                 | Navigation and Navigable Waters          |
| 9.                  | Animals and Animal Products               | 34.                 | Education                                |
| 10.                 | Energy                                    | 35.                 | Panama Canal (reserved)                  |
| 11.                 | Federal Elections                         | 36.                 | Parks, Forests, and Public Property      |
| 12.                 | Banks and Banking                         | 37.                 | Patents, Trademarks, and Copyrights      |
| 13.                 | Business Credit and Assistance            | 38.                 | Pensions, Bonuses, and Veterans= Relief  |
| 14.                 | Aeronautics and Space                     | 39.                 | Postal Service                           |
| 15.                 | Commerce and Foreign Trade                | 40.                 | Protection of the Environment            |
| 16.                 | Commercial Practices                      | 41.                 | Public Contracts and Property Management |
| 17.                 | Commodity and Securities Exchange         | 42.                 | Public Health                            |
| 18.                 | Conservation of Power and Water Resources | 43.                 | Public Lands: Interior                   |
| 19.                 | Customs Duties                            | 44.                 | Emergency Management and Assistance      |
| 20.                 | Employees= Benefits                       | 45.                 | Public Welfare                           |
| 21.                 | Food and Drugs                            | 46.                 | Shipping                                 |
| 22.                 | Foreign Relations                         | 47.                 | Telecommunications                       |
| 23.                 | Highways                                  | 48.                 | Federal Acquisition Regulations System   |
| 24.                 | Housing and Urban Development             | 49.                 | Transportation                           |
| 25.                 | Indians                                   | 50.                 | Wildlife and Fisheries                   |

# Corps Guidance

## *Official Corps guidance publications:*

ENGINEER REGULATIONS (ER)  
ENGINEER CIRCULARS (EC)  
ENGINEER MANUALS (EM)  
ENGINEER TECHNICAL LETTERS (ETL)  
ENGINEER PAMPHLETS (EP)

EP 1165-2-1, "Digest of Water Resources Policies and Authorities" is commonly referred to as the "Policy Digest".

ER 1105-2-100, "Guidance for Conducting Civil Works Planning Studies" is commonly referred to as the "Planning Guidance Notebook" or the "PGN" (pronounced "pigeon").

## *Codified policy and implementing guidance:*

Corps guidance and policy developed by the Corps that has implications for other agencies or the general public is first published in the Federal Register for comment; the final rules are also published in Federal Register, and later in the Code of Federal Regulations.

## *Supplemental guidance:*

The Corps supplements its regulations with Guidance Letters that provide guidance to districts on specific issues:

POLICY GUIDANCE LETTERS (PGL) (See:  
<http://www.usace.army.mil/inet/functions/cw/cecwa/pglindex.htm> )  
REGULATORY GUIDANCE LETTERS (RGL) (See:  
<http://www.usace.army.mil/inet/functions/cw/cecwo/reg/rglsindx.htm>  
DREDGING GUIDANCE LETTERS (DGL)  
COUNSEL GUIDANCE LETTERS (CGL)

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## PART II

# Summary Profiles of Laws

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## ABANDONED SHIPWRECK ACT OF 1987

**LEGISLATIVE TITLE:** Abandoned Shipwreck Act of 1987

**UNITED STATES CODE CITATION:** 43 U.S.C. §§ 2101- 2106

**OTHER TITLES AND POPULAR NAMES:** ASA

**SUMMARY:** This law provided for the United States to assert ownership over any abandoned shipwreck in State waters and submerged lands. Submerged lands means lands that are "lands beneath navigable waters" as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301). It also provides guidelines for the designation of abandoned shipwrecks as national historic parks, recreation areas and marine biological sanctuaries. The act provides Federal authority to transfer ownership of abandoned shipwrecks to the state on whose submerged lands the wreck is located. The act provides Federal protection to any shipwreck that meets the criteria for eligibility for inclusion in the National Register for Historic Places. Therefore, disposal of dredged or other material on or in the near vicinity of such wrecks is prohibited.

The Department of the Interior administers the act through regulations issued by the National Park Service. The act requires that study and evaluation standards be promulgated by the National Park Service. Federal agencies and States are to develop companion regulations. The Corps does not have a specific companion regulation at this time, but uses the National Park Service's Abandoned Shipwreck Act Guidelines, and has integrated consideration of shipwrecks into the general planning, engineering, operations, and regulatory Corps regulations cited below. Basically, for Federal actions, the Section 106 process, National Historic Preservation Act, applies, as set forth in implementing regulations 36 C.F.R. 800. The act allows for appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and the sites.

**RESOURCES COVERED:** Historic and cultural properties; abandoned shipwrecks, cargo, and other contents.

**COMPLIANCE REQUIREMENTS:** Corps reports and NEPA documents must show evidence of consultation with the State Historic Preservation Officers (SHPOs) and, if necessary, the Advisory Council on Historic Preservation (ACHP) for significance and impact determinations, and agreements about mitigation stipulations, if required. If public or private sector recovery is proposed for a shipwreck or submerged site under Corps jurisdiction, a permit must be obtained from the appropriate Corps office under the Archaeological Resources Protection Act of 1979, as amended.

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** National Park Service, SHPOs, and appropriate public and private sector interests (Secretary of Commerce, ACHP, sport divers, professional dive operators, archaeologists, historic preservationists, fishermen).

**Process:** Submerged resources are considered by the Corps in accordance with Section 106 of the National Historic Preservation Act, and as set forth in the implementing regulation 36 C.F.R. 800. The act authorizes States to issue permits to non-Federal entities to work with submerged resources. However, since States can not issue permits to Federal agencies under this act or the National Historic Preservation Act, Corps offices coordinate with State officials and, to the extent practicable, provide information similar in scope to that required under the State permit process.

**Product:** Determinations of significance (National Register of Historic Places) and effect are made in consultation with the SHPO and ACHP, and plans are made to preserve (avoid) or recover (mitigate) significant remains that would be affected by Corps activities.

**Timing/Schedule:** Depending upon available information and the nature and significance of resources, effect determinations may take 30 days (No Effect) to over a year. Studies and significance and effect determinations should be completed during the feasibility phase. Mitigation is ordinarily done just prior to construction.

**CORPS GUIDANCE** When Sec. 106 of the National Historic Preservation Act is triggered, the following regulations apply:

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 6.

**Civil Works Operations:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 6; Dredging Guidance Letter No. 89-01, Policy and Procedures for the Conduct of Underwater Historic Resource Surveys for Maintenance Dredging and Disposal Activities

**Regulatory:** 33 C.F.R. 325, Appendix C, Processing Department of the Army Permits, Procedures for Protection of Historic Properties.

**FOR MORE INFORMATION SEE:** National Historic Preservation Act

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** National Park Service

**Guidance Title:** Guidelines for Recreational Use and Preservation of Abandoned Shipwrecks and to Administer and Manage Underwater Resources; National Register Nominations for Submerged Resources; Historic American Engineering Record Guidelines for Ships

**Federal Register Citation:** Abandoned Shipwreck Act Guidelines (proposed regulations) F.R. Vol. 54, No. 63, Tuesday, April 4, 1989; Final guidelines, F.R. Vol. 55, No. 50116, December 4, 1990; Correction, F.R. Vol 55 No. 51528, December 14, 1990; Final guidelines correction, F.R. Vol. 56, No. 7875, February 26, 1991.

**Code of Federal Regulations Citation:** None applicable

**MANAGEMENT OPPORTUNITIES:** Management of abandoned shipwrecks and submersed resources is vested with the Secretary of Interior, National Park Service and delegated SHPO. The Corps, while having no direct authority, has limited opportunity to work in coordination with the Secretary of Interior and SHPOs on Corps projects to incorporate elements within the design and operations that facilitate access and utilization of cultural resources by recreational and historical interests.

## AMERICAN FOLKLIFE PRESERVATION ACT

**LEGISLATIVE TITLE:** American Folklife Preservation Act

**UNITED STATES CODE CITATION:** 20 U.S.C. §§ 2101 - 2107

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This act establishes, in the Library of Congress, an American Folklife Center to preserve and present American folklife. The Center is to encourage research and training, foster awareness, and promote performances, festivals, exhibits, workshops, and educational programs. The act does not routinely affect Corps day-to-day operations. However, the Library of Congress could contact the Corps and request use of a site, or objects.

**RESOURCES COVERED:** Historic and Cultural Properties; American folklife - traditional expressive culture within the various groups in the United States.

**COMPLIANCE REQUIREMENTS:** Use of sites or objects would be regulated under other historic preservation laws regarding impacts and curation standards.

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Library of Congress

**Process:** Coordination

**Product:** Loan of cultural items

**Timing/Schedule:** None specified

### CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** None identified

### IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** None identified

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** None

**MANAGEMENT OPPORTUNITIES:** The Corps may participate in Library of Congress and American Folklife Center educational programs by providing information, records, displays, exhibits, and artifacts.



# AMERICAN INDIAN RELIGIOUS FREEDOM ACT

**LEGISLATIVE TITLE:** American Indian Religious Freedom Act

**UNITED STATES CODE CITATION:** 42 U.S.C. § 1996

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This act that states the policy of the U.S. is to protect and preserve for American Indians, Eskimo, Aleut, and native Hawaiians, their inherent rights of freedom to believe, express, and exercise traditional religions. These rights include, but are not limited to, access to sites, use and possession of sacred objects, and the freedom to worship through ceremony and traditional rites. A related law, the National Historic Preservation Act (16 U.S.C. 470) greatly strengthens the requirements for Federal agencies to ensure that tribal values are taken into account. Tribes are given greater control over patrimonial objects and are allowed to establish their own culturally-specific criteria of significance.

**RESOURCES COVERED:** Historical and Cultural Properties; Sacred sites, use and possession of sacred objects, and traditional Native American ceremonies and rites.

**COMPLIANCE REQUIREMENTS:** Federal agencies must make reasonable efforts to locate and coordinate with organizations, and communities of groups covered by the Act to insure that religious rights are accommodated during project planning, construction, and operation. Efforts must be documented in Corps project reports and NEPA documents.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Organizations, and communities of groups covered by the Act

**Process:** Formal and informal correspondence and meetings.

**Product:** Presidential report to Congress regarding changes in administrative policy and procedure in fulfillment of this act. If sacred sites and objects are involved for a Federal project, the product may be an agreement between the Federal agency and organizations and communities of groups covered by the Act regarding access and use.

**Timing/Schedule:** Consultation begins, whenever the Federal agency is made aware of relevant resources, or upon the request of traditional organizations and communities of groups covered by the Act.

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance, PGL No. 57, Indian Sovereignty and Government-to-Government Relations with Indian Tribes.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 6.

**Civil Works Operations:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 6.

**Regulatory:** 33 C.F.R. 325, Appendix C, Processing Department of the Army Permits, Procedures for the Protection of Historic Properties

**FOR MORE INFORMATION SEE:** Native American Graves Protection and Repatriation Act of 1990; National Historic Preservation Act

#### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** None identified

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** None

**MANAGEMENT OPPORTUNITIES:** None identified.

# ANADROMOUS FISH CONSERVATION ACT

**LEGISLATIVE TITLE:** Anadromous Fish Conservation Act

**UNITED STATES CODE CITATION:** 16 U.S.C. §§ 757a to 757g

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This act authorizes the Secretary of the Interior to enter into a cooperative agreements with the States and other non--Federal interests for the conservation, development, and enhancement of the Nation's anadromous fishery resources that are subject to depletion from water resources developments and other causes, or with respect to which the Federal government has made conservation commitments concerning such resources by international agreements. [Administration of the program authorized by this Act was transferred to the Secretary of Commerce by Reorg. Plan No. 4 of 1970 (historical note accompanying 16 U.S.C. 755; 35 F.R. 15627).] The program emphasizes the conservation and enhancement of anadromous fishery resources and the fish in the Great Lakes and Lake Champlain that ascend streams to spawn. The Act established a grant program to provide funding to states for habitat or fish enhancement work, and specifies cost-sharing and appropriation provisions.

**RESOURCES COVERED:** Anadromous fish, their habitat and fishery resources in the Great Lakes and Lake Champlain that ascend streams to spawn are specifically mentioned. With the exception of the State of Idaho, projects in the Columbia River system are specifically excluded from the grant program authorized by this Act (16 U.S.C. 757e). Grant funds are not to be used for law enforcement, public relations, or to construct facilities primarily for the commercial harvest, handling and processing of fishery products.

**COMPLIANCE REQUIREMENTS:** No compliance requirements for the Civil Works program specified in this Act.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** There are no consultation requirements specified in the Act Consultation, if necessary, would be with the state agencies that have received grants under the terms of the Act, as well as the granting agency.

**Process and Product:** Guidance on applying for the grants is provided in 50 C.F.R. 401. States provide progress and final reports to U.S. Fish and Wildlife Service or National Marine Fishery Service (NMFS) regional offices.

**Timing/Schedule:** Progress reports are prepared periodically, financial reports are prepared annually by the USFWS and NMFS Regional offices.

## CORPS GUIDANCE

**Civil Works Planning:** ER 1150-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** Catalog of Federal Domestic Assistance, Chapter 11.405, General Services Administration. This catalog is a compendium of Federal programs, projects, services and activities that provide assistance or benefits to the American public. It contains financial and nonfinancial assistance programs administered by departments and established by the Federal Government. Chapter 11.405 specifically discusses the scope, procedures and eligibility requirements for the grant program authorized by this Act.

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service. Administration of the program authorized by this Act was transferred to the Secretary of Commerce by Reorg. Plan No. 4 of 1970 (16 U.S.C. 755).

**Guidance Title:** NMFS - Departmental Administrative Order 203-26; 50 C.F.R. Part 401.

**Code of Federal Regulations Citation:** 50 C.F.R. 401

**MANAGEMENT OPPORTUNITIES:** Under the program authorized by this Act, money is granted to state agencies and/or non-Federal interests. Funds can be used to improve spawning areas, install fishways, construct fish protection devices and hatcheries, conduct research to improve management, and increase anadromous fish resources. At the earliest stage in planning, when identifying problems and opportunities, planners should determine if opportunities exist to contribute to the objectives of this Act, including opportunities to complement state anadromous fishery habitat restoration efforts. Also, participants in the grant program prepare reports on their activities; this information may be useful in Corps reconnaissance or feasibility studies.

This Act authorizes the Secretary (of Interior originally, now Commerce) to conduct studies that contribute to the objectives of the Act, and make such recommendations as the Secretary determines to be appropriate, regarding the development and management of any stream or other body of water for the conservation and enhancement of anadromous fishery resources, and the fish in the Great Lakes and Lake Champlain that ascend streams to spawn. The reports on such studies and the recommendations of the shall be transmitted to the States, the Congress, and the Federal water resources construction agencies for their information. This Act shall not be construed as authorizing the formulation or construction of water resources projects, except that water resources projects which are determined by the Secretary to be needed solely for the conservation, protection, and enhancement of such fish may be planned and constructed by the Corps of Engineers, (other agencies were also listed) or by the States, with funds made available by the Secretary under this Act and subject to the cost-sharing and appropriations provisions this Act (16 U.S.C. 757b). The Corps can examine the recommendations in these reports in light of ecosystem restoration opportunities discussed in ER 1165-2-501, Civil Works Ecosystem Restoration Policy, and EP 1165-2-502, Ecosystem Restoration-Supporting Policy Information, taking into account current Administration policies and budgetary priorities.

## ANTIQUITIES ACT OF 1906

**LEGISLATIVE TITLE:** Antiquities Act of 1906

**UNITED STATES CODE CITATION:** 16 U.S.C. § 431 - 433

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** The Act provides for the protection of historic and prehistoric ruins and objects of antiquity on lands owned or controlled by the Federal Government, and authorizes scientific investigation of antiquities on Federal lands, subject to permits and other regulatory requirements. Paleontological resources are covered by this Act. The Act also provides for criminal penalties for anyone desecrating, injuring, excavating, or otherwise destroying any historic or prehistoric ruin or monument without express Federal permission. Authorizes the President to declare by public proclamation historic and prehistoric landmarks as national monuments. Federal agencies are permitted to transfer objects of antiquity to properly qualified institutions.

**RESOURCES COVERED:** Historical and Cultural Properties; Historic or prehistoric ruins or monuments, or any objects of antiquity, including landmarks, prehistoric structures, and landmarks.

**COMPLIANCE REQUIREMENTS:** None. The Antiquities Permit has been replaced by the permit required under the Archeological Resources Protection Act of 1979.

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Designated agency representatives from the Departments of Interior, Agriculture and Army may issue permits to reputable museums, universities, colleges, or other recognized scientific or educational institutions.

**Process:** Persons must apply for permits for the examination of ruins, the excavation of archeological sites, and the gathering of objects of antiquity upon lands under the jurisdiction of the Secretaries of the Interior, Agriculture, and Army.

**Product:** Permit - the permit required under this act has been replaced by the Archeological Resources Protection Act permit.

**Timing/Schedule:** Prior to any work.

### CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 6.

**Civil Works Operations:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 6.

**Regulatory:** 33 C.F.R. 325, Appendix C, Processing Department of the Army Permits, Procedures for the Protection of Historic Properties

**FOR MORE INFORMATION SEE:** Archaeological Resources Protection Act of 1979, as amended

#### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Department of Interior

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** 43 C.F.R. 3

**MANAGEMENT OPPORTUNITIES:** The President is authorized to declare historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments and to afford them proper protection. Further, the Corps can pursue national monument status for significant historic properties under agency control. If obtained, appropriate protection is to be provided to such properties. The Act states that the Secretary of the Army may grant permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity upon lands under his control. Permits should only be granted to properly qualified individuals and the work should be undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions.

# ARCHEOLOGICAL RESOURCES PROTECTION ACT OF 1979

**LEGISLATIVE TITLE:** Archeological Resources Protection Act of 1979

**UNITED STATES CODE CITATION:** 16 U.S.C. § 470 et seq

**OTHER TITLES AND POPULAR NAMES:** ARPA

**SUMMARY:** The Act was enacted to preserve and protect resources and sites on Federal and Indian lands. It fosters cooperation between governmental authorities, professionals, and the public. The Act prohibits the removal, sale, receipt, and interstate transportation of archaeological resources obtained illegally (i.e., without permits) from public or Indian lands and authorizes Federal agency permit procedures for investigations of archeological resources on public lands under the agency's control. Permits are required to excavate and remove those cultural remains covered by the Act.

The purpose of the ARPA permit process is to ensure that individuals and organizations wishing to work with Federal resources have the necessary professional qualifications, and that Federal standards and guidelines for research and curation are followed. The process also allows the SHPO to review and comment on ARPA permit applications. Federal agencies do not issue ARPA permits to themselves or to contractors. The Scope of Work and contractors proposal, which constitute the contract, ensure that contractors comply with Federal standards and guidelines. The ARPA permit replaces the permit required by the Antiquities Act of 1906.

**RESOURCES COVERED:** Historical and Cultural Properties; Any material remains of past human life or activities which are of archaeological interest. Material shall include but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items.

**COMPLIANCE REQUIREMENTS:** ARPA requires Federal agencies to conduct archaeological investigations on lands under their jurisdiction to determine the nature and extent of the protected cultural resources present, and to help manage extant resources in accordance with permit and enforcement provisions of the Act.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** State Historic Preservation Officer (SHPO)

**Process:** Persons wishing to excavate or remove any archeological resource located on public lands or Indian lands must apply for a permit from the appropriate Federal land manager as defined by the Act and its implementing regulations. The application must include information on the time, scope, location, and specific purpose of the proposed work, and describe professional qualifications and anticipated scientific contributions. Permit applications are approved by the Federal land managers in consultation with their historic preservation staff and the SHPO. Criminal penalties are also established for violations of the Act.

**Product:** The applicant receives a permit, while, as a condition of the permit, the agency receives a report of investigations and documentation of appropriate curation of materials.  
**Timing/Schedule:** No time frame is established for permit processing. The permit must be received prior to any archeological work being done on Federal land.

## **CORPS GUIDANCE**

ER 405-1-12 Change 27, October 1988, Real Estate Handbook, paragraph 8-65, Implementation of ARPA Uniform Regulations.

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance; ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures; 36 C.F.R. 800, Protection of Historic Properties Section 106 Review Process; 36 C.F.R. 79, Curation of Federally-Owned and Administered Archeological Collections.

**Civil Works Engineering:** 36 C.F.R. 800, Protection of Historic Properties Section 106 Review Process; 36 C.F.R. 79, Curation of Federally-Owned and Administered Archeological Collections

**Civil Works Construction:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures; 36 C.F.R. 800, Protection of Historic Properties Section 106 Review Process; 36 C.F.R. 79, Curation of Federally-Owned and Administered Archeological Collections

**Civil Works Operations:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures; 36 C.F.R. 800, Protection of Historic Properties Section 106 Review Process; 36 C.F.R. 79, Curation of Federally-Owned and Administered Archeological Collections

**Regulatory:** 33 C.F.R. 320-330; 33 C.F.R. 325 (Appendix C) - Processing of Department of the Army Permits, Procedures for the Protection of Historic Properties.

**FOR MORE INFORMATION SEE:** Refer to ER 405-1-12, Change 27, 1 Oct. 88, Real Estate Handbook, para. 8 -65, Implementation of ARPA Uniform Regulations. Figure 8-22 is an example of ENG Form 4922, the permit application; Figure 8-23, is an example of ENG Form 4923-R, the permit.

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Department of the Interior

**Guidance Title:** Archeological Resources Protection Act Supplemental Regulations

**Code of Federal Regulations Citation:** 43 C.F.R. 7, Protection of Archaeological Resources; 36 C.F.R. 79, Curation of Federally-Owned and Administered Archeological Collections

**MANAGEMENT OPPORTUNITIES:** None identified.



# ATLANTIC STRIPED BASS CONSERVATION ACT

**LEGISLATIVE TITLE:** Atlantic Striped Bass Conservation Act

**UNITED STATES CODE CITATION:** 16 U.S.C. 1851

**OTHER TITLES AND POPULAR NAMES:** Striped Bass Conservation, Atlantic Fisheries Management, and Marine Mammal Rescue Assistance Act of 2000;

**SUMMARY:** This Act authorizes and encourages the development, implementation, and enforcement of effective interstate action regarding the conservation and management of the Atlantic striped bass. It provides for the Atlantic States Marine Fisheries Commission to monitor the implementation and enforcement by coastal states of their Atlantic striped bass management plan. If a state is found to be in violation of the plan, a moratorium can be declared in that state by the Secretaries of Commerce and Interior, prohibiting fishing for Atlantic striped bass in that state, as well as civil penalties and civil forfeitures invoked. The Act also directs the Secretaries of Commerce and Interior to conduct continuing, comprehensive studies of Atlantic striped bass stocks, as well as a study of the socio-economic benefits of the Atlantic striped bass resource, and to make biennial reports to Congress concerning these studies.

This Act was reauthorized by the Striped Bass Conservation, Atlantic Coastal Fisheries Management, and Marine Mammal Rescue Assistance Act of 2000 (16 U.S.C. 1361). Subtitle A of this Act (16 U.S.C. 5156) directs the Secretaries of Commerce and Interior to conduct a study to determine if the distribution of year classes in the Atlantic striped bass population is appropriate for maintaining adequate recruitment and sustainable fishing opportunities. Subtitle B (16 U.S.C. 5101) reauthorizes the Atlantic Coastal Fisheries Cooperative Management Act.

**RESOURCES COVERED:** Atlantic striped bass fish populations

**COMPLIANCE REQUIREMENTS:** None specific to the Corps.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Secretaries of Commerce and Interior are to consult with the Atlantic States Marine Fisheries Commission, the appropriate Regional Fishery Management Councils, and each affected Federal, State, and local government entity in preparing regulations governing fishing for Atlantic striped bass in the exclusive economic zone.

**Process and Product:** None Specified

**Timing/Schedule:** None specified

## CORPS GUIDANCE

**Civil Works Planning:** None specific to this statute.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** Magnuson Fishery Conservation and Management Act

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Departments of Commerce (National Oceanic and Atmospheric Administration) and Interior

**Guidance Title:** None identified.

**Code of Federal Regulations Citation:** None identified.

**MANAGEMENT OPPORTUNITIES:** There may be opportunities to support populations of Atlantic striped bass through the restoration and protection of essential fish habitats through Civil Works authorities and programs. Ecosystem restoration initiatives may complement the fishery management plans, and there may be opportunities to contribute to regional coordination and assistance efforts.

## BALD EAGLE PROTECTION ACT

**LEGISLATIVE TITLE:** Bald Eagle Protection Act

**UNITED STATES CODE CITATION:** 16 U.S.C. §§ 668, 668 note, 668a-668d

**OTHER TITLES AND POPULAR NAMES:** Bald Eagle Act; Bald and Golden Eagle Protection Act

**SUMMARY:** This Act prohibits wantonly possessing, selling, transporting, or trading of a bald or golden eagle or eagle part, alive or dead. Whoever so violates will be subject to criminal or civil penalties. The statute authorizes searches, seizures and arrests for enforcement purposes. The Secretary of the Interior can issue a permit for taking, possession and transporting of bald and golden eagles for scientific, exhibition, and religious purposes, and may permit the taking of golden eagle nests if they interfere with resource development or recovery operations 16 (U.S.C. 668(a)).

**RESOURCES COVERED:** Wildlife; American or golden eagle, alive or dead and any part, nest or egg.

**COMPLIANCE REQUIREMENTS:** The Endangered Species Act (16 U.S.C. 1531-1542) contains requirements on Corps projects concerning bald and golden eagles. See Section 7 coordination and consultation of the Endangered Species Act for additional requirements regarding bald eagles.

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** See requirements under the Endangered Species Act

**Process:** See requirements under the Endangered Species Act

**Product:** Permits for the taking, possession and transportation of eagles for scientific, religious, conservation or agricultural purposes.

**Timing/Schedule:** See requirements under the Endangered Species Act

### CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies , Appendix C, Environmental Compliance.

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute

**Regulatory:** 33 C.F.R. 325

**FOR MORE INFORMATION SEE:** Endangered Species Act

### IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** U.S. Fish and Wildlife Service

**Guidance Title:** Interagency Cooperation- ESA of 1973, as amended; Final Rule

**Code of Federal Regulations Citation:** 50 C.F.R. 402; Exemption Procedures 50 C.F.R. 450

**MANAGEMENT OPPORTUNITIES:** Opportunities to provide protection to bald and golden eagles may be possible as part of ecosystem restoration initiatives, or as part of natural resource management initiatives.

## CLEAN AIR ACT

**LEGISLATIVE TITLE:** Clean Air Act

**UNITED STATES CODE CITATION:** 42 U.S.C. §§ 7401-7671g

**OTHER TITLES AND POPULAR NAMES:** CAA; Air Pollution Prevention and Control Act

**SUMMARY:** The purpose of this Act is to protect public health and welfare by the control of air pollution at its source, and to set forth primary and secondary National Ambient Air Quality Standards (NAAQS) to establish criteria for States to attain, or maintain, these minimum standards. Section 118 (42 U.S.C. 7418) specifies that each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility or (2) engaged in any activity resulting, or which may result, in the discharge of air pollutants, shall be subject to, and comply with, all Federal, State, interstate, and local requirements respecting the control and abatement of air pollution in the same manner, and to the same extent as any non-governmental entity.

States are responsible for developing a State Implementation Plan (SIP) for the prevention, control and abatement of air pollution according to National Ambient Air Quality Standards (NAAQS). National Emissions Standard for Hazardous Air Pollutants (NESHAPs) and Federal emissions standards for motor vehicles are largely determined by the Environmental Protection Agency. Section 176(c) (42 U.S.C. 7596(c)) requires that Federal agencies do not (1) engage in, (2) support in any way or provide financial assistance for, (3) license or permit, or (4) approve, any activity which does not conform to a SIP. EPA has published its final General Conformity Rule (40 C.F.R. Part 93) to implement Section 176(c) addressing how Federal agencies are to demonstrate that activities in which they engage, support, permit, or approve conform to CAA State Implementation Plans. The EPA rule contains a number of "exempted" or "presumed to conform" activities which include a number of Corps activities. CAA conformity determinations will be completed during feasibility studies and included in feasibility reports.

Section 309 (42 U.S.C. 7609) calls for the Administrator of the EPA to review and comment on the environmental impact of (1) legislation proposed by any Federal agency, (2) newly authorized Federal projects for construction and any major agency action, and (3) proposed regulations published by any department of agency of the Federal Government. The Act also provides for financial and technical assistance to State agencies for research and training in air pollution control and prevention. Technical advisory committees are established to provide support, as well as publish information on air pollution control techniques. A Federal program is established for research into alternative fuel technology.

**RESOURCES COVERED:** Air; air pollution; criteria pollutants (sulphur dioxide, particulate matter, carbon monoxide, volatile organic compounds, nitrogen dioxide, lead), ozone depleting substances, and the 189 hazardous air pollutants regulated under Section 112 of the Act (42 U.S.C. 7412).

**COMPLIANCE REQUIREMENTS:** Corps activities resulting in the discharge of air pollutants must conform to NAAQS and SIPs, unless the activity is explicitly exempted by EPA regulations. Section 173 (42 U.S.C. 7503) requires a permit from EPA to construct or operate a new or modified major stationary source. Major stationary sources are required to obtain a Title V Operating Permit in addition to permits to construct. Maximum achievable control technology (MACT) must be attained for sources for which a MACT standard has been promulgated. It is important to consult with State air regulatory personnel to determine regulatory requirements, as many non-major sources that do not require a Federal permit may require operating permits under State programs.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** State and local agencies; EPA. As of this time, all but a few States have approved or proposed for approval Title V operating permit programs. Permits required under State SIPs are also done at the State level.

**Process:** EPA reviews and comments upon the environmental impact of proposed legislation and newly authorized projects for construction and any other major agency action. Permit must be secured to construct or operate new or modified major stationary source in certain areas of the U.S. SIPs are the primary mechanisms used by the state to ensure compliance with EPA area wide standards.

**Product:** EPA Permits for stationary sources of air pollution.

**Timing/Schedule:** Permitting authority must approve or disapprove a complete permit application within 18 months of the date it receives the application. At least one-third of the permit applications will be acted upon within a three year period.

## CORPS GUIDANCE

CECW-ON & CEEC-S, 30 Jan 89, Guidance for Radon Assessment and Mitigation for USACE Civil Research and Development and Military Missions.

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** ER 200-2-3, Environmental Compliance Policies and EP 200-2-3, Environmental Compliance Guidance and Procedures; ETL 1110-1-118 Hazards involved with use of asbestos containing material (ACM) and prohibition on use of friable asbestos.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** ER 200-2-3, Environmental Compliance Policies, and EP 200-2-3, Environmental Compliance Guidance and Procedures.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** None identified

## IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** Environmental Protection Agency, State agencies for air pollution control

**Guidance Title:** See below

**Code of Federal Regulations Citation:** 40 C.F.R. 50, EPA Regulations on National Primary and Secondary Air Quality Standards; 40 C.F.R. 58, EPA Ambient Air Quality Surveillance Regulations; 40 C.F.R. 60, Standards of Performance for New Stationary Sources; 40 C.F.R. 61, EPA Regulations on Asbestos Removal and Disposal; 40 C.F.R. 82, Protection of Stratospheric Ozone, and Appendix A, List of Ozone Depleting Chemicals; 40 C.F.R. 93, EPA Regulations on Determining Conformity of General Federal Actions to State or Federal Implementation Plans; 48

C.F.R. 23, Ozone Depleting Substances; Office of Counsel CECC-E Memorandum on EPA's Clean Air Act General Conformity Rule, 20 April 1994.

**MANAGEMENT OPPORTUNITIES:** None identified.

## CLEAN WATER ACT

**LEGISLATIVE TITLE:** Clean Water Act

**UNITED STATES CODE CITATION:** 33 U.S.C. 1251 et seq.

**OTHER TITLES AND POPULAR NAMES:** Water Pollution Control Act, Federal Water Pollution Control Act Amendments; Water Quality Act; FWPCA; CWA

**SUMMARY:** This Act is the principle law governing pollution control and water quality of the Nation's waterways. The objective of this Act is to restore and maintain the chemical, physical and biological integrity of the Nation's waters (33 U.S.C. 1251). The Act has been amended numerous times and given a number of titles and codification (see footnote below). It was originally enacted as the Water Pollution Control Act in 1948 (P.L. 80-845), and was totally revised by the 1972 amendments, the Federal Water Pollution Control Act Amendments (P.L. 92-500). The 1972 amendments gave the Act its current form, and established a national goal of eliminating all pollutant discharges into U.S. waters by 1985 and an interim goal of making the waters safe for fish, shellfish, wildlife and people by July 1, 1983 (86 Stat. 816, 33 U.S.C. 1251). The 1977 amendments (the Clean Water Act of 1977 (P.L. 95-217)) gave the Act its current title. Additional amendments were enacted in 1981 (Municipal Wastewater Treatment Construction Grants Amendments (P.L. 97-117)) and in 1987 (Water Quality Act of 1987 (P.L. 100-4)).

The Federal Water Pollution Control Act was amended by the Beaches Environmental Assessment and Coastal Health Act of 2000 (33 U.S.C. 1251), intended to improve the quality of coastal recreation waters. It calls for the adoption of coastal recreation water quality criteria and standards by the states. The Administrator of EPA is required to publish performance criteria for monitoring and assessment of coastal recreation waters, and provisions to assure the prompt notification of the public, local governments, and the EPA of any exceeding or likelihood of exceeding of applicable water quality standard at public beaches.

The Act provides standards and enforcement, a number of regulatory programs with permits and licenses, grants and revolving funds, as well as general provisions and provisions for research and related programs. Because of the extensiveness of the Act and the complexity of the numerous implementing regulations and guidance documents that have been developed in response to the various provisions of the Act, it is not possible to provide a detailed summary of these provisions, documents, policies and guidance in this profile. Instead, those provisions particularly relevant to the Civil Works program are briefly summarized below. Corps personnel requiring more detailed information are encouraged to refer to Corps guidance documents, interpretation from Corps counsel and seek guidance from HQUSACE.

**Reservoir Storage for Streamflow Augmentation.** Section 102(b) of the 1972 amendments (33 U.S.C. 1252) provided that in the planning of any Corps reservoir, consideration shall be given to inclusion of storage for regulation of streamflow. Such storage is not to be provided as a substitute for adequate treatment or other methods of controlling waste at the source.

**State Water Quality Certification.** Section 401 of the 1972 amendments (33 U.S.C. 1341) requires certification from the State or interstate water control agencies that a proposed water resources project is in compliance with established effluent limitations and water quality standards. Corps projects, as well as applicants for Federal permits or licenses are required to obtain this certification.

**National Pollution Discharge Elimination System(NPDES).** Section 402 of the 1972 amendments (33 U.S.C. 1342) establishes conditions and permitting for discharges of pollutants under the National Pollution Discharge Elimination System(NPDES), and replaces the Corps Refuse Act Permit Program under the Act of 1899 without repealing the Act.



Ocean Discharges. Section 403 of the 1972 amendments (33 U.S.C. 1343) addresses criteria and permits for discharges into the territorial seas, the contiguous zone, and the oceans.

Permits for Dredged or Fill Material. Section 404 (33 U.S.C. 1344) authorizes a separate permit program for the disposal of dredged or fill material in the Nation's waters, to be administered by the Secretary of the Army, acting through the Chief of Engineers. Under Section 404 of the amended Act, the Corps of Engineers retains primary responsibility for permits to discharge dredged or fill material into waters of the United States. The Act also defines the conditions which must be met by Federal projects before they may make discharges into the Nation's waters. Under the program, permits are to be issued, after notice and opportunity for public hearings for disposal of such material at specified sites. Sites are to be selected in compliance with guidelines developed by EPA in conjunction with the Secretary of the Army. EPA is authorized to forbid or restrict the use of specified areas whenever it determines that disposal of material at a specific site would have an unacceptable adverse effect on municipal water supplies, shellfish, and fishery areas, or recreational activities.

**RESOURCES COVERED:** Waters of the United States, but does not include groundwater; Pollutants discharged into the waters of the U.S. and water quality that provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation.

Jurisdiction under Section 404: Traditionally navigable waters; all interstate waters, including interstate wetlands, all other waters including lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce; all impoundments of water that fit these definitions; territorial seas; and wetlands adjacent to waters, other than adjacent to other wetlands (33 C.F.R. 328.3). Although some of these definitions were phased in over a period of years, the current regulations provide for the Clean Water Act's jurisdiction over all of the above mentioned waters. Regulatory jurisdiction over isolated waters depends on the Corps finding that the degradation of those waters would impact interstate commerce.

**COMPLIANCE REQUIREMENTS:** Reservoir Storage for Streamflow Augmentation. In the planning of any Corps reservoir, consideration shall be given to inclusion of storage for regulation of streamflow. Such storage is not to be provided as a substitute for adequate treatment or other methods of controlling waste at the source. The need for, value of, and the impact of storage for the purpose of water quality control are determined by the Administrator of the Environmental Protection Agency (EPA). The need for and value of storage for regulation of streamflow for other purposes are to be determined by the Corps. The costs of storage are to be non-reimbursable if the benefits are widespread or National in scope.

State Water Quality Certification. Section 401 of the CWA requires that the Corps obtain certification from the State or interstate water control agencies that a proposed water resources project is in compliance with established effluent limitations and water quality standards. If the State in question has assumed responsibilities for the 404 regulatory program, a State 404 permit would be obtained which would serve as the certification of compliance. Section 404(r) waives the requirement to obtain the State Water Quality certificate if the information on the effects of the discharge are included in an EIS on the proposed project submitted to Congress before the discharge takes place and prior to either authorization of the project or appropriation of construction funds. It is the general policy of the Corps to seek State water quality certification rather than utilizing the Section 404(r) exemption (ER 1105-2-100). Applicants for Corps permits must obtain certification from the State for activities involving discharges.

Civil Works Projects. Corps projects involving the discharge of dredged or fill material into the waters of the United States, shall be developed in accordance with guidelines promulgated by the Administrator of the Environmental Protection Agency (EPA) in conjunction with the Secretary of the Army under the authority of Section 404(b)(1) of the CWA (40 C.F.R. 230) unless the activity is exempt under Section 404(f). Procedures for the evaluation of potential contaminant-related impacts associated with the discharge of dredged material, as required by the Section 404(b) (1) Guidelines are contained in the "Evaluation of Dredged Material Proposed for Discharge in the Waters of the U.S. - Testing Manual " commonly referred to as the Inland Testing Manual which was jointly developed by the EPA and the Corps. The investigations and analysis required by the Section 404(b)(1) Guidelines shall be included in feasibility reports. (ER 1105-2-100)

Dredged Material Testing. Dredged material and sediments beneath the navigable waters proposed for dredging shall be tested and evaluated for their suitability for disposal in accordance with the appropriate guidelines and criteria adopted pursuant to Section 404 of the Clean Water Act and/or Section 103 of the Marine Protection Research and Sanctuaries Act (MPRSA) and supplemented by the Corps of Engineers Management Strategy for Disposal of Dredged Material: Containment Testing and Controls (or its appropriate updated version) as cited in Title 33 C.F.R. Section 336.1.

National Pollution Discharge Elimination System (NPDES) Storm Water Discharge Permit Requirements. Point source discharge of pollutants into "navigable water" is regulated through the NPDES. All point source discharges must have an NPDES permit (33 U.S.C. 1311). All Corps facilities and activities that meet the definition of an "industrial activity" under 40 C.F.R. 122.26 are subject to the requirement to obtain storm water permits. One Corps activity covered by the storm water rule is any construction activity that disturbs five acres or more of land. Storm water permits are issued by the states if they have an authorized NPDES storm water permit program or by the EPA for areas not covered by an authorized state program. Activities regulated under Section 404 of the CWA do not require permits under the NPDES program.

Reservoir Management and Water Control. ER 1110-2-8154, Water Quality and Environmental Management for Corps Civil Works Projects (31 May 1995), establishes a policy for water quality management program at Corps Civil Works Projects. The guidance requires development of water quality management objectives and operational procedures for each water control project in order to ensure that water quality is suitable for authorized project purposes, existing water uses, and public health and safety and is in compliance with applicable Federal water quality criteria and state standards. It discusses the development and implementation of water quality data collection programs in order to understand and manage the environmental resources of the Corps' water control projects effectively. Consideration is given to both upstream activities and downstream water quality and ecological conditions. (See Management Opportunities).

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Depending on the provisions: Army Corps of Engineers; Environmental Protection Agency; National Marine Fisheries Service; Fish and Wildlife Service; State and Local agencies; Applicants; the Public.

**Process:** Depending on the provisions: NPDES Permitting Process; Section 401 Water Quality Certification; Section 404 Permitting Process

**Product:** Depending on the provisions: NPDES Permits; State Water Quality Certificates; Individual, general, or nationwide permits may be issued under the Section 404 program depending upon the type and scope of activity involved.

**Timing/Schedule:** NPDES applications in response to Section 402 requirements, must be submitted at least 180 days prior to the date the discharge is expected to commence or the current permit is due to expire (40 C.F.R. 122.21). When an application for a regulated activity in waters of the United States is submitted under Section 404 requirements, the Corps will review the application for completeness. Within 15 days of receipt of a complete application the Corps will issue a public notice (if required) soliciting comments or notify the applicant that additional information is needed. All comments will be considered and a decision to issue or deny the application will be made. The length of time between receipt of a complete application and decision to issue or deny the permit varies depending upon the type of permit issued. (See 33 C.F.R. 325)

## **CORPS GUIDANCE**

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.; CECW Memorandum dated 19 January, 2000, Special Emphasis Given to Coral Reef Protection under the Clean Water Act, Marine Protection, Research, and Sanctuaries Act, Rivers and Harbors Act, and Federal Project Authorities.

**Civil Works Engineering:** ER 1110-2-8154, Water Quality and Environmental Management for Corps Civil Works Projects; ER 200-2-3, Environmental Compliance Policies and EP 200-2-3, Environmental Compliance Guidance and Procedures; ER 1130-2-307 Dredging Policies and Practices; ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects; 33 C.F.R. 222.

**Civil Works Construction:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies; ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects.

**Civil Works Operations:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies; ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects; ER 200-2-3, Environmental Compliance Policies, and EP 200-2-3, Environmental Compliance Guidance and Procedures.

**Regulatory:** 33 C.F.R. 320-330; 33 C.F.R. 330 updated November 22, 1991; The Corps supplements its Regulatory regulations with Regulatory Guidance Letters (RGL's) that provide guidance to districts on specific issues. RGLs are published annually in the Federal Register. Also, 33 CFR 331, the Administrative Appeal Process, which was added to the Code of Federal Regulations on March 9, 1999 and updated on March 28, 2000. Also, CECW Memorandum dated 19 January, 2000, Special Emphasis Given to Coral Reef Protection under the Clean Water Act, Marine Protection, Research, and Sanctuaries Act, Rivers and Harbors Act, and Federal Project Authorities.

ALSO: CECC-E Memorandum NPDES Storm Water Discharge Permit Requirements, 23 June 1992; CECC-E Memorandum NPDES Storm Water Discharge Permit Requirements, 21 January 1993.

**FOR MORE INFORMATION SEE:** Marine Protection Research and Sanctuaries Act

## IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** Environmental Protection Agency

**Guidance Title:** See below

**Code of Federal Regulations Citation:** 40 C.F.R. 230, Interim Regulations on Discharge of Dredged or Fill Material into Navigable Waters. Section 404 (B)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material.

**MANAGEMENT OPPORTUNITIES:** There are numerous opportunities to contribute to the goals of the Act within the Civil Works program. The water quality management programs carried out as part of water control management provide both information about water quality and ecological conditions as well as restoration implementation opportunities associated with Corps reservoir and lock and dam projects. Some of these opportunities can be implemented as part of either day-to-day operations, or special operations. Others may be implemented through the Section 1135 program, examined as part of Section 216 studies, or pursued in conjunction with major rehabilitation studies or specifically authorized studies.

## COASTAL BARRIER RESOURCES ACT

**LEGISLATIVE TITLE:** Coastal Barrier Resources Act of 1982

**UNITED STATES CODE CITATION:** 16 U.S.C. § 3501 et seq; 12 U.S.C. § 1441 et seq

**OTHER TITLES AND POPULAR NAMES:** Coastal Barrier Resources Act; CBRA; Coastal Barrier Improvement Act of 1990, CBIA. Coastal Barrier Resources Reauthorization Act of 2000

**SUMMARY:** This Act established a policy that coastal barriers, in certain geographic areas of the U.S., and their adjacent inlets, waterways and wetlands resources are to be protected by restricting Federal expenditures which have the effect of encouraging development of coastal barriers. The Act provides for a Coastal Barrier Resources System (CBRS) which identifies undeveloped coastal barriers along the Atlantic and Gulf Coasts, including islands, spits, tombolos, and bay barriers that are subject to wind, waves, and tides such as estuaries and nearshore waters (the extent of which is defined by a set of maps approved by Congress dated 30 September 1982). Except for specific exempted projects (e.g. dredging, Federal navigation projects, some habitat management and enhancement efforts), no new Federal expenditures or financial assistance are allowed for areas within the system. The purpose is to minimize loss of human life, wasteful expenditure of Federal revenues, and damage to fish, wildlife and other natural resources associated with the development of coastal barriers. The 1990 reauthorization, Coastal Barrier Improvement Act (16 U.S.C. 3501 et seq) provides for the technical revision of maps, modification of boundaries, and additions to the CBRS. A similar resource inventory is to be created for coastal barrier resources of the U.S. Pacific Coast under the Pacific Coast Barrier Resources Study and Mapping. A Coastal Barriers Task Force is created to report on the management of coastal barrier resources.

Although the Act restricts Federal expenditures for coastal barrier development, Section 6(a)(6)(A) contains a broad exemption for projects relating to the study, management, protection, or enhancement of fish and wildlife resources and habitats, including recreational projects. Section 6(a)(6)(G) also exempts nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems; exemptions also include maintenance or construction of improvements to existing Federal navigational channels and related structures (e.g. jetties), including the disposal of dredge materials related to maintenance and construction. Care must be taken when interpreting any exemptions described, as they are limited to projects that are consistent with the purpose of the CBRA. Specific activities undertaken by the Corps under the rationale of a CBRA-exemption must be evaluated to ensure that they comply with the limitations described within CBRA.

A 1999 amendment redesignated the Coastal Barrier Resources System as the “John H. Chaffee Coastal Barrier Resources System.” (16 U.S.C. 3501)

The 2000 reauthorization (16 U.S.C. 3501) 1) revises the guidelines for determining whether a coastal barrier is undeveloped, 2) provides for voluntary additions to the John H. Chaffee Coastal Barrier Resources System, 3) authorizes a digital mapping pilot project, and 4) calls for an economic assessment of the System, including the impact of the System on Federal expenditures, particularly impacts resulting from the avoidance of Federal expenditures for disaster relief, the national flood insurance program, and development assistance for roads, potable water supplies, and wastewater infrastructure.

**RESOURCES COVERED:** Undeveloped and underdeveloped U.S. coastal barriers, bay barriers, barrier islands, and sediment features that protect the mainland and associated fish, wildlife, and other natural resources.

**COMPLIANCE REQUIREMENTS:** For activities within the Coastal Barrier Resources System, Corps must document that they are in compliance with this Act. Documentation must be reviewed by the Secretary of the Interior.

## **REVIEW AND CONSULTATION REQUIREMENTS**

**Who Reviews or Consults:** The Secretary of the Interior must review reports for compliance with the Act.

**Process:** Reports must be sent to the Secretary for review.

**Product:** Technical revision, modification of Coastal Barrier Resources System; Pacific Coast Barrier Protection Study and Maps; Report to Congress regarding Coastal Barrier Management.

**Timing/Schedule:** None specified

## **CORPS GUIDANCE**

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies.

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute

**Regulatory:** 33 C.F.R. 220-230

**FOR MORE INFORMATION SEE:** None identified

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Department of Commerce, States

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** 13 C.F.R. 116.40

**MANAGEMENT OPPORTUNITIES:** There may be opportunities for the Corps to coordinate with the FWS and state resource agencies on projects and activities within the CBRA units such as ecosystem restoration, shoreline stabilization, and beach nourishment and other activities where dredged material may be used beneficially. Additionally, the Corps can offer design and construction assistance to the FWS for fish and wildlife protection and enhancement features in non-Corps related CBRA units.

# COASTAL WETLANDS PLANNING, PROTECTION AND RESTORATION ACT

**LEGISLATIVE TITLE:** Coastal Wetlands Planning, Protection and Restoration Act

**UNITED STATES CODE CITATION:** 16 U.S.C. § 3951 to 3955

**OTHER TITLES AND POPULAR NAMES:** Breaux-Johnston Act; Breaux Bill; Title III of PL 101-646, "Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990"

**SUMMARY:** Sections 303 (16 U.S.C. 3952) and 304 (16 U.S.C. 3953) direct a Task Force chaired by the Secretary of Army to identify a list of coastal wetland restoration projects in Louisiana to provide for the long-term conservation of such wetlands and dependent fish and wildlife populations in order of priority, based on cost-effectiveness of such projects in creating, restoring, protecting, or enhancing coastal wetlands. The quality of such wetlands, and provisions for small-scale projects to demonstrate the use of new techniques or materials for coastal wetlands restoration will also be taken into account (16 U.S.C. 3952). The task force is also to develop a plan for a comprehensive approach to restore and prevent loss of wetlands in Louisiana. Section 305 (16 U.S.C. 3954) directs the Director of the U.S. Fish and Wildlife Services to make matching grants to any coastal State to carry out cost-shared coastal wetlands conservation projects. Funding of this program has been extended to 2009 (16 U.S.C. 699).

**RESOURCES COVERED:** Wetlands; fish and wildlife

**COMPLIANCE REQUIREMENTS:** None specified.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** The Department of the Army, the Department of Interior, Department of Agriculture, Department of Commerce, the Environmental Protection Agency, and the Governor of Louisiana jointly develop annual priority project lists and the restoration plan. The Department of the Army, the Director of the FWS, the Administrator of the EPA and the Governor of Louisiana develop the Louisiana Coastal Wetlands Conservation Plan.

**Process:** Task force agencies work together on a continuing basis to identify, develop, plan, and implement coastal restoration projects.

**Product:** Annual priority project lists; a Louisiana Coastal Wetlands Restoration Plan, and a Louisiana Coastal Wetlands Conservation Plan.

**Timing/Schedule:** Priority project lists are submitted annually. The Louisiana Coastal Wetlands Restoration Plan was completed in 1994. The Louisiana Coastal Wetlands Conservation Plan is under development.

## CORPS GUIDANCE

**Civil Works Planning:** None specific to this statute

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** None identified

**IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** None identified

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** None identified

**MANAGEMENT OPPORTUNITIES:** There may be opportunities for the Corps to contribute to the goals of this Act through ecosystem restoration initiatives (e.g., Section 1135, Section 204, Section 206 and General Investigation Studies) as well as through other Civil Works programs and activities such as through the authority provided by Section 22, "Planning Assistance to States", when the primary purpose is to complement comprehensive State planning for effective management of its coastal zone. Available data or other information collected in the course of ongoing research, surveys, studies or regulatory activities can be provided the states.



## COASTAL ZONE MANAGEMENT ACT

**LEGISLATIVE TITLE:** Coastal Zone Management Act of 1972

**UNITED STATES CODE CITATION:** 16 U.S.C. § 1451-1464

**OTHER TITLES AND POPULAR NAMES:** CZMA; Coastal Zone Act Reauthorization Amendments of 1990 (CZARA); Coastal Zone Management Act Amendments of 1976; Coastal Zone Management Improvement Act of 1980; Coastal Zone Management Reauthorization Act of 1985

**SUMMARY:** The Act (as amended) establishes a policy: 1) to preserve, protect, develop and where possible, restore and enhance the resources of the Nation's coastal zone for current and future generations; and, 2) to encourage and assist states in their responsibilities in the coastal zone through development and implementation management programs to achieve wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and esthetic values, as well as the needs for compatible economic development (16 U.S.C. 1452).

Guidelines are set forth to develop a program for the management, beneficial use, protection and development of the land and water resources of the Nation's coastal zones through protection of natural resources, management of development, providing public access, and establishment of pollution control. It delegates responsibility to coastal states to exercise their responsibilities as owners of coastal zone areas to develop and implement management programs to achieve wise use of the land and water resources. [More specific details on the state programs are provided at the end of this summary.] Participation and cooperation is encouraged among state and local governments, interstate regional agencies and Federal agencies to help states manage competing demands in coastal areas. The Secretary of Commerce is authorized to award Federal grants to assist the states in developing and administering management programs for land and water use in the coastal zone giving full consideration to ecological, cultural, historic and esthetic values as well as to the need for economic development.

The 1980 amendments provided for the development of special area management plans (SAMPs) for areas of the coastal zone considered to be of particular importance. SAMPs are comprehensive plans that provide for natural resource protection and reasonable coastal-dependent economic growth containing a detailed and comprehensive statement of policies; standards and criteria to guide public and private uses of lands and waters; and mechanisms for timely implementation of the designated geographic areas (16 U.S.C. 1453(17)). They are also intended to provide for increased specificity in improved protection of life and property in hazardous areas, including those areas likely to be affected by land subsidence, sea level rise, or fluctuating water levels of the Great Lakes, and improved predictability in governmental decision making (16 U.S.C. 1452(3)).

Section 307 (16 U.S.C. 1456(c)(1)(A)) directs Federal agencies proposing activities or development projects including Civil Works activities, whether within or outside of the coastal zone, that are reasonably likely to affect any land or water use or natural resource of the coastal zone, to assure that those activities or projects are consistent, to the maximum extent practicable, with the approved state programs. Non-Federal projects requiring a Federal permit for an activity in or outside of the coastal zone, affecting any land or water use or natural resource of the coastal zone of the state, must provide certification to the permitting agency that the proposed activities complies with the enforceable policies of the states approved program.

No License or permit shall be granted by a Federal agency until the state has concurred with the applicants certification or until the state has waived its right to do so (16 U.S.C. 1456 (c)(3)(A)).

The Coastal Zone Act Reauthorization Amendments (CZARA) of 1990 authorized NOAA to undertake a Coastal Nonpoint Pollution Control Program. State and local authorities are to develop and implement management measures for nonpoint source pollution to restore and protect coastal waters (16 U.S.C. 1455(b)).

State management programs are to provide for: (A) the protection of natural resources, including wetlands, flood plains, estuaries, beaches, dunes, barrier islands, coral reefs, and fish and wildlife and their habitat, within the coastal zone; (B) the management of coastal development to minimize the loss of life and property caused by improper development in flood-prone, storm surge, geological hazard, and erosion-prone areas and in areas likely to be affected by or vulnerable to sea level rise, land subsidence, and saltwater intrusion, and by the destruction of natural protective features such as beaches, dunes, wetlands, and barrier islands; (C) the management of coastal development to improve, safeguard, and restore the quality of coastal waters, and to protect natural resources and existing uses of those waters; (D) priority consideration to coastal-dependent uses and orderly processes for siting major facilities related to national defense, energy, fisheries development, recreation, ports and transportation, and the location, to the maximum extent practicable, of new commercial and industrial developments in or adjacent to areas where such development already exists; (E) public access to the coasts for recreation purposes; (F) assistance in the redevelopment of deteriorating urban waterfronts and ports, and sensitive preservation and restoration of historic, cultural, and esthetic coastal features; (G) the coordination and simplification of procedures in order to ensure expedited governmental decision making for the management of coastal resources; continued consultation and coordination with, and the giving of adequate consideration to the views of, affected Federal agencies; (I) the giving of timely and effective notification of, and opportunities for public and local government participation in, coastal management decision making; (J) assistance to support comprehensive planning, conservation, and management for living marine resources, including planning for the siting of pollution control and aquaculture facilities within the coastal zone, and improved coordination between State and Federal coastal zone management agencies and State and wildlife agencies; and, (K) the study and development, where appropriate, of plans for addressing the adverse effects upon the coastal zone of land subsidence and of sea level rise. (16 U.S.C. 1452 (2)).

**RESOURCES COVERED:** All coastal zone areas (described as the coastal waters, and lands therein and thereunder, and the adjacent shorelines strongly influenced by each other and in proximity to shorelines of the several coastal states) including islands, transitional and intertidal areas, salt marshes, wetlands, beaches, estuaries, bays, ponds, lagoons bayous, dunes, barrier islands, reefs, or fish and wildlife habitat. (16 U.S.C. 1453)

**COMPLIANCE REQUIREMENTS:** If a state has an approved coastal zone management program through the Office of Coastal Zone Management (NOAA), Federal agencies with development projects within the coastal zone, including Civil Work activities, must assure that those activities or projects are consistent to the maximum extent practicable, with the approved state program. Non-Federal applicants proposing activities affecting land or water uses in the coastal zone are required to furnish certification that the activity is in compliance with the approved state coastal zone management plan. Generally, no permit will be issued until the state has concurred with the non-Federal applicant's certification, unless the State has waived its right to do so.

## **REVIEW AND CONSULTATION REQUIREMENTS**

**Who Reviews or Consults:** Department of Commerce through its Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration (NOAA), States

**Process:** State management plans should be reviewed by the Corps to determine whether Civil Works projects or activities will impact coastal zone resources.

**Product:** Documentation of a "determination of consistency" with the state coastal zone management program to the appropriate State agency (16 U.S.C 1456).

**Timing/Schedule:** State must be notified at least 90 days before final approval of project. State has 45 days to respond to Federal notification. If final response has not been issued within 45 days from State receipt of the notification, the Federal Agency may presume State consistency. State may be given a 15 day extension to the 45 days.

## **CORPS GUIDANCE**

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** 33 C.F.R. Parts 209, 335, 336, 337, 338

**Regulatory:** 33 C.F.R. 220-230; 33 C.F.R. 320, 325, 330 (Updated November 29, 1991); Regulatory Guidance Letter 86-10, Special Area Management Plans (SAMPs).

**FOR MORE INFORMATION SEE:** None identified

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** National Oceanic and Atmospheric Administration (NOAA)

**Guidance Title:** See below

**Code of Federal Regulations Citation:** 15 C.F.R. 923, Coastal Zone Management Program Development and Approval Regulations; 15 C.F.R. 930 Subpart D, NOAA Regulations of Federal Consistency; 15 C.F.R. 933, Coastal Zone Management Research and Technical Assistance.

## **MANAGEMENT OPPORTUNITIES**

The Secretary of Commerce administers the program and provides grants to states for coastal resource improvement programs. The funds can in turn be cost shared as part of a coastal state's share of costs required under any other Federal program that is consistent with the purpose of this Act. Improvement opportunities may include:

- a. The preservation or restoration of specific coastal areas of the state because of their conservational, recreational, ecological, or aesthetic values.
- b. The redevelopment of deteriorating and under-utilized urban waterfronts and ports.
- c. Provide access to public beaches and to other public coastal areas and coastal waters.

Corps opportunities exist by partnering with State Coastal Zone Management Offices in providing technical, design, and construction assistance with the improvement projects. Corps participation in the development of SAMPs, ecosystem restoration projects, watershed and other comprehensive studies may contribute to state coastal zone management plan objectives.

The Coastal Nonpoint Pollution Control Program may provide data and other information useful to Corps planning studies and management activities.

## COASTAL ZONE PROTECTION ACT

**LEGISLATIVE TITLE:** Coastal Zone Protection Act of 1996

**UNITED STATES CODE CITATION:** 16 U.S.C. 1451 et seq

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This Act reauthorizes the Coastal Zone Management Act of 1972. It includes provisions which amend authorities pertaining to financial assistance for development of state coastal programs (16 U.S.C. 1454(a)), implementation assistance for coastal zone enhancement (16 U.S.C. 1456b(b)), authorization of appropriations for grants (16 U.S.C. 1464), the Coastal Zone Management Fund (16 U.S.C. 1456a(b)(2)(A)), aquaculture in the coastal zone, and appeals to the Secretary (16 U.S.C. 1465).

**RESOURCES COVERED:** See Coastal Zone Management Act.

**COMPLIANCE REQUIREMENTS:** See Coastal Zone Management Act

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Department of Commerce through its Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration (NOAA), States.

**Process:** State management plans should be reviewed by the Corps to determine whether Civil Works projects or activities will impact coastal zone resources.

**Product:** Documentation of a “determination of consistency” with the state coastal zone management program to the appropriate State agency (16 U.S.C 1456).

**Timing/Schedule:** State must be notified at least 90 days before final approval of project. State has 45 days to respond to Federal notification. If final response has not been issued within 45 days from State receipt of the notification, the Federal Agency may presume State consistency. State may be given a 15 day extension to the 45 days.

### CORPS GUIDANCE

**Civil Works Planning:** None specific to this statute; See Coastal Zone Management Act

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute; See Coastal Zone Management Act

**Regulatory:** None specific to this statute; See Coastal Zone Management Act

**FOR MORE INFORMATION SEE:** Coastal Zone Management Act.

### IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** National Oceanic and Atmospheric Administration (NOAA)

**Guidance Title:** See Coastal Zone Management Act.

**Code of Federal Regulations Citation:** See Coastal Zone Management Act.

**MANAGEMENT OPPORTUNITIES:** See Coastal Zone Management Act.

## COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT

**LEGISLATIVE TITLE:** Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), amended by Superfund Amendments and Reauthorization Act of 1986 (SARA)

**UNITED STATES CODE CITATION:** 42 U.S.C. §§ 9601 - 9675

**OTHER TITLES AND POPULAR NAMES:** CERCLA; Superfund; SARA.

**SUMMARY:** CERCLA (PL 96-510), as amended by SARA of 1986 (PL 99-499), provides for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and cleanup of inactive hazardous substances disposal sites. CERCLA also established a fund which is financed by hazardous waste generators and is used to financially support cleanup and response actions of abandoned hazardous waste sites when no financially responsible party(ies) can be found. Parties responsible for the contamination of sites are liable for all costs incurred in the cleanup and remediation process. The Environmental Protection Agency (EPA) has a hazard ranking system for assessing sites. The most severely contaminated sites are placed on the National Priorities List (NPL). Although Federal agency hazardous wastes sites may be placed on the NPL, no Federal facilities are eligible to receive financial assistance from the Superfund program. Civil Works projects are not eligible for Defense Environmental Restoration Program (DERP) funding.

**RESOURCES COVERED:** Sites contaminated with hazardous substances. The definition for hazardous substances is found at 42 U.S.C. 9601(14) and includes substances regulated under the Clean Water Act (33 U.S.C. 1317), the Resource Conservation and Recovery Act (42 U.S.C. 6921), the Clean Air Act (42 U.S.C. 7412), and the Toxic Substances Control Act (15 U.S.C. 2606). A list of hazardous substances is provided in 40 C.F.R. 302 and 40 C.F.R. 355. CERCLA does not cover petroleum contamination, unless the petroleum has been mixed with hazardous wastes, or a hazardous substance was added to the petroleum after the refining process, as an additive. Oil spills are covered under the Clean Water Act. Contaminated dredged material and sediments beneath navigable waters proposed for dredging may qualify as a hazardous substance unless the materials are designated as part of a Federal permitted release.

**COMPLIANCE REQUIREMENTS:** 42 U.S.C. 9620 provides that Federal facilities and agencies must comply with the substantive and procedural requirements of CERCLA, including liability under 9607. As Federal facilities, Civil Works projects must comply with CERCLA. The remediation requirements can be found in 40 C.F.R. 300. In addition, Federal real property which is transferred by Federal agencies by contract for sale or other transfer must, pursuant to 9620(h), include a contract notice of the type, quantity and time for which any hazardous substance was stored, release, or disposed on the property in accordance with 40 C.F.R. 373, and must place covenants in the deed which warrant that all remedial actions necessary to protect human health and the environment have been taken. Spills must be reported in accordance with the requirements set forth in 40 C.F.R. 302 and 355.

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Environmental Protection Agency, State Environmental Agencies, Other Federal agencies, the public.

**Process:** Typically CERCLA is triggered by (1) the release or substantial threat of a release of a hazardous substance into the environment; or (2) the release or substantial threat of a release of

any pollutant or contaminant into the environment which presents an imminent threat to the public health and welfare. In practical terms, the CERCLA investigation and remediation process may be triggered when a Civil Works project is added to the Federal Agency Hazardous Waste Compliance Docket (the Docket) or when there is a release or substantial threat of a release of a hazardous substance into the environment or when the release or substantial threat of a release of any pollutant or contaminant into the environment which presents an imminent threat to the public health and welfare. The remediation process itself can be found in 40 C.F.R. 300, the National Contingency Plan. The spill reporting requirements are found in 40 C.F.R. 302 and 355.

\* Due to the complexity and often times large financial concerns associated with RCRA issues, your Office of Counsel should be consulted regarding liability and compliance with RCRA. Also, given their experience with Formerly Used Defense Sites (FUDS), Base Realignment and Closure (BRAC), and Installation Restoration (IR), the Center For Expertise in Hazardous, Toxic and Radioactive Waste should be consulted regarding legal and technical matters.

**Product:** When a spill of a reportable quantity occurs, spill notification to the National Response Center is required. Spills may also be required to be reported under other laws to other Federal or state agencies. For projects listed on the Docket, a Preliminary Assessment and possibly a Site Inspection may be performed. For sites on the National Priorities List (NPL) a Remedial Investigation/Feasibility Study will be performed. For removal actions, an Engineering Evaluation/Cost Analysis (EE/CA) may be performed.

**Timing/Schedule:** Spills requiring notification must be reported to the National Response Center (NRC) immediately. Emergency response procedures should be immediately undertaken. For remediations, removal actions are short term response actions typically characterized by the limits of \$2 million dollars and 12 months. Remedial actions are longer term remediations (6-8 years).

## CORPS GUIDANCE

DODD 5030.41, Oil and Hazardous Substance Pollution Prevention and Contingency Program (26 Sep 78)

AR 200-1, Environmental Protection and Enhancement

AR 200-2, Environmental Effects of Army Actions ;

ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects

ER 385-1-92, Safety and Occupational Health Document Requirements for Hazardous, Toxic and Radioactive Waste (HTRW) and Ordnance and Explosive Waste (OEW) Activities

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance; EP 1165-2-1, Water Resources Policies and Authorities; Real Estate Policy Letter 4 dated 13 September 1991 and amended 8 May 1992.

**Civil Works Engineering:** ER 1110-1-263, Chemical Data Quality Management for Hazardous Waste Remedial Activities; ETL 1110-1-154, HTRW Guide Scopes of Work. Also, ER 200-2-3, Environmental Compliance Policies and EP 200-2-3, Environmental Compliance Guidance and Procedures.

**Civil Works Construction:** EP 200-1-2, Process and Procedures for RCRA Manifesting

**Civil Works Operations:** ER 200-2-3, Environmental Compliance Policies, and EP 200-2-3, Environmental Compliance Guidance and Procedures.

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** USACE Operated Facilities Environmental Compliance Guidance Letter, Spill Planning and Response Requirements; Executive Order 12580, Superfund Implementation; Executive Order 12088, Federal Compliance with Pollution Control Standards

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** The majority of guidance is prepared by the Environmental Protection Agency.

**Guidance Title:** See below

**Code of Federal Regulations Citation:** There are many guidance documents pertaining to spill notification procedures, spill response and remediation. You may contact NTIS or the Environmental Protection Agency RCRA/CERCLA hotline (800-424-9346) in Washington, DC to inquire as to the availability of additional guidance documents. The following is a list of just a few of the more useful documents:

40 C.F.R. 300 The National Oil and Hazardous Substance Contingency Plan

40 C.F.R. Part 302 Designation, Reportable Quantities, and Notification

40 C.F.R. Part 355 Emergency Planning and Notification

40 C.F.R. Part 373 Reporting Hazardous Substance Activity when selling or transferring Federal Real Property

**MANAGEMENT OPPORTUNITIES:** The purchasing of contaminated properties should be avoided whenever possible. Construction of Civil Works projects on contaminated properties should also be avoided whenever possible. This can be accomplished by early identification of potential problems in the reconnaissance, feasibility, and PED phases before any land acquisition begins. The plan for, and execution of, each Civil Works project will routinely include a phased and documented review to provide for early identification of HTRW problems at Civil Works projects. In addition, spills of reportable quantities of hazardous substances must be reported in accordance with 40 C.F.R. 302 and 40 C.F.R. 355.



# CONSERVATION PROGRAMS ON MILITARY RESERVATIONS

**LEGISLATIVE TITLE:** Conservation Programs on Government Lands

**UNITED STATES CODE CITATION:** 16 U.S.C. § 670a-670f

**OTHER TITLES AND POPULAR NAMES:** Sikes Act; Fish and Wildlife Conservation on Military Reservations; Subchapter I: Conservation Programs on Military Reservations

**SUMMARY:** The Act authorizes the Secretary of Defense to carry out a program of planning, development, maintenance and coordination of wildlife, fish and game conservation and rehabilitation on military lands, in coordination with the Secretary of Interior, appropriate state agencies. Cooperative plans shall provide for 1) fish and wildlife habitat improvements or modifications, 2) range rehabilitation where necessary for support of wildlife, 3) control of off-road vehicle traffic, and 4) specific habitat improvement projects and related activities and adequate protection for species of fish, wildlife, and plants considered threatened or endangered (16 U.S.C. 670(a)). The Act also authorizes programs for the development, enhancement, operation and maintenance of public outdoor recreation resources at military reservations, in coordination with the previously mentioned agencies (16 U.S.C. 670(c)). In addition, the Act promotes the conservation, restoration and management of migratory game birds on military reservations (16 U.S.C. 670(b)). While this Act specifically excludes the Corps of Engineers, Corps districts providing support to military installations may be able to provide assistance to installation natural resource managers in developing these plans.

**RESOURCES COVERED:** Fish and wildlife resources and habitat.

**COMPLIANCE REQUIREMENTS:** None identified.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** U.S. Fish and Wildlife Service, state resource agencies

**Process and Product:** Development of joint-Federal and State natural resources plans for military reservations.

**Timing/Schedule:** Plans are developed based on Federal-State coordinated schedules.

## CORPS GUIDANCE

**Civil Works Planning:** None specific to this statute

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** None identified

## IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** None identified.

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** 32 C.F.R. 190: Office of the Secretary of Defense, National Resources Management Plan; 43 C.F.R. 8000 Bureau of Land Management, Department of Interior, Recreation Programs; 43 C.F.R. 8300 Bureau of Land Management, Department of Interior, Procedures; 43 C.F.R. 8370, Bureau of Land Management, Department of Interior, Use Authorizations.

**MANAGEMENT OPPORTUNITIES:** Corps districts providing assistance to military installations may be able to assist the installation natural resource managers in developing the plans authorized by this Act.

## DEEPWATER PORT ACT OF 1974

**LEGISLATIVE TITLE:** Deepwater Port Act of 1974

**UNITED STATES CODE CITATION:** 33 U.S.C. § 1501-1524

**OTHER TITLES AND POPULAR NAMES:** None identified

**SUMMARY:** This Act provides authority for Secretary of Transportation to issue a license for the ownership, construction and operation of a deepwater port (33 U.S.C. 1503). “Deepwater port” means any fixed or floating manmade structures other than a vessel, or any group of such structures, located beyond the territorial sea and of the coast if the United States, and intended for the loading or unloading and further handling of oil for transportation, except as excluded in 33 U.S.C. 1522. Included are all associated components and equipment, including pipelines, pumping stations, service platforms, mooring buoys, and similar apurtances to the extent they are located seaward of the highwater mark. (33 U.S.C. 1502). The Act provides for licenses to be issued if applicants meet the required criteria, including the demonstration that the project will be constructed with the best technology to minimize adverse impacts on the marine environment and compliance with the Clean Water Act, Federal Water Pollution Control Act, Coastal Zone Management Act, and Marine Protection, Research and Sanctuaries Act. The license applications will be coordinated with Federal Agencies and departments with jurisdiction (33 U.S.C. 1504(e)).

**RESOURCES COVERED:** Coastal zone; Coastal environment - transitional and intertidal areas - bays, lagoons, salt marshes, estuaries, beaches; and fish and wildlife resources; water, air.

**COMPLIANCE REQUIREMENTS:** The Act prohibits the ownership, construction, or operation of a deepwater port beyond the territorial seas without a license issued by the Secretary of Transportation. Authorization for a deepwater port requires that applications for Section 10, 404 and 103 permits be issued by the Corps if appropriate.

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Secretary of Transportation in consultation with other agencies and departments.

**Process:** Outlined in 33 U.S.C. 1504.

**Product:** Licenses for the construction and ownership of deepwater ports.

**Timing/Schedule:** None specified

### CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies.

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** None identified

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Department of Transportation

**Guidance Title:** None identified.

**Code of Federal Regulations Citation:** 33 C.F.R. 62, 64, 66, 67, 70, 137, 140, 142-146, 148-150, 320; 40 C.F.R. 110; 46 C.F.R. 2, 4, 50, 54, 56, 58, 61, 108-110, 170, 173, 174, 197; 49 C.F.R. 146

**MANAGEMENT OPPORTUNITIES:** The Corps is encouraged to coordinate closely with the Department of Transportation during early stages of planning and siting deep water ports.

## **EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT OF 1986 AND THE POLLUTION PREVENTION ACT OF 1990**

**LEGISLATIVE TITLE:** The Emergency Planning and Community Right-to-Know Act of 1986 and the Pollution Prevention Act of 1990

**UNITED STATES CODE CITATION:** 42 U.S.C. §§ 11001 - 11050, and 42 U.S.C. §§ 13101 TO 13109

**OTHER TITLES AND POPULAR NAMES:** SARA Title III, EPCRA and PPA

**SUMMARY:** This Act, also known as SARA Title III, was designated to promote emergency planning and preparedness at both the state and local level. It provides citizens, local governments, and local response authorities with information regarding the potential hazards in their community. EPCRA requires use of emergency planning and designates state and local governments as recipients for information regarding certain chemicals used in the community.

The Pollution Prevention Act of 1990 (PPA) was enacted to prevent or reduce pollution at the source whenever feasible; pollution that cannot be prevented should be recycled in an environmentally sound manner whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or other release into the environment should be employed only as a last resort and conducted in an environmentally safe manner.

The PPA required owners or operators of facilities required to file an annual toxic chemical release form under EPCRA Section 313 to also include with each annual filing a toxic source reduction and recycling report for the preceding calendar year. Not only did EO 12856 require Federal Agencies to comply with the provisions of EPCRA and file Toxic Release Inventory (TRI) reports for those chemicals exceeding the threshold, it also requires Federal facilities to prepare pollution prevention plans.

**RESOURCES COVERED:** Hazardous substances, hazardous chemicals, extremely hazardous substances, and toxic chemicals.

**COMPLIANCE REQUIREMENTS:** The key compliance requirements are: emergency planning, Right-To-Know requirements, reporting requirements, and notification requirements.

**Emergency Planning:** Facilities with extremely hazardous substances in amounts equal to or greater than the amounts shown in 40 C.F.R. 355 are required to notify the state emergency response commission (SERC) and designate a representative to participate in the local emergency planning committee (LEPC).

**Right-To-Know Requirements:** Facilities are required to prepare or have available a MSDS for hazardous chemicals and are required to submit the MSDSs to the emergency commission and the fire department with jurisdiction over the facility for each hazardous chemical present at the facility according to varying threshold amounts.

**Reporting:** Section 312 of EPCRA requires facilities to submit annual Emergency and Hazardous Chemical Inventory forms (Tier I and II forms) to the state emergency response commission (SERC), the local emergency planning committee (LEPC), and the fire department having jurisdiction over the facility for the chemicals manufactured, processed or otherwise used in quantities exceeding established minimum threshold values. EO 12856 requires Federal facilities to comply regardless of the facility's SIC code.

Notification: Section 304 of EPCRA establishes spill reporting requirements for facilities that release any extremely hazardous substance listed in 40 C.F.R. 355 or the release of a reportable quantity of a hazardous substance (40 C.F.R. 302).

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Environmental Protection Agency and State Emergency Response Commissions, Local Emergency Planning Committees, and the local community.

**Process:** Facilities must first perform an internal evaluation to determine what types of chemicals are onsite and the amount stored or used onsite. Facilities may then have to provide appropriate notifications to the LEPC, SERC and fire departments pending the internal evaluation. Facilities may have to file Tier I/II reports. As a result of EO 12856, Federal agencies are required to develop a Pollution Prevention Plan and program.

**Product:** Pollution Prevention Plan and associated program. Tier I/II reports as appropriate.

**Timing/Schedule:** None specified

## CORPS GUIDANCE

AR 200-1, Environmental Protection and Enhancement

**Civil Works Planning:** None specific to this statute.

**Civil Works Engineering:** ER 200-2-3, Environmental Compliance Policies and EP 200-2-3, Environmental Compliance Guidance and Procedures.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** ER 200-2-3, Environmental Compliance Policies and EP 200-2-3, Environmental Compliance Guidance and Procedures.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** None identified

## IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** The Environmental Protection Agency, State Emergency Response Commissions, Local Emergency Planning Committees

**Guidance Title:** Guidance for Implementing E.O. 12856: Federal Compliance with Right-To-Know Laws and Pollution Prevention Requirements - March 28, 1995 (EPA 300-B-95-005, April 1995); E.O. 12856, Questions and Answers, March 1995 (EPA 745-R-95-011)

**Code of Federal Regulations:** 40 C.F.R. 355 Emergency planning and notification; 40 C.F.R. 370 Hazardous chemical reporting: Community right-to-know; 40 C.F.R. 372 Toxic chemical release reporting: Community right-to-know; EO 12856, Federal Compliance with Right-To-Know laws and Pollution Prevention Requirements; EO 12088, Federal Compliance with Pollution Standards

**MANAGEMENT OPPORTUNITIES:** Corps Civil Works facilities must be assessed to determine necessary reporting requirements. Also, coordination with the LEPC and SERC may be necessary. Pollution Prevention Plans and programs should be developed.

## EMERGENCY WETLANDS RESOURCES ACT

**LEGISLATIVE TITLE:** Emergency Wetlands Resources Act of 1986

**UNITED STATES CODE CITATION:** 16 U.S.C. §§ 3901-3932

**OTHER TITLES AND POPULAR NAMES:** None Identified.

**SUMMARY:** The purpose of this Act is to promote the conservation of wetlands in order to maintain the public benefits they provide, and to fulfill international obligations contained in various migratory bird treaties and conventions (16 U.S.C. 3901 (b)). The means for this identified in the Act include: cooperative management and conservation efforts among private interests, local, state and Federal governments; and acquisition in fee, easements or other interests and methods. Under the Act, the U.S. Fish and Wildlife Service has developed a National Wetlands Priority Conservation Plan (16 U.S.C. 3921) to identify the locations and types of wetlands that should be priorities for state and Federal acquisition through the Land and Water Conservation Fund. The Act requires that each state consider wetlands as an important outdoor resource in preparing State Comprehensive Outdoor Recreation Plans (SCORPs) required under the Land and Water Conservation Fund Act (16 C.F.R. 4601-8). The Act also requires continuation of the National Wetland Inventory project to complete preparation of wetland maps for all the contiguous states by 1998 (16 U.S.C. 3931). The Act also requires the Department of Interior to report to Congress on the status, condition, and trends of wetlands and the effects of Federal programs on wetlands in certain regions of the United States.

**RESOURCES COVERED:** Wetlands; migratory waterfowl; fish; spawning, nesting, migration, wintering and breeding habitat essential to the survival of migratory and resident fish and wildlife.

**COMPLIANCE REQUIREMENTS:** None identified for Corps.

### REVIEW AND CONSULTATION REQUIREMENTS:

**Who Reviews and Consults:** Department of Interior(U.S. Fish and Wildlife Service); Department of Commerce (National Marine Fisheries Service); Environmental Protection Agency; States

**Process:** None specified

**Product:** Regional Wetland Concept Plans are developed by regional FWS offices, using information from the wetland components of State Comprehensive Outdoor Recreation Plans (SCORPs), required by the Land and Water Conservation Fund Act.

**Timing/Schedule:** None specified

### CORPS GUIDANCE

**Civil Works Planning:** None specific to this statute.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** Land and Water Conservation Fund Act



**IMPLEMENTING GUIDANCE OF OTHER AGENCIES:**

**Agency:** US Fish & Wildlife Service

**Guidance Title:** National Wildlife Refuge System Administrative Provisions

**Code of Federal Regulations Citation:** 50 C.F.R. Part 25

**MANAGEMENT OPPORTUNITIES:** Regional offices of the USFWS develop Regional Wetland Concept Plans, with lists of priority wetland sites. While these lists may focus primarily on sites for acquisition, the plans themselves may be useful in identifying significant opportunities for ecosystem restoration. Maps and other information from the National Wetlands inventory may be useful in Civil Works planning and natural resources management initiatives.

## ENDANGERED SPECIES ACT

**LEGISLATIVE TITLE:** Endangered Species Act of 1973

**UNITED STATES CODE CITATION:** 16 U.S.C. 1531 et seq.

**OTHER TITLES AND POPULAR NAMES:** ESA; Conservation, Protection and Propagation of Endangered Species

**SUMMARY:** The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved and to provide a program for the conservation of such endangered species and threatened species (16 U.S.C. 1531). It establishes a policy that all Federal departments and agencies seek to conserve endangered species and threatened species and utilize their authorities in furtherance of the purposes of this Act (16 U.S.C. 1531 and 1536).

Section 7 (16 U.S.C. 1536) states that all Federal departments and agencies shall, in consultation with and with the assistance of the Secretary of the Interior/Commerce, insure that any actions authorized, funded, or carried out by them do not jeopardize the continued existence of any endangered species or threatened species, or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary (Interior/Commerce) to be critical, unless an exception has been granted by the Endangered Species Committee (16 U.S.C.1536(a)(2)).

Section 9 (16 U.S.C. 1538) identifies prohibited acts related to endangered species, and prohibits all persons, including all Federal, state and local governments, from taking listed species of fish and wildlife, except as specified under the provisions for exemptions (16 U.S.C. 1539). The term “take” is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(18)). Provisions for civil penalties, criminal violations, enforcement, and citizen suits are found at 16 U.S.C. 1540. Additional guidelines for protection of marine mammals are established in the Marine Mammal Protection Act of 1972, as amended. Consultation procedures are administered by the Fish and Wildlife Service (FWS), Department of the Interior, and the National Marine Fisheries Service (NMFS), Department of Commerce.

Section 10, Habitat Conservation Plan Policies. The Habitat Conservation Plan process developed pursuant to this section of the Act includes provisions that allow for the incidental take of endangered and threatened species by private interests and non-Federal government agencies. The purpose of this section is to reduce the disincentives (fear of regulatory restrictions) that often cause landowners to avoid or prevent land use practices that would otherwise benefit listed species. Related to this provision are the “Safe Harbor” agreements and assurances that authorize incidental take of listed species when there is a net conservation benefit to the covered species through some proactive measures specifically for the species.

This Act was amended in 2000 to require that certain species conservation reports shall continue to be submitted (16 U.S.C. 1544).

**RESOURCES COVERED:** Fish, wildlife and their habitat, and plants; Any mammal, fish, bird, (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part product, egg, or offspring thereof, or the dead body parts thereof (16 U.S.C. 1532 (8)). Also, any member of the plant kingdom, including seeds, roots and other parts thereof (16 U.S.C 1532(14)).

**COMPLIANCE REQUIREMENTS:** Federal agencies must request that the FWS or NMFS, as appropriate, furnish information as to whether any listed species or designated critical habitat are

in the proposed project area. If the FWS/NMFS provides listed or proposed species or designated critical habitat, the Corps shall prepare a biological assessment to determine if the proposed project may affect the species or their habitat. The biological assessment shall be completed within a time period mutually agreed to by the Corps, the USFWS, and/or the NMFS, and before any contract for construction is entered into and before construction is begun. Areas that should be avoided or critically considered, as well as opportunities for conserving these resources will be considered during formulation of alternative plans (ER 1105-2-100).

If, biological assessment indicates that an alternative plan(s) may affect a listed species or critical habitat, the Corps will request formal consultation with the FWS/NMFS. If the assessment determines that the alternative plan(s) is not likely to adversely affect the species or critical habitat, then the Corps may request informal consultation with the FWS/NMFS to receive their written concurrence with the determination of no adverse affect. If the FWS/NMFS do not concur with the no adverse determination, the FWS/NMFS may request that the Corps initiate formal consultation (ER 1105-2-100).

The finding, by the Corps, that a proposed construction or operational activity will negatively impact an endangered or threatened species, or its critical habitat, will initiate the preparation of a biological opinion by the USFWS and/or the NMFS. This biological opinion will include a detailed discussion of the effects of the proposed action on the species or its critical habitat, and a summary of the information upon which the opinion is based. The biological opinion will also include a determination on whether the proposed action is likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. If a jeopardy decision is reached, the resource agencies will suggest reasonable and prudent alternatives for the proposed action, if any are possible. The Corps is required to carefully consider the reasonable and prudent measures to protect and conserve the species and critical habitat. The biological opinion may also include a conservation plan, which the Corps is not required to implement, but should consider to see if the plan or portions of the plan may be implementable.

An incidental take provision is included in all biological opinions, where an anticipated take may occur, whether there is a "no jeopardy" or "likely jeopardy" opinion. This provision permits the district commander to "take" a specified number of the protected species, or impact a specified acreage of habitat in the project area, without being subject to the penalties established in 16 U.S.C. 1540. The incidental take statement will also specify "reasonable and prudent" measures necessary to minimize impacts; set for terms and conditions; and specify procedures to be used to handle or dispose of any individuals of a species taken (ER 1105-2-100, 7-33, b(5)).

Consultation shall be concluded within a 90 day period (or other period mutually acceptable to the agency and FWS/NMFS). During consultation, the Corps cannot make any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

## **REVIEW AND CONSULTATION REQUIREMENTS**

**Who Reviews and Consults:** U.S. Fish and Wildlife Service and/or National Marine Fisheries Service

**Process:** Section 7 Consultation (50 C.F.R. 402).

**Product:** Species List, Biological Assessment, Biological Opinion.

**Timing/Schedule:** FWS/NMFS will provide list of species, within 30 days of request; Biological Assessment completed by Corps within 180 days from receiving Species List, or within a time

period mutually agreed to by the Corps and resource agencies, and before any contract for construction is entered into and before construction is begun; Biological Opinion completed by the FWS/NMFS within 90 days, and 45 days to deliver, a total of 135 days.

## **CORPS GUIDANCE**

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 2.

**Regulatory:** 33 C.F.R. 320, 323, 325, 330 (Updated November 22, 1991)

**FOR MORE INFORMATION SEE:** Marine Mammal Protection Act of 1972

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** U.S. Fish and Wildlife Service and/or National Oceanic and Atmospheric Administration (National Marine Fisheries Service)

**Guidance Title:** Interagency Cooperation-Endangered Species Act of 1973, as amended; Final Rule

**Code of Federal Regulations Citation:** 50 C.F.R. Part 402, Joint Regulations on Endangered Species establishes the procedural regulations governing interagency cooperation under Section 7 of the Endangered Species Act; 50 C.F.R. 450: Exemption Procedures. There are additional C.F.R. titles that provide related guidance for programs of other agencies.

**MANAGEMENT OPPORTUNITIES:** On 28 September 1994, a Memorandum of Understanding was signed by the Acting Assistant Secretary of the Army, along with six other Federal departments, to establish a general framework for cooperation and participation among the departments in the exercise of their responsibilities under the Act. The departments will work together to achieve the common goals of (1) conserving species listed as threatened or endangered under the Act; (2) using existing Federal authorities and programs to further the purposes of the Act; and , (3) improving the efficiency and effectiveness of interagency consultations conducted pursuant to Section 7(a)(2) of the Act.

There may be opportunities for the Corps to restore or protect habitat for threatened and endangered species, or to contribute to endangered species recovery plans, as part of ecosystem restoration, natural resources management, dredged material management and water control management projects and initiatives. Also, with respect to the Habitat Conservation Plans, the Corps can provide technical, particularly hydraulic, expertise and assistance, facilitate local sponsor coordination with the USFWS and the NMFS, and recognize endangered species' needs in operation and maintenance manuals for projects.

## ENVIRONMENTAL QUALITY IMPROVEMENT ACT OF 1970

**LEGISLATIVE TITLE:** Environmental Quality Improvement Act of 1970

**UNITED STATES CODE CITATION:** 42 U.S.C. § 4371 to 4375

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This Act was implemented as Title II of P.L. 224 (Federal Water Pollution Control Act Amendments of 1970) to assure that each Federal department and agency conducting or supporting public works activities which affect the environment shall implement policies established under existing law, and to authorize an Office of Environmental Quality in the Executive Office of the President to provide professional and administrative staff for the Council on Environmental Quality (established by NEPA (42 U.S.C. 4343). The Chairman of the CEQ is appointed Director of the Office of Environmental Quality. This office is directed to (1) assist Federal agencies and departments in appraising the effectiveness of their existing and proposed facilities, programs, policies, and activities which affect environmental quality, (2) reviewing the adequacy of existing systems to monitor and predict environmental change, (3) promote the advancement of scientific knowledge of effects of actions and technology on the environment, and (4) assist in coordination among Federal departments and agencies in those programs and activities which affect, protect, and improve environmental quality (42 U.S.C. 4341-4347).

**RESOURCES COVERED:** Overall environmental policy for protection and enhancement of environmental quality.

**COMPLIANCE REQUIREMENTS:** None specified that are applicable to the Corps.

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** None specified

**Process:** None specified

**Product:** None specified

**Timing/Schedule:** None specified

### CORPS GUIDANCE

**Civil Works Planning:** None specific to this statute.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** National Environmental Policy Act

### IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** Council on Environmental Quality

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** N/A

**MANAGEMENT OPPORTUNITIES:** None identified.

## ESTUARIES AND CLEAN WATERS ACT

**LEGISLATIVE TITLE:** Estuaries and Clean Waters Act of 2000

**UNITED STATES CODE CITATION:** various – see below

**OTHER TITLES AND POPULAR NAMES:** None

**SUMMARY:** This Act includes a number of provisions, with Title I – Estuary Restoration being most relevant to the Civil Works program. Title I is sited as the “Estuary Restoration Act” (33 U.S.C 2901) and is discussed in a separate summary profile in this desk reference. Other titles within the Act include:

- a) Title II – Chesapeake Bay Restoration (33 U.S.C. 1251), which authorizes a cooperative program between the Environmental Protection Agency (EPA) and the State of Maryland, Commonwealths of Virginia and Pennsylvania, and the District of Columbia to achieve improved water quality and improved productivity of living resources in the Chesapeake Bay.
- b) Title III – National Estuary Program (33 U.S.C. 1330) with provisions that amend the Federal Water Pollution Control Act related to specified locations, grants and appropriations.
- c) Title IV - Long Island Sound Restoration (33 U.S.C. 1251) amends provisions of the Federal Water Pollution Control Act (Section 119) related to innovative technologies, assistance for distressed communities and appropriations.
- d) Title V – Lake Pontchartrain Basin Restoration (33 U.S.C. 1251) amends provisions of the Federal Water Pollution Control Act to establish a Lake Pontchartrain Basin Restoration Program within EPA.
- e) Title VI – Alternative Water Sources (33 U.S.C. 1251) amends Title II of the Federal Water Pollution Control Act by establishing a pilot program to make grants to states, interstate, and intrastate water resources development agencies, local government agencies, private utilities, and nonprofit entities for alternative water source projects to meet critical water supply needs.
- f) Title VII- Clean Lakes amends the Federal Water Pollution Control Act provisions related to grants to states and demonstration program (33 U.S.C 1324(c) and (d)).
- g) Title VIII – Tijuana River Valley Estuary and Beach Cleanup (22 U.S.C 277d-43) authorizes actions to comprehensively address the treatment of sewage emanating from the Tijuana River area, Mexico, that flows untreated or partially treated in the United States causing significant adverse public health and environmental impacts.

**RESOURCES COVERED:** Estuaries, estuary habitat (the physical, biological, and chemical elements associated with an estuary), water quality.

**COMPLIANCE REQUIREMENTS:** See Estuary Restoration Act.

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** See Estuary Restoration Act.

**Process:** See Estuary Restoration Act.

**Product:** See Estuary Restoration Act.

**Timing/Schedule:** See Estuary Restoration Act.

## **CORPS GUIDANCE**

**Civil Works Planning:** None specified.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** None specified.

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** None specific to the Corps.

**Guidance Title:** None specific to the Corps.

**Code of Federal Regulations Citation:** None specific to the Corps.

**MANAGEMENT OPPORTUNITIES:** There may be opportunities for the Corps to coordinate its studies, projects and programs to complement the implementation of Titles II- VIII initiatives through regional collaborative efforts with Federal, state and other entities who are authorized and funded to carry out projects, studies and other initiatives under these provisions.

# ESTUARY PROTECTION ACT

**LEGISLATIVE TITLE:** Estuaries-Inventory-Study

**UNITED STATES CODE CITATION:** 16 U.S.C. § 1221 et seq

**OTHER TITLES AND POPULAR NAMES:** Estuarine Protection Act; Estuary Protection Act

**SUMMARY:** This Act authorizes the Secretary of Interior, in cooperation with the States, Secretary of the Army and other Federal agencies, to conduct an inventory and study of the Nation's estuaries, to facilitate estuary protection, conservation and restoration in a manner that maintains the balance between conserving the natural resources and natural beauty of the Nation and the need to develop these estuaries for further growth and development of the Nation. Considerations of this study are to include: (1) wildlife and recreational potential of estuaries, their ecology, their value to the marine, anadromous and shell fisheries, and their esthetic value; (2) their importance to navigation, value for flood, hurricane, and erosion control, mineral value, and value of submerged lands; and, (3) the value of such areas for more intensive development for economic use as part of urban, commercial and industrial development (16 U.S.C. 1222). The Act requires Federal agencies, in planning for the use or development of water and related land resources, to give consideration to estuaries and their natural resources. All plans and projects submitted to Congress shall include a discussion by the Secretary of Interior of such estuaries and resources, and the potential impact of the proposed project on them, as well as his recommendations thereon (16 U.S.C. 1224).

**RESOURCES COVERED:** Estuaries; coastal marshlands, bays, sounds, seaward areas, lagoons, and the land and waters of the Great Lakes (16 U.S.C. Section 1222(a)).

**COMPLIANCE REQUIREMENTS:** As part of planning for the use and development of water and water related land resources, the Corps must give consideration to estuaries and their natural resources. Reports to Congress on projects in and around estuaries shall include a discussion of such estuaries and resources, and the potential impact of the proposed project on them.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Secretary of the Interior, Secretary of the Army, other Federal agencies, States

**Process:** Circulation of project reports for review by the appropriate Department of the Interior agencies

**Product:** Study and inventory reports of the Nation's estuarine areas.

**Timing/Schedule:** Secretary of the Interior has 90 days to make recommendations on Corps reports.

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute



**Regulatory:** 33 C.F.R. 220-230; 33 C.F.R. 320

**FOR MORE INFORMATION SEE:** None identified

**IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** None identified.

**Guidance Title:** None identified.

**Code of Federal Regulations Citation:** None identified.

**MANAGEMENT OPPORTUNITIES:** The Corps can coordinate studies and other initiatives in and around estuaries with Department of Interior agencies and State agencies implementing programs to further the purposes of this Act. The Corps may also be able to contribute data and other information to their studies. There may be opportunities to implement Ecosystem Restoration projects that are responsive to estuary restoration and protection needs.

## ESTUARY RESTORATION ACT

**LEGISLATIVE TITLE:** Estuary Restoration Act of 2000

**UNITED STATES CODE CITATION:** 33 U.S.C. § 2901, et seq.

**OTHER TITLES AND POPULAR NAMES:** Title I of the Estuaries and Clean Water Act of 2000

**SUMMARY:** The purposes of the act are: 1) to promote the restoration of estuary habitat; 2) to develop a national estuary habitat restoration strategy for creating and maintaining effective estuary habitat restoration partnerships among public agencies at all levels of government and to establish new partnerships between the public and private sectors; 3) to provide Federal assistance for estuary habitat restoration projects and to promote efficient financing of such projects; and 4) to develop and enhance monitoring and research capabilities through the use of the environmental technology innovation program associated with the National Estuarine Research Reserve System established by section 315 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1461) to ensure that estuary habitat restoration efforts are based on sound scientific understanding and innovative technologies. (Section 103, (22 U.S.C. 2901)).

The Act establishes an estuary habitat restoration program under which the Secretary of the Army may carry out estuary habitat restoration projects and provide technical assistance. Proposed projects must originate from a non-Federal interest, be submitted to the Estuary Habitat Restoration Council, and be selected by the Secretary of the Army from a list provided by the Council.

Required project elements include: 1) addressing needs identified in an estuary habitat restoration plan; 2) consistency with the estuary habitat restoration strategy (as per Section 106 (33 U.S.C. 2904)); 3) a monitoring plan consistent with the data standards discussed in Section 107 (33 U.S.C. 2906); 4) satisfactory assurance that the non-Federal interest proposing the project will be able to carry out the items of local cooperation and properly maintain the project.

Factors for project selection include: 1) whether the project is part of an approved Federal estuary management or habitat restoration plan; 2) technical feasibility; 3) scientific merit; 4) whether increased coordination and cooperation among Federal, state, and agencies will be encouraged; 5) whether public-private partnerships are fostered, including private funds or in-kind contributions; 6) cost effectiveness; 7) whether the state in which the project will be located has a dedicated source of funding to acquire open space for the benefit of estuary habitat restoration or protection; 8) other factors that the Secretary determines to be reasonable and necessary for consideration (33 U.S.C. 2903).

Federal cost sharing is specified for construction (not to exceed 65%; except for interim actions as described in Section 104(e)(2)), innovative technology for project pilot testing (85%). The non-Federal share shall include lands, easements, rights-of-way, and relocations and may include services, or other in-kind contributions determined by the Secretary to be appropriate (33 U.S.C. 2903(d)).

Section 106 of the act (33 U.S.C. 2905) directs development of an Estuary Habitat Restoration Strategy, and specifies the goal of restoring 1,000,000 acres of estuary habitat by the year 2010. The act authorizes the Under Secretary for Oceans and Atmosphere of the Department of Commerce to develop and maintain a database on restoration projects carried out under this title, including information on project techniques, completion, monitoring data, and other relevant information (Section 107 (33 U.S.C. 2906)).

The act authorizes appropriations for the Secretary of the Army to carry out and provide technical assistance for restoration projects, for the Under Secretary for Oceans and Atmosphere of the Department of Commerce to acquire, maintain and manage monitoring data on restoration projects, for administration and operation of the Council in Section 109 (33 U.S.C. 2908).

The act authorizes the Secretary to undertake and update information on sites appropriate for beneficial uses of dredged material for the protection, restoration and creation of aquatic and ecologically related habitats, including wetlands to further purposes of this study (Section 110 (33 U.S.C. 2909)).

**RESOURCES COVERED:** Estuaries, which are defined as a part of a river or stream or other body of water that has an unimpaired connection with the open sea and where the sea water is measurably diluted with fresh water derived from land drainage (Section 103(2)). The term also includes near coastal waters and wetlands of the Great Lakes that are similar in form and function to estuaries. Estuary habitat means the physical, biological, and chemical elements associated with an estuary, including the complex of physical and hydrologic features and living organisms within the estuary and associated ecosystems (Section 103(3)) (33 U.S.C. 2902).

**COMPLIANCE REQUIREMENTS:** The Secretary of the Army (or the Secretary's designee) shall serve on the Estuary Habitat Restoration Council established by this act. The Council is to develop an estuary habitat restoration strategy designed to ensure a comprehensive approach to maximize benefits derived from estuary habitat restoration projects and foster coordination of Federal and non-Federal activities related to restoration of estuary habitat. In developing the strategy, the Council is to review Federal programs established under laws that authorize funding for estuary habitat restoration activities. Elements of the strategy are described in Section 106(d) (33 U.S.C. 2905). Reports to Congress on the results of activities carried out under this title are specified in Section 108 (33 U.S.C. 2907).

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** The Estuary Habitat Restoration Council is composed of: Secretary of Army; Under Secretary for Oceans and Atmosphere of the Department of Commerce; the Administrator of EPA; the Secretary of the Interior, acting through the Director of the U.S. Fish and Wildlife Service; the Secretary of Agriculture; or their designees, and the head of any other Federal agency designated by the President as an ex officio member. Consultation with recognized scientific experts, state, regional and local agencies, and non-governmental agencies and organizations, representatives of Indian tribes and specific interests is discussed in Section 105(i) (33 U.S.C. 2904).

**Process:** The Council is to solicit, review, and evaluate project proposals, and develop a national strategy for restoration of estuary habitat. Meetings shall be open to the public.

**Product:** A national strategy for restoration of estuary habitat, a list of recommended projects, including a recommended priority order, and recommendations as to whether a project should be carried out by the Secretary of the Army or by another Federal department or agency. Ultimately 1,000,000 acres of restored estuary habitat by the year 2010. A database of restoration project information.

**Timing/Schedule:** Submittal of the strategy to Congress by one year after the date of enactment of the act (November 7, 2000). No timing or schedule specified for individual projects.

## CORPS GUIDANCE

**Civil Works Planning:** None specified.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** None specified.

#### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Guidance prepared by the Council and the strategy will be published in the Federal Register.

**Guidance Title:**

**Code of Federal Regulations Citation:**

**MANAGEMENT OPPORTUNITIES:** Per provisions of the Act, the Corps participates on the Estuary Habitat Restoration Council, and once the Estuary Habitat Restoration Program is funded, will be able to implement projects specifically under this authority. Appropriations for this program will provide opportunities to implement cost-shared estuary habitat restoration projects and activities. The Act provides authority for the Corps to carry out estuary habitat restoration projects and to provide technical assistance, and emphasizes partnerships within the federal government and with state and local governments, along with the private sector to promote efficient financing of estuary habitat restoration projects. Without funding specific to this program, existing Civil Works authorities could potentially be used, to the extent possible, to implement the strategy. The legislation serves to re-emphasize estuaries as significant ecosystems for consideration across Civil Works programs.

The Act authorizes the Secretary to undertake and update information on sites appropriate for beneficial uses of dredged material for the protection, restoration and creation of aquatic and ecologically related habitats, including wetlands to further purposes of this study (Section 110 (33 U.S.C. 2909)). It may be instances to contribute to these efforts through dredged material management planning.

## FARMLAND PROTECTION POLICY ACT

**LEGISLATIVE TITLE:** Subtitle I of Title XV of the Agriculture and Food Act of 1981

**UNITED STATES CODE CITATION:** 7 U.S.C. §§ 4201 et seq

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This Act amends the Agriculture and Food Act of 1981. The purpose of this Act is to minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that Federal programs are administered in a manner that will be compatible with State, local government and private programs and policies protecting farmland. The Act instructs the Department of Agriculture, in cooperation with other departments, agencies, independent commissions and other units of the Federal government, to develop criteria for identifying the effects of Federal programs on the conversion of farmland to nonagricultural uses. It does not provide a basis for any action, either legal or equitable, by any person

**RESOURCES COVERED:** Prime and unique farmlands

**COMPLIANCE REQUIREMENTS:** This Act (Subtitle I of Title XV of the Agriculture and Food Act of 1981) is implemented under Department of Agriculture final rule effective 6 August 1984 (7 C.F.R. 658). The final rule requires that Corps districts contact the Natural Resource Conservation Service (NRCS) for identification of prime or unique farmland which might be impacted by proposed Corps actions. Prior to taking any action that would result in conversion of designated prime or unique farmland to nonagricultural uses, the Corps must examine the potential impacts of the proposed action and if there are adverse effects on farmland preservation, consider alternatives to lessen the adverse effects. It is the Corps discretion to proceed with a project once the required examination is completed. The analysis is an integral part of the environmental assessment process under NEPA and the analysis and results will be included as part of the final NEPA document.

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Department of Agriculture (Natural Resources Conservation Service (formerly the Soil Conservation Service))

**Process:** Early in a feasibility study, the Corps fills out parts I and III of the Farmland Conversion Impact Rating Form (Form AD 1006) and, via the form and transmittal letter, provides basic project and site information to the NRCS. The NRCS assesses the information provided, measures the relative value of the site as farmland, and provides other pertinent information. NRCS returns form AD 1006 with parts II, IV, and V completed. The Corps uses the evaluation criteria provided by NRCS and site assessment criteria (part VI of the form) and derives a combined score (part VII of form). The combined score helps determine the level of consideration that an area should receive in plan formulation.

**Product:** Form AD 1006 should be included as an attachment to the NEPA document.

**Timing/Schedule:** NRCS must return Form 1006 (with parts II, IV, and V complete) within 45 calendar days from receipt of the Corps request.

## **CORPS GUIDANCE**

**Civil Works Planning:** None specific to this statute.

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** Council on Environmental Quality Memorandum of August 11, 1980: Analysis of Impacts on Prime or Unique Agricultural Lands in Implementing the National Environmental Policy Act.

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Department of Agriculture; Environmental Protection Agency

**Guidance Title:** See below

**Code of Federal Regulations Citation:** 7 C.F.R. 658 August 6, 1984, USDA Final Rule, Farmland Protection Policy, Proposed revisions published on January 8, 1987.

**MANAGEMENT OPPORTUNITIES:** The Corps is responsible for planning activities to avoid prime and unique farmland whenever possible.

## **FEDERAL FACILITIES COMPLIANCE ACT**

**LEGISLATIVE TITLE:** Federal Facility Compliance Act of 1992

**UNITED STATES CODE CITATION:** This Act, P.L. 102-386 (106 STAT 1505) amends the Resource Conservation and Recovery Act (RCRA); readers are referred to RCRA for a summary of the Federal Facilities Compliance Act as it amends RCRA.

**OTHER TITLES AND POPULAR NAMES:** FFCA

**SUMMARY:** This Act provides for a waiver of sovereign immunity with respect to Federal, state, and local procedural and substantive requirements relating to the Resource Conservation and Recovery Act (RCRA) solid and hazardous waste laws and regulations at Federal facilities. Federal agencies are responsible for compliance and government agents or employees are subject to criminal sanctions under any Federal or authorized state solid or hazardous waste law. In addition, EPA is authorized to issue Administrative Orders to Federal agencies and may, as are authorized states, levy fines in the event of non-compliance (42 U.S.C. 6961). It also directs the Environmental Protection Agency to make annual inspections of facilities owned or operated by the United States which treat, store, or dispose of hazardous waste to insure compliance with applicable regulations. Authorized states may also conduct inspections to insure compliance with authorized State hazardous waste programs (42 U.S.C. 6927(c)). Additionally, it defines hazardous waste in relation to public vessels, expands the definition of mixed waste, and discusses waste discharges to Federally owned treatment works.

See: Resource Conservation and Recovery Act

# FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

**LEGISLATIVE TITLE:** Federal Insecticide, Fungicide, and Rodenticide Act

**UNITED STATES CODE CITATION:** 7 U.S.C. § 136 et seq.

**OTHER TITLES AND POPULAR NAMES:** FIFRA; Federal Environmental Pesticide Control Act, FEPCA

**SUMMARY:** This Act requires that all pesticides used in the United States be submitted for registration by the Environmental Protection Agency (EPA)(7 U.S.C. 136(a)). To be approved for registration, pesticides must meet criteria set forth by the EPA regarding the quantity, quality and impact upon the environment by the active ingredient(s). Approved pesticides must also be labeled as such. The EPA is required to publish a list of all registered pesticides by the classification and certification by specific use. FIFRA requires registration of chemicals used to control pests. It also requires EPA to establish regulations for the storage and disposal of pesticide containers, excess pesticides and pesticides for which registration has been canceled. Under FIFRA, no manufacturer or importer may make or sell a product for use to control pests unless the compound is registered with EPA. The Act also outlines penalties, indemnities, and administrative procedures (7 U.S.C. 136(l-n)). In addition, the Administrator may, at his discretion, exempt any Federal or state agency from any provision of this Act, if he determines emergency conditions, requiring such exemption, exist (7 U.S.C. 136(p)).

**RESOURCES COVERED:** Pesticides, fungicides, rodenticide, and insecticides.

**COMPLIANCE REQUIREMENTS:** Mostly applicable to operations activities; Corps or contractor personnel applying pesticides must use registered pesticides, use properly licensed applicators, provide proper training, and store materials in approved containers and buildings.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** The EPA requires registration of all pesticides, issues guidelines for use by states, and maintains regulations for several restricted use pesticides. States generally regulate pesticide applicator licensing and certification, pesticide application regulations and record keeping, restricted use pesticides, pesticide storage, container disposal, aquatic applications, and numerous other rules.

**Process:** Decision to register pesticide can result in (1) granting registration in form requested by manufacturer; (2) deny of registration outright; or (3) grant of registration with specific use limitations.

**Product:** Pesticide registration and approval for use.

**Timing/Schedule:** None specified

## CORPS GUIDANCE:

ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 3; applies to all Corps' activities performed on fee-owned lands, regardless of Division or office.

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.



**Civil Works Engineering:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 3.

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 3.

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** None identified

#### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Environmental Protection Agency

**Guidance Title:** None identified.

**Code of Federal Regulations Citation:** 40 C.F.R. 152-180, except section 157

**MANAGEMENT OPPORTUNITIES:** Executive Orders and Corps policy guidance offers the opportunity to utilize more biological controls, encourage alternatives to chemicals, and require more stringent controls over chemical use and choices.

## FEDERAL LAND POLICY AND MANAGEMENT ACT

**LEGISLATIVE TITLE:** Federal Land Policy and Management Act of 1976

**UNITED STATES CODE CITATION:** 43 U.S.C. § 1701 et seq

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This Act establishes the public land policy and guidelines for the administration of public lands administered by the Department of Interior, through Bureau of Land Management (BLM), and gives the BLM their mission statement. Direction is given to other agencies that undertake activities that would result in the “withdrawal” of such public lands. As paraphrased from the Act, “withdrawal” means withholding an area of Federal land from settlement, sale or entry , for the purpose of limiting activities or reserving the area for a particular purpose or program (43 U.S.C. 1702). The Secretary of Defense and the Secretaries of military departments within the Department of Defense (43 U.S.C. 1732), are directed to manage the lands under their jurisdictions, that are adjacent to lands referenced in this Act, in a manner consistent with the Act, wherever practicable. The Department of Defense activities noted in the Act, and its amendments, address military functions and activities. Restrictions on military activities on public lands in Alaska, including environmental requirements for avoiding impacts are addressed in 43 U.S.C. 1732. This law may be applicable to the Civil Works program if the issue of withdrawn public lands arises in connection with a civil works program or activity.

**RESOURCES COVERED:** Public lands.

**COMPLIANCE REQUIREMENTS:** To be determined on a case-by-case basis.

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Department of Interior, Bureau of Land Management; Department of Agriculture

**Process:** None specified.

**Product:** None specified.

**Timing/Schedule:** None specified.

### CORPS GUIDANCE

**Civil Works Planning:** None specific to this statute

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** None identified

### IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** None identified

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** None identified specific to Civil Works Program.

**MANAGEMENT OPPORTUNITIES** None identified.

# FEDERAL WATER PROJECT RECREATION ACT

**LEGISLATIVE TITLE:** Federal Water Project Recreation Act

**UNITED STATES CODE CITATION:** 16 U.S.C. §§ 4601-12 -4601-22, 662

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** The Act establishes the policy that consideration be given to the opportunities for outdoor recreation and fish and wildlife enhancement in the investigating and planning of any Federal navigation, flood control, reclamation, hydroelectric or multi-purpose water resource project, whenever any such project can reasonably serve either or both purposes consistently (16 U.S.C. 4601-12). Recreational use of projects will be coordinated with other existing and planned Federal, State, or local recreational developments. The Act does not apply to local flood control, beach erosion control, small boat harbors, or hurricane protection projects (16 U.S.C. 4601-17(e)). Non-Federal bodies will be encouraged to operate and maintain project recreational and fish and wildlife enhancement facilities. If non-Federal bodies agree in writing to administer the facilities at their expense and to pay one-half the separable first cost, the recreation and fish and wildlife benefits shall be included in project benefits and project costs allocated to recreation and fish and wildlife. Fees may be charged by the non-Federal interests to repay their costs. If non-Federal bodies do not so agree, no facilities for recreation and fish and wildlife may be provided except those justified to serve other purposes or as needed for public health and safety. However, project land may be acquired to preserve the recreational potential. If within 10 years after initial project operation there is no local agreement the land may be used for other purposes or sold (16 U.S.C. 4601-13).

Benefits for recreation should be included in the economics of a contemplated project, provided that non-Federal public entities agree (letter of intent) to participate in the recreation development. Recent Corps policy resulting from the Water Resources Development Act of 1986 is that a non-Federal public body must cost share recreation (50% of separable costs), and bear all costs of operation, maintenance, repair, and rehabilitation (OMRR). The Corps is authorized to construct minimum health, safety, and access facilities without cost sharing. The Act also contains a provision that non-Federal public bodies may elect to lease recreation facilities and lands as long as they agree to bear OMRR responsibilities and costs.

The Secretary of Interior is authorized to enter into agreements with Federal agencies to promote development and operation of lands or facilities for recreation and fish and wildlife enhancement purposes (16 U.S.C. 4601-18(b)).

**RESOURCES COVERED:** Water resources development projects; outdoor recreation; fish and wildlife enhancement.

**COMPLIANCE REQUIREMENTS:** Documentation in Corps reports and NEPA documents that recreation opportunities were considered during the planning and design processes.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Non-Federal project sponsors and community.

**Process and Product:** Recreation lands and facilities incorporated into flood control, navigation, reservoir, and storm damage and hurricane protection projects

**Timing/Schedule:** Recreation planning is accomplished at the same level of detail as other aspects of civil works projects during reconnaissance, feasibility, and detailed design phases.

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Chapter 3, Section 7, and Appendix E; ER 1165-2-400, Recreational Planning, Development, and Management Policies, Chapter 1; Policy Guidance Letter No. 30, Recreation Cost Sharing Credit for Increased Real Estate Interest for Recreation Development at Non-Reservoir Projects; Policy Guidance Letter No. 36, Recreation Development at Structural Flood Control Projects (Non-Reservoir), Policy Guidance Letter No. 59, Recreation Development at Ecosystem Restoration Projects.

**Civil Works Engineering:** EM 1110-2-410, Design of Recreation Facilities - Access and Circulation

**Civil Works Construction:** ER 1130-2-550, Recreation Operations and Maintenance Policies; ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies.

**Civil Works Operations:** 1130-2-550, Recreation Operations and Maintenance Policies, and EP 1130-2-550, Recreation Operations and Maintenance Guidance and Procedures; ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** Fish and Wildlife Coordination Act (16 U.S.C. 662); Reclamation Projects Authorization and Adjustments Act of 1992 (16 U.S.C. 4601-13(a)).

## IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** None identified

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** None identified.

**MANAGEMENT OPPORTUNITIES:** The Act encourages state, regional and local agencies to more fully participate in the planning and operation of outdoor recreation and fish and wildlife facilities and enhancement at Corps constructed projects. Through state and local participation in the funding and management of outdoor recreation and fish and wildlife related features, design and operation can be more in accordance with local and regional needs and desires. Further the Act allows Corps construction of minimal health, safety and access facilities in the absence of local cost sharing agreements. These minimal facilities will assist the Corps in protecting the health and safety of the public visiting Corps managed lands, where state and local agencies have declined to participate in recreation and fish and wildlife planning and operation for the completed project.

# FISH AND WILDLIFE CONSERVATION ACT

**LEGISLATIVE TITLE:** Fish and Wildlife Conservation Act of 1980

**U.S. CODE CITATION:** 16 U.S.C. §§ 2901-2911

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This Act declares that fish and wildlife are of ecological, educational, esthetic, cultural, recreational, economic and scientific value to the Nation. The Act acknowledges that historically, fish and wildlife conservation programs have focused on more recreationally and commercially important species within any particular ecosystem, without provisions for the conservation and management of non-game fish and wildlife. The purposes of this Act are to encourage all Federal departments and agencies to utilize their statutory and administrative authority, to the maximum extent practicable and consistent with each agency's statutory responsibilities, to conserve and to promote conservation of non-game fish and wildlife and their habitats, in furtherance of the provisions of this chapter, and to provide financial and technical assistance to States to conduct inventories and conservation plans for conservation of non-game wildlife (16 U.S.C. 2901(b)). The Act defines "fish and wildlife" as wild "vertebrate animals in an unconfined state, including, but not limited to, "nongame fish and wildlife," and "nongame fish and wildlife" as wild vertebrate animals in an unconfined state, that are not ordinarily taken for sport, fur or food, not listed as endangered or threatened species, and not marine mammals within the meaning of 16 U.S.C. 1362(5). (16 U.S.C. 2902 (6) (A), (B), (C)).

**RESOURCES COVERED:** Nongame fish and wildlife, excluding listed endangered species or threatened species, and marine mammals as defined in 16 U.S.C. 1362(5).

**COMPLIANCE REQUIREMENTS:** None specified.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews and Consults:** Department of the Interior, Department of Commerce, States

**Process and Product:** State conservation plans.

**Timing/Schedule:** Upon receiving State's application, the Secretary of the Department of the Interior has 180 days to approve or disapprove the State's application

## CORPS GUIDANCE

**Civil Works Planning:** None specific to this statute

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute

**Regulatory:** 33 C.F.R. 320, Navigation and Navigable Waters, Corps of Engineers, General Regulatory Policies.

**FOR MORE INFORMATION SEE:** None identified

## IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** None identified

**Guidance Title:** None identified

**Code of Federal Regulations Citation: 50 C.F.R. 83**

**MANAGEMENT OPPORTUNITIES:** The Secretary of the Army may loan to any state such personnel and equipment, share information, and provide financial and such other assistance as the Secretary determines appropriate for the purposes of assisting any State to develop or revise conservation plans (16 U.S.C. 2908).

## FISH AND WILDLIFE COORDINATION ACT

**LEGISLATIVE TITLE:** Fish and Wildlife Conservation and Water Resource Developments-Coordination

**UNITED STATES CODE CITATION:** 16 U.S.C. § 661 et seq.

**OTHER TITLES AND POPULAR NAMES:** Fish and Wildlife Coordination Act; Coordination Act; FWCA

**SUMMARY:** A primary purpose of the act is to provide for more effective integration of fish and wildlife conservation within Federal water resources development. It states that “wildlife conservation shall receive equal consideration and be coordinated with other features of water-resource development programs through the effectual and harmonious planning, development, maintenance, and coordination of wildlife conservation and rehabilitation” (16 U.S.C. 661). The act authorizes the Secretary of Interior to provide assistance to, and cooperate with Federal, state and public or private agencies and organizations in developing, protecting, rearing and stocking wildlife resources and their habitat through various conservation measures and approaches. Federal agencies are directed to consult with the US Fish and Wildlife Service (USFWS) and relevant state wildlife resource agencies “whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage”. The intent of this consultation is to help integrate “the conservation of wildlife resources by preventing loss of and damage to such resources” as well as provide for “the development and improvement thereof in connection with such water-resource development”.

The act authorizes the USFWS to conduct surveys and investigations to determine the possible damage of proposed development on wildlife resources, and to make recommendations to construction agencies regarding means and measures to prevent the loss or damage to wildlife resources, as well as to provide concurrently for the development and improvement of such resources. Construction agencies are authorized to transfer funds to the USFWS to carry out these in investigations out of appropriations or other funds made available for investigations, engineering, or construction (16 U.S.C. 661e).

The provisions of 16 U.S.C. 661- 666c are not applicable to those projects where the maximum surface area of impoundment is less than ten acres, nor to activities for or in connection with programs primarily for land management and use carried out by Federal agencies with respect to Federal lands under their jurisdiction.

Any reports and recommendations of the wildlife agencies shall be included in authorization documents for construction or for modification of projects (16 U.S.C. 662(b)). The Corps shall give full consideration to the reports and recommendations of the wildlife agencies, and include such justifiable means and measures for wildlife mitigation or enhancement as the Corps finds should be adopted to obtain maximum overall project benefits.

The costs of planning, construction or installation, and maintenance of adopted conservation means and measures shall be integral to the cost of the water resources project, provided that costs attributable to the development of wildlife shall not extend beyond those necessary for land acquisition, facilities as recommended in project reports, modification of the project, modification of project operations, but shall not include the operation of wildlife facilities (16 U.S.C. 662(d)).

16 U.S.C. 662(e) authorizes the Corps, to transfer investigation, engineering, or construction funds to USFWS to conduct all or part of the investigations to carry out 16 U.S.C. 622. The Corps has entered into

a Memorandum of Agreement (MOA) with the USFWS for funding their activities pursuant to this law. Funding is provided for general investigation, special studies, continuing authority projects, advanced engineering and design studies, and construction and significant post-authorization change reports. Reports to Congress are to include an estimation of the wildlife benefits or losses for projects including benefits for measures recommended specifically for enhancement, the part of the cost of joint-use facilities allocated to wildlife, and the part of the costs to be reimbursed by non-Federal interests (16 U.S.C. 662(f)). Congressional authorization is required before the Corps can acquire lands, waters and interests for wildlife conservation (16 U.S.C. 663(c)).

16 U.S.C. 665(a) describes provisions for maintaining adequate water levels and management of existing facilities (locks, dams and pools) in the Mississippi River between Rock Island, Illinois and Minneapolis, Minnesota. The Corps is directed to give full consideration of fish and wildlife resources and their habitat dependent on such waters, without increasing additional liability to the Government, and without causing damage to levee and drainage districts, adjacent railroads, highways, farm lands, and dam structures, operation for navigation. Impoundments with a maximum surface area less than ten acres are exempt from the provisions of 16 U.S.C. 661-666(c).

**RESOURCES COVERED:** The terms “wildlife” and “wildlife resources”, as used in this act, “include birds, fishes, mammals and all other classes of wild animals and all types of aquatic and land vegetation upon which wildlife is dependent” (16 U.S.C. 666(b)). Included are fish and wildlife and their habitats; the birds, fishes, mammals, and all other classes of wild animals and all types of aquatic and land vegetation upon which wildlife is dependent.

**COMPLIANCE REQUIREMENTS:** To accomplish the conservation objectives of the act, preconstruction planning on project development is to be coordinated with the USFWS and relevant state resource management agencies. (The National Marine Fisheries Service (NMFS) provides similar assistance and cooperation for wildlife species under the management responsibilities of the Department of Commerce). The Corps, and other Federal agencies involved in water resource development, is to consult with the FWS and with the agency exercising administration over wildlife resources of the particular state where the proposed project is to be constructed or action taken.

Corps regulations require that the coordination begin with the initiation of the reconnaissance report phase and continue through feasibility and planning, engineering, and design phases of project development. The district must make the reports and recommendations of these entities an integral part of any report presented to Congress or to any agency or person having authority or power (1) to authorize the construction of water resource development projects or (2) to approve a report on the modification or supplementation of plans for previously authorized projects. Recommendations provided by the FWS in Coordination Act Reports must be specifically addressed in Corps feasibility reports. Specific guidance is provided in Appendix C, Environmental Compliance, of ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies.

Regulatory program: The Corps will consult with the Regional Directors of the USFWS and the NMFS, and the head of the agency responsible for fish and wildlife for the state in which the work is to be performed, with a view to the conservation of wildlife resources by prevention of their direct or indirect loss and damage due to the activity proposed in a permit application. The District Engineer will give full consideration to these views in evaluating the application.



## REVIEW AND CONSULTATION REQUIREMENTS

**Agency:** U.S. Fish and Wildlife Service, National Marine Fisheries Service, state wildlife resource management agencies

**Process:** An outline of the process is provided below. Details are provided in the Memorandum of Agreement between the US Fish and Wildlife Service and the US Army Corps of Engineers for Funding of Fish and Wildlife Coordination Act Activities, 1982 (Revised draft agreement August 8, 2001).

**Program Review-** At the beginning of each fiscal year (FY), the Corps districts develop a list of potential projects for which transfer funding may be required, and provide this list to the regional USFWS to aid in planning their workload for the FY.

**Initial Coordination-** Very early in the planning process, a meeting is held to identify potential environmental issues that must be addressed; attendees typically will include US FWS staff, Corps district staff, and if appropriate, representatives of NMFS or the state wildlife resources management agency.

**Development of Scope of Work (SOW)-** After a conceptual plan of study has been developed by the Corps study managers and environmental staff, a draft SOW is negotiated with the USFWS for each specific project for each FY. After the SOW is finalized, the Corps district prepares a cover letter and a Military Interdepartmental Purchase Request (MIPR) DD Form 448 to authorize expenditure of funds, and sends these to the USFWS. The USFWS approves this package and returns a signed copy to the district. The funding arrangement is on a cost reimbursable basis, and the district receives quarterly billings.

**Product:** The FWS conducts habitat surveys, evaluating likely impacts of proposed actions, and making recommendations for avoiding or ameliorating impacts or enhancing fish and wildlife resources. Their input to the Corps is provided both verbally and in written documents such as Coordination Act Reports, Planning Aid Reports, and Planning Aid Letters.

**Timing/Schedule:** The USFWS should provide a timely and useful product, which has been reviewed in draft form by the district. At the completion of each SOW task, the Corps and the USFWS should review and evaluate the product. The USFWS should finalize the report. The Fish and Wildlife Coordination Act Report should be included in the Corps report before going to Congress.

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance; ER 1165-2-501, Civil Works Ecosystem Restoration Policy, and EP 1165-2-502, Ecosystem Restoration-Supporting Policy Information.

**Civil Works Engineering:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance; 33 C.F.R. 222; ER 1165-2-501, Civil Works Ecosystem Restoration Policy, and EP 1165-2-502, Ecosystem Restoration-Supporting Policy Information

**Civil Works Construction:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance

**Civil Works Operations:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures; EC 1165-2-200, Procedures for Implementing NEPA; ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance

**Regulatory:** 33 C.F.R. 320

**FOR MORE INFORMATION SEE:** Agreement between the US Fish and Wildlife Service and the US Army Corps of Engineers for Funding of Fish and Wildlife Coordination Act Activities, signed by Director of Civil Works and Director, U.S. Fish and Wildlife Service - original in 1980, amended in 1982.

### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** None identified.

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** 43 C.F.R. 24.1-24.7

**MANAGEMENT OPPORTUNITIES:** The Corps is authorized to modify or add to the structures and operations of water-control projects, and to acquire lands in accordance with the Act in order to accommodate the conservation of wildlife resources as an integral part of water resources projects. Additionally, ecosystem restoration projects may be formulated to restore or protect degraded habitat associated with resources identified in this Act as part of specifically authorized projects and through programmatic authorities (see ER 1165-2-501, Civil Works Ecosystem Restoration Policy, and EP 1165-2-502, Ecosystem Restoration-Supporting Policy Information).

16 U.S.C. 663 provides for the use of Civil Works projects for conservation, maintenance and management of fish and wildlife resources and wildlife habitat. This is accomplished through the licensing of lands and waters to state wildlife agencies or by cooperative agreement with the Secretary of the Interior under terms of a General Plan, ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures.

# **FISH AND WILDLIFE PROGRAMS IMPROVEMENT AND NATIONAL WILDLIFE REFUGE SYSTEM CENTENNIAL ACT OF 2000**

**LEGISLATIVE TITLE:** Fish and Wildlife Programs Improvement and National Wildlife Refuge System Centennial Act of 2000.

**UNITED STATES CODE CITATION:** 16 U.S.C. 669

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This Act amends the Pittman-Robertson Wildlife Restoration Act and the Dingell-Johnson Sport Fish Restoration Act by enhancing the funds available for grants to States for fish and wildlife conservation projects. It also reauthorizes and amends the National Fish and Wildlife Foundation Establishment Act, and commemorates the centennial of the establishment of the first national wildlife refuge in the U.S.

**RESOURCES COVERED:** fish and wildlife and their associated habitats

**COMPLIANCE REQUIREMENTS:** None specific to the Corps.

## **REVIEW AND CONSULTATION REQUIREMENTS**

**Who Reviews or Consults:** A priority list of projects is prepared by the International Association of Fish and Wildlife Agencies, in consultation with the heads of state fish and game agencies, nongovernmental conservation organizations, sportsmen organizations, and industries that support hunting. The program is administered by the Secretary of the Interior.

**Process and Product:** None specific to the Corps.

**Timing and Schedule:** None specific to the Corps.

## **CORPS GUIDANCE**

**Civil Works Planning:** None identified

**Civil Works Engineering:** None identified

**Civil Works Construction:** None identified

**Civil Works Operations:** None identified

**Regulatory:** None identified

**FOR MORE INFORMATION SEE:** None identified.

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** None identified

**Guidance Title:** None specific to the Corps.

**Code of Federal Regulations Citation:** None specific to the Corps.

**MANAGEMENT OPPORTUNITIES:** None specific to the Corps.

## FLOOD CONTROL ACT OF 1944

**LEGISLATIVE TITLE:** Flood Control Act of 1944

**UNITED STATES CODE CITATION:** 16 U.S.C. §460d et seq; 33 U.S.C. § 701 et seq

**OTHER TITLES AND POPULAR NAMES:** None identified

**SUMMARY:** Section 4 of this Act authorizes the Corps, under the supervision of the Secretary of the Army, to construct, maintain and operate public park and recreational facilities at water resources development projects (16 U.S.C. 460(d)). Local interests are also permitted to construct, operate and maintain such facilities with permission from the Secretary of the Army. Water areas of all such projects shall be open to public use generally, for boating, swimming, bathing, fishing, and other recreational purposes, and ready access to and exit from such water areas along the shores of such reservoirs shall be maintained for general public use, when such use is not found to be contrary to the public interest. The lease of public lands and structures at water projects is also authorized. Recreational uses must be consistent with State laws for the protection of fish and game. All persons designated by the Chief of Engineers for enforcement shall have the authority to issue a citation for violation of the regulations adopted by the Secretary of the Army. Amendments to this Act extend the development of recreation to non-reservoir projects.

**RESOURCES COVERED:** Reservoirs, water resources, recreation facilities.

**COMPLIANCE REQUIREMENTS:** Consider recreation during planning of Corps projects.

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Corps with communities, State governmental agencies, and project sponsor.

**Process:** Coordination

**Product:** Mutually acceptable recreation features and operation plan

**Timing/Schedule:** Identification of potential opportunities during reconnaissance phase; development of feasible alternatives and willing cost sharing local partner in feasibility phase; refinement of recreation plan details during detailed design.

### CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies; ER 1165-2-400, Recreational Planning, Development, and Management Policies Chapter 1; ER 1165-2-130, Federal Participation in Shoreline Protection

**Civil Works Engineering:** ER 1110-2-1150, Engineering and Design for Civil Works Projects ; EM 1110-1-400, Recreation Planning and Design Criteria; ER 1110-2-2902, Prescribed Procedures for the Maintenance and Operation of Shore Protection Works.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapters 1-2.

**Regulatory:** 33 C.F.R. 222, Corps of Engineers, Department of the Army, Engineering and Design.

**FOR MORE INFORMATION SEE:** Senate Document 97, Land and Conservation Fund Act of 1964; Federal Water Project Recreation Act of 1965; also, Water Resources Development Act of 1992, Section 225 (33 U.S.C. 2328) and Section 203 (33 U.S.C. 2325).

#### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** None identified

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** 36 C.F.R. 327; 33 C.F.R. 208, 209, 211

**MANAGEMENT OPPORTUNITIES:** The Corps' new Challenge Cost-Sharing Program provides opportunities for non-Federal public and private groups and individuals to contribute to and participate in the operation and/or management of recreation facilities and natural resources at Corps water resource development projects (33 U.S.C. 2328).

## FOOD SECURITY ACT OF 1985

**LEGISLATIVE TITLE:** Food Security Act of 1985

**UNITED STATES CODE CITATION:** 16 U.S.C. 3801-3862

**OTHER TITLES AND POPULAR NAMES:** "Swampbuster"; 1985 Farm Bill; 1996 Farm Bill; Federal Agriculture Improvement and Reform Act of 1996; Erodible Land and Wetland Conservation and Reserve Program.

**SUMMARY:** The 1985 Act contains provisions designed to discourage the conversion of wetlands into non-wetland areas. These provision collectively, are commonly referred to as the "Swampbuster" provisions (Food Security Act of 1985 (Title XII, Subtitle C)). Swampbuster provisions denied Federal farm program benefits to producers who converted wetlands after December 23, 1985. The Food, Agriculture, Conservation, and Trade Act of 1990 strengthened Swampbuster by making violators ineligible for farm program benefits for that year and subsequent years. The Act also created a system for inadvertent violations allowing farmers to regain lost Federal benefits if they restore converted wetlands.

The 1996 Farm Bill, (Federal Agriculture Improvement and Reform Act of 1996, PL 104-127) contains numerous provisions that purportedly modify the operation of certain agricultural programs. In particular, Subtitle C, Wetland Conservation, modifies Sections 1221 and 1222 (16 U.S.C. 3821, and 16 U.S.C. 3822) of the Food Security Act of 1985 regarding program ineligibility, wetland delineation, consultation and cooperation requirements, and clarifies the definition of agricultural lands in the Memorandum of Agreement signed with the Department of the Army, the Department of Interior, and the Environmental Protection Agency, January 6, 1994. It also authorizes the Secretary of Agriculture to operate a pilot program for mitigation banking of wetlands to assist persons to increase the efficiency of agricultural operations while protecting wetland functions and values.

The Conservation Reserve Program (Title XII) (16 U.S.C. 3831) authorizes the Federal government to enter into contracts with agricultural producers to remove highly erodible cropland from production, in return for annual rental payments. The Wetlands Reserve Program (16 U.S.C. 3837) authorizes enrollment of wetlands for protection and restoration through permanent and temporary (30 year) easements.

**RESOURCES COVERED:** Wetlands; agricultural lands; highly erodible land; converted wetlands.

**COMPLIANCE REQUIREMENTS:** The Corps coordinates its flood control plans involving agricultural lands with the Natural Resources Conservation Service, and alerts project sponsors and affected farmers of their responsibilities for meeting requirements set forth in the "Swampbuster" provisions of the Food Security Act of 1985. The Act provides for certain "third party" exemptions that may be available to landowners who receive ancillary drainage benefits from Corps projects. It is the responsibility of the individual landowner, not the Corps, to request such an exemption.

The U.S. Department of Agriculture's (USDA) implementing guidance for the Swampbuster provisions establishes the terms and conditions under which a person, who has produced an agricultural commodity on newly converted wetlands, shall be declared ineligible for certain benefits provided by USDA. Such benefits include: commodity price support or production adjustment payments; farm storage facility loans; disaster payments; payments for storage of grain owned or controlled by the Commodity Credit Corporation; Federal crop insurance; and FHA loans. Farmers who plant commodity crops, after 23 December 1985, on lands that were

converted from a wetland to a non-wetland condition by a Corps project will trigger "Swampbuster" considerations, which may lead to the cited USDA program ineligibilities. This could result in lessening of sponsor support for a project and a reduction in estimated benefits that might otherwise have been attributed to the project proposal. It could also change the with and without project assumptions used to establish environmental impacts and associated mitigation needs; this is particularly significant where habitat preservation credit is a component of mitigation plans.

The Memorandum of Agreement between the Department of Agriculture, the Environmental Protection Agency, the Department of the Interior, and the Department of the Army on January 6, 1994, gives NRCS authority to make Section 404 (33 U.S.C. 1344) jurisdictional determinations on agricultural lands using the Food Security Act Manual, and the 1996 Amendments further clarify the definition of agricultural lands for the purposes of implementing that agreement. Implementing guidance is currently under development by an interagency working group (as of May 1996).

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** The Secretary of Agriculture is to assist, through contracts, owners and operators of such land to help them comply with this act.

**Process:** None specified

**Product:** None specified

**Timing/Schedule:** None specified

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies,

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute. However, efforts are currently underway between the Corps and the NRCS to develop implementing guidance regarding the 1996 amendments to the "Swampbuster Provisions" and the interagency Memorandum of Agreement. There is an MOA between the Department of Agriculture, the EPA, the Department of Interior, and the Department of the Army regarding this Act (see above).

**FOR MORE INFORMATION SEE:** Conservation Reserve Program (Title XII); Fish and Wildlife Coordination Act.

## IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** Department of Agriculture (USDA) final rule effective 17 September 1987 (7 C.F.R. 12), are administered by the Natural Resource Conservation Service.

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** 7 C.F.R. 12

**MANAGEMENT OPPORTUNITIES:** None identified.

# HAZARDOUS MATERIALS TRANSPORTATION ACT

**LEGISLATIVE TITLE:** Hazardous Materials Transportation Act of 1974

**UNITED STATES CODE CITATION:** 49 U.S.C. §§ 1801-1819

**OTHER TITLES AND POPULAR NAMES:** HMTA, DOT regulations.

**SUMMARY:** The Act, as last amended in November 1990, is the Federal legislation which governs the transportation of hazardous materials in the nation. The policy of Congress is to improve the regulatory and enforcement authority of the Secretary of Transportation to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce.

**RESOURCES COVERED:** Transportation of hazardous materials, including, but not limited to, solvents, asbestos, PCBs, paints, pesticides, hazardous wastes, etc.

**COMPLIANCE REQUIREMENTS:** Persons transporting hazardous materials, including hazardous wastes, must comply with the DOT requirements for shipping papers, container marking and labeling, vehicle placarding, record keeping and all other requirements associated with the safe transportation of hazardous materials.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Department of Transportation

**Process:** Hazardous materials, including hazardous wastes must be properly packaged, labeled and marked. The transport vehicle must be properly placarded. Shipping papers must accompany the shipment and the shipment must be in all aspects in good condition. Records must be maintained.

**Product:** Shipping papers (manifests for hazardous wastes), labels and marks on containers, placards on transport vehicle.

**Timing/Schedule:** None specified

## CORPS GUIDANCE

AR 55-355, Defense Traffic Management Regulation, 31 July 1986

EP 200-1-2, Process and Procedures for RCRA Manifesting, 31 March 1994

Construction Bulletin 96-9 (dated 3/13/96), Hazardous Waste Manifesting Signature Policy and Procedures

**Civil Works Planning:** None specific to this statute.

**Civil Works Engineering:** ER 200-2-3, Environmental Compliance Policies and EP 200-2-3, Environmental Compliance Guidance and Procedures.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** ER 200-2-3, Environmental Compliance Policies and EP 200-2-3, Environmental Compliance Guidance and Procedures.

**Regulatory:** None specific to this statute.



**FOR MORE INFORMATION SEE:** None identified

**IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Department of Transportation and the Environmental Protection Agency

**Guidance Title:** See below

**Code of Federal Regulations Citation:** 49 C.F.R. 170-178 Hazardous Materials Regulations;  
40 C.F.R. 263 Standards Applicable to Transporters of Hazardous Wastes

**MANAGEMENT OPPORTUNITIES:** Corps Civil Works facilities must prepare shipping papers, properly mark and label containers, and properly placard vehicles carrying hazardous materials. Manifests will be required for hazardous wastes. Training and certification requirements must be met. Records must be maintained.

## HISTORIC SITES ACT OF 1935

**LEGISLATIVE TITLE:** Historic Sites Act of 1935

**UNITED STATES CODE CITATION:** 16 U.S.C. §§ 461 to 467

**OTHER TITLES AND POPULAR NAMES:** Historic Sites, Buildings and Antiquities Act, Historic Sites Act

**SUMMARY:** This Act establishes a national policy to preserve for public use, historic sites, buildings, and objects of national significance for the inspiration and benefit of the American people. The Act authorizes the designation of national historic sites and landmarks, authorizes interagency efforts to preserve historic resources, and establishes a maximum fine of \$500 for violations of the Act. The Act authorizes surveys of historic and archeological sites, buildings, and objects to determine which are significant, and provides for the restoration, reconstruction, rehabilitation, preservation, and maintenance of historic or prehistoric properties of national significance. The Secretary of the Interior, through the National Park Service, is authorized to conduct surveys and studies, collect information, and purchase significant historic properties. The Secretary is also authorized to restore, preserve, maintain, and rehabilitate structures and sites. Museums may be established, and the National Park Service may operate and manage historic sites, and develop educational programs.

**RESOURCES COVERED:** Historical and Cultural Properties; historic sites, buildings, and objects of national significance.

**COMPLIANCE REQUIREMENTS:** None specified.

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Secretary of the Interior, through the National Park Service, with Federal agencies, States, municipal subdivisions, corporations, associations, or individuals.

**Process:** Contracts, cooperative agreements

**Product:** Plans to restore, reconstruct, rehabilitate, preserve, and maintain historic or prehistoric sites, buildings, objects, and property of national historical or archaeological significance, and where deemed desirable, establish and maintain museums and educational programs in connection therewith.

**Timing/Schedule:** None specified.

### CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 6.

**Civil Works Operations:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 6.

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** None identified

**IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** National Park Service

**Guidance Title:** See below

**Code of Federal Regulations Citation:** Implementing Regulation 36 C.F.R. 62 and 65-National Historic Landmarks; 36 C.F.R. 68- Standards for Historic Preservation.

**MANAGEMENT OPPORTUNITIES:** The Secretary of the Interior, through the National Park Service, may seek and accept the assistance of any Federal (i.e., Corps), State or municipal department or agency, or any educational or scientific institution, or any patriotic association, or any individual in the accomplishment of the historic preservation activities cited in the above "Summary" (16 U.S.C. 464 (a)).

## HISTORICAL AND ARCHEOLOGICAL DATA-PRESERVATION

**LEGISLATIVE TITLE:** Historical and Archeological Data - Preservation

**UNITED STATES CODE CITATION:** 16 U.S.C. §§ 469 et. seq.

**OTHER TITLES AND POPULAR NAMES:** Moss-Bennett Act; Historical Data - Dam Construction; Reservoir Salvage Act Amendment; Archeological and Historic Preservation Act; An Act to Provide for the Preservation of Historic American Sites, Buildings, Objects and Antiquities of National Significance

**SUMMARY:** The intent of the Act is to make authorized Federal construction programs, dam construction and specified related activities, and all other Federal projects licensed or assisted by Federal agencies responsive to the damage they will cause to scientific, prehistoric, historical and archeological resources. The Act provides a mechanism through which resources can be salvaged after a decision has been made to proceed with a project. The Act directs Federal agencies to notify the Secretary of the Interior when they find that any Federal construction project or Federally licensed activity or program may cause irreparable loss or destruction of significant resources or data. It also provides for criteria for funding historical and archeological protection for such projects. Section 7 of the Act is interpreted to mean that historic preservation as part of mitigation for Corps projects shall be limited to 1 percent of the total estimated Federal appropriation required for construction of a project, and that this expenditure is a Federal cost. The 1 per centum limitation of this section does not apply in the event that the project involves \$50,000 or less. A waiver request must be submitted to the National Park Service, through the Assistant Secretary of the Army for Civil Works, to exceed the 1 percent limitation. Costs over the 1 percent limitation are shared on the same basis as other joint and separable costs.

**RESOURCES COVERED:** Historical and cultural resources; historic American sites, buildings, objects (relics and specimens), and antiquities of national significance that would be altered, lost, or destroyed by dam construction and operation projects. Archeological data are the focus of the act.

**COMPLIANCE REQUIREMENTS:** Coordinate with Secretary of the Interior, National Park Service, Regional Consulting Archeologist

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Regional Consulting Archeologist (RCA)

**Process:** Federal agencies notify RCA, typically through the Sections 106/110 compliance process, and solicit comments and willingness to provide funding (rarely occurs).

**Product:** Comment letter from RCA

**Timing/Schedule:** Along with overall routine project and NEPA coordination.

### CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** ER 1110-2-1150, Engineering and Design for Civil Works Projects

**Civil Works Construction:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 6.

**Civil Works Operations:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 6.

**Regulatory:** Title II, 33 C.F.R. 320-330, Regulatory Programs of the Corps of Engineers; Final Rule November 13, 1986; 33 C.F.R. 325, Appendix C.

**FOR MORE INFORMATION SEE:** National Historic Preservation Act of 1966, as amended (the NHPA further implements policies and purposes of this Act)

#### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** None identified.

**Guidance Title:** None identified.

**Code of Federal Regulations Citation:** The protection to be provided by this Act is subsumed under the compliance process and protection afforded by the National Historic Preservation Act, as amended, and implementing regulations 36 C.F.R. 800.

**MANAGEMENT OPPORTUNITIES:** None identified.

## LAND AND WATER CONSERVATION FUND ACT

**LEGISLATIVE TITLE:** Land and Water Conservation Fund Act of 1965

**UNITED STATES CODE CITATION:** 16 U.S.C. § 4601-4 et seq

**OTHER TITLES AND POPULAR NAMES:** Land and Water Conservation Act, LWCFA

**SUMMARY:** The Act established a fund from which Congress can make appropriations for outdoor recreation. The fund derives revenue from entrance and user fees, sale of surplus Federal property, and the Federal motorboat fuel tax. The National Park Service provides assistance to the states and territories in preparing and maintaining Statewide Comprehensive Outdoor Recreation Plans (SCORPs), under the Act. Planning for recreation development at Corps projects is coordinated with the appropriate states so that the plans are consistent with public needs as identified in the SCORPs. The Corps must coordinate with the Secretary of the Interior to insure that no property acquired or developed with assistance from this Act will be converted to other than outdoor recreation uses. The Secretary must assure that conversions are in accordance with existing comprehensive outdoor recreation plans, and that any substitution of other recreation properties are of at least fair market value and of reasonably equivalent usefulness and location.

**RESOURCES COVERED:** Recreation Facilities and Fish and Wildlife Resources; (See list of recreation facilities per ER 1105-2-11, Appendix J).

**COMPLIANCE REQUIREMENTS:** Documentation of coordination with the Secretary of the Interior is provided in feasibility reports in situations where Corps undertakings will or may affect (convert) properties or facilities acquired or developed with assistance from this Act. If conversion is necessary, approval of the Secretary is required and plans are usually developed to relocate or recreate affected recreational opportunities.

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Department of the Interior (National Park Service), States

**Process and Product:** Statewide Comprehensive Outdoor Recreation Plans (SCORPs), developed by the states which identify recreation opportunities and priorities for land acquisition and development of recreational facilities. Federal agencies are to consider the information in SCORPS during their planning activities (16 U.S.C. 4601-8).

**Timing/Schedule:** Impacts to recreation areas and facilities are considered and coordinated throughout the Corps planning process. An initial assessment is made during the reconnaissance phase. Specific, formal coordination with Local and State officials, and the Secretary of the Interior, occurs during the feasibility phase.

### CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, chapter 3, Section 7; ER 1165-2-400, Recreational Planning, Development, and Management Policies.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** ER 1165-2-400, Recreational Planning, Development, and Management Policies.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** Emergency Wetlands Resources Act

#### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Department of Interior

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** 43 C.F.R. 71.1 et seq; 36 C.F.R. 291.9; 36 C.F.R. 327.23

**MANAGEMENT OPPORTUNITIES:** The Emergency Wetlands Resources Act amends this Act and requires states to consider wetlands in their SCORPs (16 U.S.C. 4601-8) States are to identify agencies and organizations involved in wetlands management, evaluate wetlands protection mechanisms, assess wetland resources, identify wetlands loss and degradation factors, and establish priorities for protection. There may be a potential for the ecosystem restoration projects implemented in the Civil Works program to contribute to or compliment the wetland priorities outlined in the SCORPs developed by the states.

# MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

**LEGISLATIVE TITLE:** Reauthorization of and Amendments to the Magnuson Fishery Conservation and Management Act

**UNITED STATES CODE CITATION:** 16 U.S.C. § 1801 et seq.

**OTHER TITLES AND POPULAR NAMES:** Magnuson Fishery Conservation and Management Act; Fishery Conservation Amendments of 1990.

**SUMMARY:** The purpose of this Act is to conserve and manage the fishery resources found off the coasts of the U.S., the anadromous species, and Continental Shelf fishery resources of the U.S. The Act promotes domestic commercial and recreational fishing under sound conservation management principles, and establishes standards for fishery conservation and management, and directs the Secretary of Commerce to establish advisory guidelines, based on the national standards, to assist the development of fishery management plans (16 U.S.C. 1851). The Act establishes eight Regional Fishery Management Councils, to prepare, monitor and revise fishery management plans, which will achieve and maintain the optimum yield from each fishery (16 U.S.C. 1852). The Secretary of Commerce has review and approval authority for the regional plans (16 U.S.C. 1854). Members of the Councils include the principal state officials with marine fishery management responsibility and expertise, the regional directors of the National Marine Fisheries Service, and individuals appointed by the Secretary of Commerce who are knowledgeable regarding the conservation, management, or the commercial or recreational harvest, of fishery resources of the geographical area. The Councils are to: 1) enable the states, fishing industry, consumer and environmental organizations, and any other interested parties to participate in, and advise on the establishment and administration of such plans; and 2) take into account the social and economic needs of the States (16 U.S.C. 1801). Each Council may comment on or make recommendations concerning any activity undertaken, or proposed to be undertaken, by any state or Federal agency that the Council feels may substantially affect the habitat of a fishery resource that is under its jurisdiction, or the habitat of an anadromous fishery under its jurisdiction (16 U.S.C. 1852).

**RESOURCES COVERED:** Fishery resources found off the coast of the U.S., anadromous species (defined as species of fish which spawn in fresh or estuarine waters of the U.S. and which migrate to ocean waters), and Continental Shelf fishery resources (Coelenterata (jellyfish), Crustacea, Mollusca, and Porifera (Sponges)).

**COMPLIANCE REQUIREMENTS:** Within 45 days after receiving a comment or recommendation from a regional Council, a Federal agency will provide a written detailed response to the Council regarding the matter raised and including, in the case of a comment or recommendation concerning any activity the Council views as likely to substantially affect the habitat of an anadromous fishery resource under its jurisdiction, description of the measures being considered by the agency for mitigating or offsetting the impacts of the activity on such habitat (16 U.S.C. 1852).

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** The Secretary of the Commerce Department; Regional Management Councils (New England; Mid-Atlantic; South Atlantic; Caribbean; Gulf of Mexico; Pacific; North Pacific; Western Pacific)

**Process and Product:** The Secretary of Commerce develops advisory guidelines, and regulations for implementation of this Act, and evaluates the plans prepared by the Regional Councils. The eight Regional Management Councils prepare and submit fishery management plans, periodic



reports to the Secretary of Commerce, and provide comments or recommendations to state or Federal agencies regarding actions that may affect the habitat of resources in their jurisdiction.

**Timing/Schedule:** Agencies must respond in writing to comments or recommendations from a Council within 45 days.

## **CORPS GUIDANCE**

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** The Sustainable Fisheries Act, and the Federal Advisory Committee Act (5 U.S.C. App)

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Department of Commerce (National Oceanic and Atmospheric Administration)

**Guidance Title:** Magnuson-Stevens Act Provisions; Essential Fish Habitat (published in the Federal Register January 2002, Vol. 67, No. 12, page 2343).

**Code of Federal Regulations Citation:** 50 C.F.R. 600-695, excluding Part 697.

**MANAGEMENT OPPORTUNITIES:** The Corps may be able to participate in opportunities to complement the fishery management plans through ecosystem restoration initiatives in the Civil Works program, and as part of participation in the Coastal America Initiative, and through participation in ongoing regional coordination and assistance efforts.

## MARINE MAMMAL PROTECTION ACT

**LEGISLATIVE TITLE:** Marine Mammal Protection Act of 1972

**UNITED STATES CODE CITATION:** 16 U.S.C. § 1361 et seq, 1401-1407, 1538, 4107

**OTHER TITLES AND POPULAR NAMES:** Marine Mammal Act

**SUMMARY:** This Act establishes a moratorium on the taking and importation of marine mammals and marine mammal products, with exceptions for scientific research, allowable incidental taking, exemptions for subsistence activities by Alaskan natives and hardship exemptions (16 U.S.C. 1371).

**RESOURCES COVERED:** Wildlife; marine mammals that are: a) morphologically adapted to the marine environment (including sea otters and members of the order Sirenia, Pinnipedia and Cetacia), and b) primarily inhabit the marine environment (e.g., polar bears)

**COMPLIANCE REQUIREMENTS:** During preparation of the NEPA document, coordination with U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) will include the discussion of potential impacts to any species covered by this Act. USFWS will provide their comments in the form of a letter or as part of the Fish and Wildlife Coordination Act Report. NMFS will provide their comments in a letter. The concerns and/or recommendations of either agency must be addressed. All practicable efforts will be made to avoid taking of a marine mammal. If the taking of a marine mammal is unavoidable, then the responsible agency (USFWS or NMFS) will be contacted to begin the process of obtaining a permit for any take.

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Secretary of Interior (U.S. Fish and Wildlife Service)and/or Secretary of Commerce (National Marine Fisheries Service)

**Process:** See Compliance Requirements above.

**Product:** See Compliance Requirements above.

**Timing/Schedule:** It usually takes a minimum of a year to obtain a permit, if no additional studies are necessary. This lengthy time period is necessary because the issuance of a permit must be in the form of a regulation that must appear in the Federal Register and be coordinated with the Marine Mammal Commission, Committee of Scientific Advisors on Marine Mammals, and the public.

### CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute

**Regulatory:** 33 C.F.R. 320

**FOR MORE INFORMATION SEE:** The Endangered Species Act

### IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** Marine Mammal Commission, Department of the Interior; National Oceanic and Atmospheric Administration

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** None Identified.

**MANAGEMENT OPPORTUNITIES:** The Corps, while given no direct authority by this Act, may have opportunities to work in coordination with the USFWS or the NMFS to incorporate design elements into Civil Works projects that are beneficial to marine mammals (e.g., breakwater designed to incorporate areas for marine mammal haul out). Corps offices are encouraged to coordinate closely with the Marine Mammal Commission for exchange of technical information regarding marine mammals to avoid duplication of research (e.g. Hopper dredging, endangered Atlantic Right Whale design).

# MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT

**LEGISLATIVE TITLE:** Marine Protection, Research, and Sanctuaries Act of 1972

**UNITED STATES CODE CITATION:** 33 U.S.C. §§ 1401- 1445; 16 U.S.C. §§ 1431 et seq; also 33 U.S.C. 1271

**OTHER TITLES AND POPULAR NAMES:** Ocean Dumping Act; MPRSA

**SUMMARY:** The Act regulates the dumping of materials into ocean waters. It prevents, or restricts, dumping of materials that would degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. The Act provides for a permitting process to control the ocean dumping of dredged material. The Act also establishes the marine sanctuaries program, which designates certain areas of the ocean waters as sanctuaries in order to preserve or restore these areas for their conservation, recreational, ecological, or aesthetic values.

Section 102 (33 U.S.C. 1412) authorizes the Administrator of the Environmental Protection Agency (EPA) to promulgate the ocean dumping criteria, to designate recommended ocean disposal sites, and to issue permits for dumping of materials into ocean waters (except for dredged material, which is regulated by the Corps). Section 103 (33 U.S.C. 1413) authorizes the Secretary of the Army to issue permits for the transportation and disposal of dredged material in ocean waters. The disposal must meet the criteria established by the EPA (40 C.F.R. 227 & 228).

Section 302 (16 U.S.C. 1433) of the Act authorizes the Secretary of Commerce to designate areas as marine sanctuaries for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or aesthetic values.

Title V of the Water Resources Development Act of 1992 (WRDA 92), National Contaminated Sediment Assessment and Management Act (33 U.S.C. 1271) establishes a National Contaminated Sediment Assessment and Management program, and amends a number of sections of the MPRSA.

Section 502(a) (33 U.S.C. 1271) establishes a National Contaminated Sediment Task Force to advise the Secretary of Army and EPA Administrator on implementation of Title V; review reports, programs and pollutants selected for criteria; advise and make recommendations on guidelines and prevention and control measures; and review and advise on means and methods to locate long-term disposal sites. The Administrator and Secretary co-chair the Task force whose membership also includes the National Oceanic and Atmospheric Administration, the U.S. Fish and Wildlife Service, the Geological Survey and the Department of Agriculture. Provisions are made for clerical and technical assistance and compensation of non-Federal members, and the Task Force is directed to provide a report to Congress within two years on findings and recommendations.

The Administrator is directed to conduct a comprehensive survey of aquatic sediment quality in the US, including potential sources of pollution, and within 24 months of enactment to report to Congress on findings with recommendations to prevent contamination. The EPA is also directed to conduct a comprehensive and continuing monitoring program to assess aquatic sediment quality. The monitoring program includes location and extent of pollution; methods and protocols for monitoring; system for data management; assessment of trends over time; identify locations of where pollutants may pose threats to specific resources; establish clearinghouse for information; and, provide a report to Congress on findings within two years.

Section 504(a) amends Sections 103 (c) and (e) of the MPRSA of 1972 (33 U.S.C. 1413(c)) to set procedures and time limits for the Administrator to review and concur with conditions, or nonconcur with a proposed permit by the Secretary for sediment disposal. The permit cannot be issued if a "nonconcur"

is issued. If a "concur with conditions" determination is made, the permit issued has to include the specific conditions and require compliance.

Section 505 amends Section 106(d) of the MPRSA of 1972 (33 U.S.C. 1416(d)) to define the applicability of State rules and establish an exception for Federal projects.

The Administrator is directed to designate sites or time periods for dumping, and in conjunction with Secretary, to develop a site management plan for each designated site and describe what should be included in plan and periodic review time frames (33 U.S.C. 1412(c)). A deadline of 1 January 1997 is established for development of management plans at all sites. These amendments also establish a basis for selection and time limits on use of "alternative" disposal sites, designated by the Secretary (33 U.S.C. 1413(b)), provide provisions to ensure consistency with site management plans as part of permit conditions, and to set a time limit of 7 years for permits (33 U.S.C. 141(a)(4)), and establish criminal penalties for violation of provisions and authorize seizure and forfeiture of vessels involved in violation (33 U.S.C. 1415(b)).

Existing reports required to Congress will include a description of permits issued under this title, including number of permits issued with concurrence of EPA, as well as, actions taken for each permit, and descriptive information on permitted site, material disposed and management practices implemented (33 U.S.C. 1412)

The National Marine Sanctuaries Amendments Act of 2000 (16 U.S.C. 1431) broadens the criteria and functions of the National Marine Sanctuary System by adding the qualities of historical, cultural, archeological, scientific, and educational to the list of criteria for establishment of a national marine sanctuary. It also expands the purposes of such sanctuaries by stating that they will "(A) improve the conservation, understanding, management, and wise and sustainable use of marine resources; (B) enhance public awareness, understanding, and appreciation of the marine environment; and (C) maintain for future generations the habitat and ecological services of the natural assemblage of living resources that inhabit these areas." Section 309 of the Act authorizes programs to "develop and test methods to enhance degraded habitats or restore damaged, injured, or lost sanctuary resources."

**RESOURCES COVERED:** Marine resources in ocean waters.

**COMPLIANCE REQUIREMENTS:** For projects involving transportation of dredged material through the territorial sea for the purpose of ocean disposal, or involving dredged material disposal within the territorial seas for the primary purpose of disposal, the discharge will be evaluated under Section 103 of the MPRSA. The disposal must meet the criteria established by the EPA (40 C.F.R. 227 and 228). Procedures for evaluating the potential contaminant-related impacts of disposing dredged material in the ocean are contained in the "Evaluation of Dredged Material Proposed for Ocean Disposal -Testing Manual" (EPA/COE-503/8-91/001). The Corps will generally utilize ocean disposal sites designated by the EPA to the maximum extent practical. Where no EPA designated site is available, the Corps may select a suitable ocean disposal site or sites using procedures and outlined criteria in 40 C.F.R. 228.4(e), 228.5 and 228.6. Potential ocean disposal sites will be specified in feasibility reports and, to the fullest extent practicable, the Section 103 evaluation will be completed during the feasibility study. (ER 1105-2-100). Efforts are currently underway to develop joint guidance between the Corps and EPA on site management plans and monitoring pursuant to 33 U.S.C. 1271 et seq.

Activities in sanctuary areas may be authorized only if the Secretary of Commerce certifies that the activities are consistent with Title III of the Act and can be carried out within in the regulations for the sanctuary.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Environmental Protection Agency (EPA), Army Corps of Engineers (Corps), National Oceanic and Atmospheric Administration (NOAA), States (if within State's jurisdiction). With a few exceptions, states normally have control over the sea out to the three mile limit.

**Process and Product:** EPA is responsible for issuing permits for the disposal of non-dredged materials in ocean waters. The Corps is responsible for issuing permits for the transportation and disposal of dredged material for disposal in ocean waters. The Corps shall apply the same testing criteria for the issuance of permits as EPA, and will issue permits in consultation with EPA and with any State having jurisdiction over the disposal site.

**Timing/Schedule:** Permits issued under this Act are limited to 7 years.

## CORPS GUIDANCE:

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies; Dredging Guidance Letter 19 September 1989; EPA/COE-503/8-91/001, Evaluation of Dredged Material Proposed for Ocean Disposal: Testing Manual, February 1991; Policy Guidance Letter Number 22, Guidance for Placement of Material on Beaches (CECW-PA/CECW-PE); Policy Guidance Letter Number 27, Beach Fill Shore Protection Policies and Non-Federal Responsibilities and Use of PL 84-99 Funds (CECW-PA/OE); ER 1130-2-307, Dredging Policies and Practices; ; ER 1130-2-520, Navigation and Dredging Operations and maintenance Policies; EC 1165-2-200, Implementation Guidance on Dredged Material Management Plans. CECW Memorandum dated 19 January 2000, Special Emphasis given to Coral Reef Protection under the Clean Water Act, Marine Protection, Research, and Sanctuaries Act, Rivers and Harbors Act, and Federal Project Authorities.

**Civil Works Engineering:** ER 1110-2-1150, Engineering and Design for Civil Works; Dredging Guidance Letter 19 September 1989; EPA/COE-503/8-91/001, Evaluation of Dredged Material Proposed for Ocean Disposal: Testing Manual February 1991; Policy Guidance Letter Number 22, Guidance for Placement of Material on Beaches; Policy Guidance Letter Number 27, Beach Fill Shore Protection Policies and Non-Federal Responsibilities and Use of PL 84-99 Funds; ER 1130-2-307, Dredging Policies and Practices ER 1130-2-520, Navigation and Dredging Operations and Maintenance Policies.

**Civil Works Construction:** Dredging Guidance Letter 19 September 1989; EPA/COE-503/8-91/001, Evaluation of Dredged Material Proposed for Ocean Disposal: Testing Manual February 1991; Policy Guidance Letter Number 22, Guidance for Placement of Material on Beaches; Policy Guidance Letter Number 27, Beach Fill Shore Protection Policies and Non-Federal Responsibilities and Use of PL 84-99 Funds; ER 1130-2-307, Dredging Policies and Practices; and ER 1130-2-520, Navigation and Dredging Operations and Maintenance Policies

**Civil Works Operations:** Dredging Guidance Letter 19 September 1989; EPA/COE-503/8-91/001, Evaluation of Dredged Material Proposed for Ocean Disposal: Testing Manual February 1991; Policy Guidance Letter Number 22, Guidance for Placement of Material on Beaches; Policy Guidance Letter Number 27, Beach Fill Shore Protection Policies and Non-Federal Responsibilities and Use of PL 84-99 Funds; ER 1130-2-307, Dredging Policies and Practices; EC 1165-2-200, Implementation Guidance on Dredged Material Management Plans.; ER 1130-2-520, Navigation and Dredging Operations and Maintenance Policies.

**Regulatory:** 33 C.F.R. 209, 335, 336, 337, and 338, Final Rule for O&M of Army Corps of Engineers Civil Works Projects Involving the Discharge of Dredged Material into Waters of the U.S. or Ocean Waters; Regulatory Guidance Letter 83-3, Section 103 versus Section 404 in the Territorial Seas, 28 February 1983; 33 C.F.R. 320, 322, 324-327, 330; EPA/COE-503/8-91/001, Evaluation of Dredged Material Proposed for Ocean Disposal: Testing Manual February 1991. EC 1165-2-200, Implementation Guidance on Dredged Material Management Plans. CECW Memorandum dated 19 January 2000, Special Emphasis Given to Coral Reef Protection under the Clean Water Act, Marine Protection, Research, and Sanctuaries Act, Rivers and Harbors Act, and Federal Project Authorities.

**FOR MORE INFORMATION SEE:** Clean Water Act, Water Resources Development Act of 1992

### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Environmental Protection Agency

**Guidance Title:** Guidance Manual: Bedded Sediment Bioaccumulation Tests September 1989; EPA/COE-503/8-91/001, Evaluation of Dredged Material Proposed for Ocean Disposal: Testing Manual February 1991

**Code of Federal Regulations Citation:** 40 C.F.R. 220-228. 33 C.F.R. 209, 320, 322, 324-327, 330, 335, 336, 337, and 338, Final Rule for Operation and Maintenance of Army Corps of Engineers Civil Works Projects Involving the Discharge of Dredged Material into Waters of the U.S. or Ocean Waters.

**MANAGEMENT OPPORTUNITIES:** Protection of marine resources, research on impacts and disposal management practices, management of disposal sites and disposal methods are part of the Corps responsibilities for stewardship of marine resources. The Corps can utilize appropriate opportunities to support the goals of this Act as part of Civil Works initiatives. The results of the research authorized in the Amendments of 2000 on methods to enhance degraded habitats and restore damaged, injured, or lost sanctuary resources may have application in the Corps Ecosystem Restoration program.

# MIGRATORY BIRD CONSERVATION ACT

**LEGISLATIVE TITLE:** Migratory Bird Conservation Act

**UNITED STATES CODE CITATION:** 16 U.S.C. § 715 to 715s

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This Act establishes the Migratory Bird Conservation Commission (MBCC) consisting of the Secretary of the Interior, Secretary of Agriculture, two members of the Senate, and two members of the House of Representatives (16 U.S.C. 715a). The committee is authorized to consider the purchase or rental of land, water or transitional area where the Secretary of Interior has determined that such an area is necessary for the conservation of migratory birds (sanctuaries, preservations, refuges), and where he has consulted with the county or local government, and the Governor of the State where the property is located (16 U.S.C. 715c). The Migratory Bird Conservation Fund is established to acquire lands for conservation, to maintain acquired lands for habitat preservation, and for any expenses necessary for the administration development, and maintenance of such areas including construction of dams, dikes, ditches, spillways, and flumes for improving habitat, and mitigating pollution threats to waterfowl and migratory birds (16 U.S.C. 715k). No lands acquired, held, or used by the United States for military purposes is subject to any provision of this Act (16 U.S.C. 715d).

**RESOURCES COVERED:** Migratory birds, waterfowl, and associated habitat

**COMPLIANCE REQUIREMENTS:** None specific to the Corps.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Secretary of Interior, Migratory Bird Conservation Commission, States, Local governments

**Process:** Not specified

**Product:** Properties purchased, rented, leased for the purposes of this Act.

**Timing/Schedule:** Not specified

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** None identified

## IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** Department of the Interior

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** None applicable

**MANAGEMENT OPPORTUNITIES:** There may be opportunity for the Corps to assist the Secretary of Interior through a Cooperative Agreement with restoration of important waterfowl habitat through the Support-for-Others program.



## NATIONAL ENVIRONMENTAL POLICY ACT

**LEGISLATIVE TITLE:** National Environmental Policy Act of 1969

**UNITED STATES CODE CITATION:** 42 U.S.C. §§ 4321- 4347

**OTHER TITLES AND POPULAR NAMES:** NEPA; also mistakenly called the National Environmental “Protection” Act.

**SUMMARY:** The National Environmental Policy Act (NEPA) is the basic national charter for protection of the environment. The Act declares it a national policy to “encourage productive and enjoyable harmony between man and the environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; and to enrich the understanding of the ecological systems and natural resources important to the Nation” (42 U.S.C. 4321). The profound impacts of man’s activities “on the interrelations of all components of the natural environment” are recognized (e.g., urbanization, population growth, industrial expansion, resource exploitation) (42 U.S.C. 4331). The Act specifically declares a "continuing policy of the Federal Government, in cooperation with State and local governments, and other public and private organizations to use all practicable means and measures ... to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans" (42 U.S.C. 4331).

The Act also states that it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of National policy, to improve and coordinate Federal plans, functions, programs, and resources to, among other things: assure safe, healthful, productive and esthetically and culturally pleasing surroundings for all Americans; attain the widest beneficial use of the environment without degradation, risk to health or safety; preserve important historic, cultural and natural aspects of our national heritage; achieve balance between population and resource use which will permit high standards of living and a wide sharing of life’s amenities; and, enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources (42 U.S.C. 4331).

The Act authorized and directed “that, to the fullest extent possible, the policies, regulations and public laws of the United States shall be interpreted and administered in accordance with the policies of the Act”, and imposes general and specific requirements on all Federal agencies (42 U.S.C. 4332).

Agencies are required to “utilize a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and decision making...”. They are also to ensure that “unquantified environmental amenities and values may be give appropriate consideration in decision making along with economic and technical considerations” (Section 102(2)(A)) (42 U.S.C. 4332 (2)(A)).

Section 102(2)(C) (42 U.S.C. 4332) requires that every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, include a statement on: the environmental impacts of the proposed action; any adverse environmental effects which cannot be avoided should the proposal be implemented; alternatives to the proposed action; the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity; and, any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. Agencies responsible for the action shall consult with and obtain comments from other agencies with jurisdiction by law or special expertise, with response to any environmental impact.

NEPA also establishes the Council on Environmental Quality (CEQ), in the Executive Office of the President (42 U.S.C. 4341). The Council advises and assists the President in providing leadership in protecting and enhancing the quality of the Nation's environment. It develops and evaluates Federal policies and activities on environmental quality. One of CEQ's primary functions in relation to water resources is the preparation of regulations concerning the development of environmental impact statements developed by the Corps and other agencies. The Office of Environmental Quality (OEQ), which was established in 1970, by the Environmental Quality Improvement Act, (P.L. 91-224) (42 U.S.C. 4371 et seq), provides staff for the Council.

**RESOURCES COVERED:** The quality of the historic, cultural and natural aspects of the human environment in general; the natural and physical environment and the relationship of people with that environment.

**COMPLIANCE REQUIREMENTS:** NEPA requires that a detailed statement accompany every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The Corps of Engineers normally prepares EISs for feasibility reports for authorization and construction of major projects, for changes in projects which increase size substantially or incorporate additional purposes, and for major changes in the operation and/or maintenance of completed projects. Environmental assessments are normally prepared for other Corps actions except for certain minor and/or routine actions which are categorically excluded from NEPA documentation. A finding of no significant impact is prepared by the reporting officer to accompany an assessment when it is determined that an EIS will not be prepared. NEPA documentation is accomplished prior to implementation of emergency work, if practicable. (ER 200-2-2)

Notice of Intent. A notice of intent to prepare a draft EIS is published in the Federal Register as soon as practicable after reporting officers decide to prepare a draft EIS (ER 200-2-2). Record of Decision. A Record of Decision is prepared to document the Corps final decision on a proposed action requiring an EIS. The Record of Decision identifies the reasonable alternatives; designates the environmentally preferable alternative or alternatives and the agency's preferred alternative; the relevant factors including economic and technical considerations, statutory missions, and national policy which were balanced to make the decision; and whether all practicable means to avoid or minimize environmental harm have been adopted, and if not, why not. (ER 200-2-2)

The Council on Environmental Quality developed Regulations For Implementing the Procedural Provisions of the National Environmental Policy Act (40 C.F.R. 1500-1508). Part 1500, Sec 1500.1(b) of this guidance requires that provisions must be made to insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. Section 1506.6 provides requirements for public involvement, requiring that ... agencies shall make diligent efforts to involve the public in preparing and implementing their NEPA

procedures. These regulation go on to mandate that the general public be involved in scoping of the project, and be invited to comment after release of the draft EIS and the final EIS and responses to those comments are provided.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Federal agencies, State and local agencies, Indian tribes, applicants, the public.

**Process and Product:** Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI); or, Environmental Impact Statement (EIS) and a Record of Decision (ROD).

The Council on Environmental Quality (CEQ) regulations implementing the provisions of NEPA (40 C.F.R. 1500-1508) require the Federal agency having primary responsibility for preparing an environmental impact statement (EIS) to determine whether any other Federal agencies have jurisdiction by law, a statutorily mandated consultive role, or special expertise on environmental quality issues. "Jurisdiction by law" is defined as authority to approve, deny, or finance all or part of a proposal, and encompasses permits and licenses. "Special expertise" is defined as statutory responsibility, agency mission or related program experience. Appendix II of CEQ regulations lists Federal agencies so defined. The Corps review of another agency's EIS should be specific and may address either the adequacy of the EIS or the merits of the alternatives, or both, where the Corps has jurisdiction by law (Section 10, Section 404, etc.) or special expertise (flood control, navigation, water supply, etc.). District Engineers are designated as responsible NEPA officials for providing comments on other agencies EIS's except proposals requiring HQUSACE or ASA(CW) review (ER 200-2-2).

**Timing/Schedule:** Minimum 45-day review of draft statement; no Federal decision until at least 90 days after draft notice and 30 days after final notice is published in the Federal Register.

## **CORPS GUIDANCE**

**Civil Works Planning:** ER 200-2-2, Procedures for Implementing NEPA (also published as 33 C.F.R. 230); ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies. Appendix C, Environmental Compliance; ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects; Policy Guidance Letter No. 29, Expenditures on Aesthetics at Civil Works Projects.

**Civil Works Engineering:** ER 200-2-2, Procedures for Implementing NEPA; ER 1105-2-100 Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance; ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects; 33 C.F.R. 222.

**Civil Works Construction:** ER 200-2-2, Procedures for Implementing NEPA; ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects.

**Civil Works Operations:** ER 200-2-2, Procedures for Implementing NEPA; ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects.

**Regulatory:** 33 C.F.R. 320, 325 (Appendix B)

**FOR MORE INFORMATION SEE:** 40 C.F.R. 1500-1508; 45 FR 57488-57514, NEPA Implementation Procedures, Appendix I (Federal Agency NEPA Contacts) and Appendix II (Agencies with Jurisdiction by Law or Special Expertise on Environmental Quality Issues; Council on Environmental Quality, 28 August 1980; 46 FR 18026-18038, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, Council on Environmental Quality, 23 March 1981.

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Council on Environmental Quality (CEQ). One of CEQ's primary functions in relation to water resources is the preparation of regulations concerning the development of environmental impact statements developed by the Corps and other agencies.

**Guidance Title:** Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act

**Code of Federal Regulations Citation:** CEQ regulations on implementation of the procedural provision of NEPA are presented in 40 C.F.R. 1500-1508.

**MANAGEMENT OPPORTUNITIES:** The policy declared as by NEPA: encourages productive and enjoyable harmony between man and the environment; promotes efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; and encourages enrichment of the understanding of the ecological systems and natural resources important to the Nation (42 U.S.C. 4321). In addition to complying with the procedural aspects of the Act, there may be opportunities to contribute to the policy established by NEPA in carrying out the numerous programs and activities within the Civil Works program.

# NATIONAL HISTORIC PRESERVATION ACT

**LEGISLATIVE TITLE:** National Historic Preservation Act of 1966

**UNITED STATES CODE CITATION:** 16 U.S.C. §§ 470 et seq

**OTHER TITLES AND POPULAR NAMES:** National Historic Preservation Act; NHPA

**SUMMARY:** The Act establishes preservation as a national policy and directs the Federal government to provide leadership in preserving, restoring and maintaining the historic and cultural environment of the Nation. Preservation is defined as the protection, rehabilitation, restoration, and reconstruction of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, or engineering. The Act authorizes the Secretary of the Interior to expand and maintain a national register of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology and culture, referred to as the National Register. Also establishes the Advisory Council on Historic Preservation composed of 29 members, one of which is the Secretary of Defense 19 members. The Secretary of Defense is an observer on this Council.

The 1980 amendments established guidelines for nationally significant properties, curation of artifacts, and data documentation of historic properties, and preservation of Federally owned historic sites; required designation of a Preservation Officer in each Federal Agency; authorized the inclusion of historic preservation costs in project planning costs; and, authorized the withholding of sensitive data on historic properties when necessary. Federal agencies are directed to maintain historic properties in ways that consider the preservation of historic, archeological, architectural, and cultural values. Federal historic preservation programs shall insure that the preservation of properties not under the jurisdiction or control of agencies, but subject to be potentially affected by agency actions, are given full consideration in planning.

**RESOURCES COVERED:** Historic and cultural properties; Any prehistoric, and/or historic district, site, building, monument, deposit, structure, or object, listed in or determined eligible for listing in the National Register of Historic Places.

**COMPLIANCE REQUIREMENTS:** Federal agencies having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking shall take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. Federal agencies shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on each undertaking (Section 106 (16 U.S.C. 470f). In addition, Federal agencies shall assume responsibility for the preservation of historic properties that are owned or controlled by the agencies. They also shall establish a program to locate, inventory and nominate all properties under the agency's ownership or control that are eligible for inclusion on the National Register (Section 110(16 U.S.C. 470h-2)).

The Corps must be able to document compliance with the Act by including relevant coordination or consultation correspondence, study results, agency views and comments, and, if required, mitigation plans in Corps project reports and NEPA documents. The Corps must prepare historic preservation plans for projects under its jurisdiction that discuss survey and evaluation strategies, costs, and schedules, and that establish management objectives for historic properties. The Act requires Federal agencies to develop and implement professional qualification standards for Federal employees and contractors. A key requirement is that the Corps must ensure that tribal values are taken into account to the extent feasible and Native American and Native Hawaiian groups are authorized to establish their own culturally-specific criteria of significance. Furthermore, these groups may develop their own Section 106 compliance process for resources

on lands under their jurisdiction. Compliance requirements for the Regulatory Program are found in 33 C.F.R. 320, 325, 325-Appendix C, Processing Department of the Army Permits, Procedures for the Protection of Historic Properties.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Advisory Council on Historic Preservation; State Historic Preservation Officers; Tribal Historic Preservation Officers.

**Process:** Section 106 Review Process, directs Federal agencies, with direct or indirect jurisdiction over proposed Federal or Federally assisted undertakings, to take into account effects on historic properties, in accordance with regulations issued by the Advisory Council on Historic Preservation, and in consultation with the Council and the State Historic Preservation Officer.

Section 110 requires Federal agencies to assume responsibility for the preservation of historic properties owned or controlled by them and requires them to locate, inventory, and nominate all properties that qualify for the National Register. Agencies shall exercise caution to assure that significant properties are not inadvertently transferred, sold, demolished, substantially altered, or allowed to deteriorate.

**Product:** Consultation determination of significance (National Register Eligibility) and Effect - No Effect, No Adverse Effect, or Adverse Effect [may require studies, mitigation plan, and data recovery or architectural recording]

**Timing/Schedule:** Depending upon available information and the nature and significance of resources, effect determinations may take 30 days (i.e. a "no effect" determination) to over a year. Studies and significance and effect determinations should be completed during the feasibility phase. Mitigation is ordinarily done just prior to construction.

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 6.

**Civil Works Operations:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 6; Dredging Guidance Letter No. 89-01, Policy and Procedures for the Conduct of Underwater Historic Resource Surveys for Maintenance Dredging and Disposal Activities [33 C.F.R. 336.1(c)(6)]

**Regulatory:** 33 C.F.R. 320, 325, 325-Appendix C, Processing Department of the Army Permits, Procedures for the Protection of Historic Properties.

**FOR MORE INFORMATION SEE:** Water Resources Development Act of 1986, Section 943 (33 U.S.C. 2303); Reclamation Projects Authorization and Adjustments Act of 1992 (16 U.S.C. 470h-2).

## IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** Advisory Council on Historic Preservation

**Guidance Title:** See below

**Code of Federal Regulations Citation:** 36 C.F.R. 800, Protection of Historic Properties (implementing regulation for the Section 106 and Section/110 processes)  
Revised implementing regulations at 36 CFR 800 were published in the Federal Register on December 12, 2000.

The Section 106 and Section 110 processes usually require application of these regulations:

- 36 C.F.R. 60, National Register of Historic Places
- 36 C.F.R. 63, Determination for eligibility for inclusion in the National Register of Historic Places
- 36 C.F.R. 78, provides a waiver of responsibility from these requirements in the event of a major natural disaster imminent threat to national security
- 36 C.F.R. 79, Curation of Federally Owned Archeological Collections

**MANAGEMENT OPPORTUNITIES:** As a Federal agency, the Corps has the opportunity to implement the Federal Government's policy of providing leadership in the preservation of the cultural resources of the United States. This can be done through the use of both financial and technical assistance and in partnership with the States, local governments, Indian tribes, and private organizations and individuals. In addition to implementing the goals of the Act as part of planning Civil Works projects, surveys are conducted and measures are implemented to protect sites and structures as part of the operation and maintenance of Corps projects.

## NATIONAL INVASIVE SPECIES ACT OF 1996

**LEGISLATIVE TITLE:** National Invasive Species Act of 1996

**UNITED STATES CODE CITATION:** 16 U.S.C. 4701 et seq

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This Act reauthorizes and amends the Nonindigenous Aquatic Nuisance Prevention Control Act of 1990 (P.L. 101-646, 16 U.S.C. 4701 et seq). It includes a number of additional findings, including that once introduced, aquatic nuisance species are unintentionally transported and introduced into inland lakes and rivers by recreational boaters, commercial barge traffic and other pathways; preventative management measures are needed nationwide to prevent the further introduction and infestation of destructive species. The findings also state that nonindigenous species may compete with or prey upon native species of plants, fish, and wildlife, may carry diseases or parasites that affect native species, and may disrupt the aquatic environment and economy of affected nearshore area (16 U.S.C. 4701).

Membership on the Aquatic Nuisance Species Task Force, established under the 1990 Act (16 U.S.C. 4721) is expanded to include the Secretary of Agriculture. Representatives of the Chesapeake Bay Program and the San Francisco Bay-Delta Estuary Program are to be invited as ex officio members.

The Act reauthorizes and modifies a number of the ballast management programs and provisions identified in the Nonindigenous Aquatic Nuisance Prevention Control Act of 1990, and directs establishment of record keeping and reporting procedures and sampling techniques, and monitoring for compliance with guidelines. The Act directs the development and maintenance of a clearing house of national data on ballasting practices, compliance with the national ballast management guidelines, and other information. The Secretary of Defense is directed to implement a ballast water management program for seagoing vessels of the Department of Defense, and the Secretary of Transportation shall implement a ballast water management program for seagoing vessels of the Coast Guard.

The Act includes provisions for a Dispersal Barrier Demonstration initiative (16 U.S.C. 4722). The Act states that [t]he Assistant Secretary, in consultation with the Task Force, shall investigate and identify environmentally sound methods for preventing and reducing the dispersal of aquatic nuisance species between the Great Lakes-Saint Lawrence drainage and the Mississippi River drainage through the Chicago River Ship and Sanitary Canal, including any of those methods that could be incorporated into the operation or construction of the lock system of the Chicago River Ship and Sanitary Canal. A report is to be submitted to Congress that identifies the most promising methods identified to prevent and reduce the dispersal of aquatic nuisance species, and ways to incorporate those methods into ongoing operations of the Corps of Engineers that are conducted at the Chicago River Ship and Sanitary Canal.

**RESOURCES COVERED:** Mississippi River drainage; waters east and west of the Great Lakes in the 8 States that border the Great Lakes; the Chesapeake Bay; San Francisco Bay-Delta Estuary; Honolulu Harbor; Columbia River system; waters of the United States. Zebra mussels, ruffe, round goby, mitten crab, green crab, brown mussel, shellfish pathogens, and other nonindigenous species; eurasian watermilfoil, hydrilla, water hyacinth, water chestnut, and other nuisance aquatic vegetation species.

**COMPLIANCE REQUIREMENTS:** All vessels operating in waters of the United States that are equipped with ballast water tanks must comply with guidelines issued by the Secretary of Transportation.



## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** The Secretary of Transportation and the Aquatic Nuisance Species Task Force.

**Process:** None specified.

**Product:** None specified.

**Timing/Schedule:** None specified.

## CORPS GUIDANCE

**Civil Works Planning:** None specific to this statute.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** Nonindigenous Aquatic Nuisance Prevention Control Act of 1990

## IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** None identified.

**Guidance Title:** None identified.

**Code of Federal Regulations Citation:** None identified.

**MANAGEMENT OPPORTUNITIES:** The Chicago Sanitary and Ship Canal links the Great Lakes and Mississippi River Basins and provides access for aquatic nuisance species to the two basins. The Corps has formed a board of stakeholders to identify common goals, possible approaches and potential problems with operating a dispersal barrier demonstration project, should efforts authorized in the Act be funded. There may be opportunities for the Corps to form or participate on similar boards and committees elsewhere in the country that are attempting to address aquatic nuisance species issues. In addition, there may be opportunities to include objectives for management of aquatic nuisance species as part of watershed studies.

# NATIONAL TRAILS SYSTEM ACT

**LEGISLATIVE TITLE:** National Trails System Act

**UNITED STATES CODE CITATION:** 16 U.S.C. 1241 - 1251

**OTHER TITLES AND POPULAR NAMES:** None identified

**SUMMARY:** This Act acknowledges the increasing popularity of outdoor recreation, the need to promote access to and enjoyment of outdoor areas of the Nation, both near urban areas and in more remote scenic areas. It establishes the National Trails System (NTS), composed of: recreation trails; scenic trails; historic trails; connecting or side trails; and uniform markers. National recreational trails provide for a variety of outdoor recreation uses in or reasonably accessible to urban areas. National historic trails generally follow original trails or routes of travel of national historical significance. They can include land and water components as well as historic artifacts. Connecting and side trails provide additional points of public access to national recreation, national historic or national scenic trails, or connections between such trails. Recreation and connecting and side trails can be established by the Secretary of Interior or the Secretary of Agriculture with the consent of the Federal Agency, State, or political subdivision with jurisdiction over the lands involved. National scenic trails are extended trails located to provide for the conservation and enjoyment of Nationally significant scenic, historic, natural or cultural qualities of the areas through which such trails may pass. Scenic trails may be located so as to represent desert, marsh, grassland, mountain, canyon, river forest, and other areas, as well as landforms that exhibit significant characteristics of the physiographic regions of the Nation.

The Act establishes a number of National scenic trails (16 U.S.C. 1244), including the Appalachian National Scenic Trail, and the Pacific Crest National Scenic Trail, and includes provisions for administration and development of the NTS (16 U.S.C. 1246). The appropriate Secretary, in consultation with the heads of any other Federal agency administering the lands through which a trail may pass may issue regulations for the use, protection, management, and development of trail right-of-way.

**RESOURCES COVERED:** Natural resources; national recreation trails; scenic and historic areas.

**COMPLIANCE REQUIREMENTS:** The Corps must identify, evaluate, and coordinate with the National Park Service, or other appropriate agency, regarding any impacts to the NTS as a result of ongoing or proposed Civil Works activities.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Department of the Interior, Department of Agriculture

**Process:** None specified.

**Product:** None specified.

**Timing/Schedule:** None specified.

## CORPS GUIDANCE

**Civil Works Planning:** None specific to this statute.

**Civil Works Engineering:** EM 1110-2-410, Design of Recreation Areas and Facilities- Access and Circulation, December 31, 1982

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** None identified

#### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Department of the Interior, National Park Service

**Guidance Title:** National Recreation Trails - Information and Application Procedures for Designation

**Code of Federal Regulations Citation:** 43 C.F.R. 8342, 8351 et seq.

**MANAGEMENT OPPORTUNITIES:** The Corps recognizes that the aesthetic attractiveness of scenic corridors available on project lands can be enhanced by incorporation of trails or trail systems. Accordingly, wherever warranted by current or potential public use of Corps water resource projects, consideration is given in planning to the incorporation of trails.

# NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT

**LEGISLATIVE TITLE:** Native American Graves Protection and Repatriation Act

**UNITED STATES CODE CITATION:** 25 U.S.C. 3001 et seq

**OTHER TITLES AND POPULAR NAMES:** NAGPRA

**SUMMARY:** The Act provides for the protection of Native American and Native Hawaiian cultural items, and establishes a process for the authorized removal of human remains, funerary objects, sacred objects, and objects of cultural patrimony from sites located on lands owned or controlled by the Federal Government. The Act also explains the transfer of ownership of cultural items to Native American or Native Hawaiian individuals (e.g., direct lineal or cultural descendants), organizations or tribes. It addresses the recovery, treatment, and repatriation of Native American and Native Hawaiian cultural items by Federal agencies and museums. In accordance with Section 3(c), (25 U.S.C. 3002) USACE Commands should not claim ownership or permanent control of specified cultural items discovered on Federal or tribal lands after 16 November 1990: 1) when lineal descendants are identified who claim human remains and associated funerary objects; 2) if the Native American tribe or Native Hawaiian organization with the closest affiliation presents a claim; or, 3) when the tribe or organization which aboriginally occupied the territory presents the strongest claim. (There may be instances in which the Corps may take temporary custody until ownership is determined.) The Act distinguishes between pre-enactment and post-enactment (November 16, 1990) resources. NAGPRA contains data gathering, reporting, consultation, and permitting provisions. The Corps interim guidance covers the basis for repatriation, the timing of repatriation, and how to handle competing claims for pre- and post-enactment covered resources. The emphasis of the Act is on consultation with Native American tribes and Native Hawaiian organizations to ensure that these entities play a major role in the treatment of specific cultural objects.

CECW-AO/CECW-PD/CECC 1995 Memorandum, Application of the Native American Graves Protection and Repatriation Act to Water Resources Development Activities, explains that NAGPRA does not apply to lands in which the Federal government has merely been provided access by a landowner and/or local sponsor, for water resources development studies or projects. However, as the Corps may accept ownership of cultural items it recovers, when they are voluntarily offered by a landowner and/or local sponsor, transferred items are subject to NAGPRA-like activities, at such time as the transfer of ownership is executed.

Section 208 of the Water Resources Development Act of 2000 (33 U.S.C. 2338) states that the Secretary of the Army may identify and set aside areas at civil works projects for the reburial of Native American remains that have been discovered on project land and have been rightfully claimed by a lineal descendant or Indian tribe in accordance with applicable Federal law. This must be done in consultation with the affected Indian tribes. The remains may be recovered and reburied at Federal expense, and the area may be conveyed to the Indian tribe for use as a cemetery.

**RESOURCES COVERED:** Historic and cultural properties; cultural items, specifically, human remains, associated funerary objects, unassociated funerary objects, sacred objects, or objects of cultural patrimony.

## **COMPLIANCE REQUIREMENTS:**

- a. The Act directs the Corps to inventory holdings or collections of human remains and associated funerary items currently under their jurisdiction by the end of 1995. Inventories were

to contain item descriptions, cultural and geographical affiliation information, and a discussion of the circumstances surrounding acquisition of all "covered resources". Summaries, defined as general narratives describing the character and extent of collections, kinds of objects, locational data, circumstances of acquisition, and cultural affiliation, were to be prepared, for unassociated covered resources, within 3 years of enactment of the law. Summaries could be prepared, in lieu of item-by-item inventories.

b. Following completion of inventories and summaries, Commands should consult with Native American tribal governments, Native Hawaiian organizations, Alaskan Native Villages, and traditional religious leaders regarding repatriation of existing collections. Programmatic consultation is recommended with tribal organizations which routinely could claim affiliation with covered resources on Corps fee lands. Commands should not delay arranging for the transfer of cultural items, unless the items are an integral part of a specific or on-going scientific study, whose outcome is "of major benefit to the United States". In these instances, transfer should occur within 90 days of completion of studies.

c. In cases where unanticipated covered resources are encountered during construction, Commanders must cease undertakings or activities, in whole or in part, for at least 30 days, and make a reasonable effort to protect the items discovered.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Department of the Interior, Tribal governments, Native Hawaiian organizations, Alaskan Native Villages

**Process:** Identification of geographical and cultural affiliation of associated (with human remains) and unassociated covered resources; consultation prior to excavation and removal and repatriation; and, transfer/repatriation.

**Product:** Inventories, narrative summaries, permits, repatriation agreements

**Timing/Schedule:** Existing collections - inventories of associated covered resources within 5 years and summaries of unassociated covered resources within 3 years; Archeological Resource Protection Act (ARPA) permits for excavation and removal prior to undertaking new work; transfer/repatriation agreements as required as a result consultation, or within 90 days of completion of "specific scientific studies".

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies. CECW-O/CECW-P, Interim Guidance for the Native American Graves Protection and Repatriation Act, Public Law 101-601, 5 June 1991. CECW-AO/CECW-PD/CECC 1995 Memorandum, Application of the Native American Graves Protection and Repatriation Act to Water Resources Development Activities. Planning Guidance Letter No. 57, Indian Sovereignty and Government-to-Government Relations with Indian Tribes. CECW-PG Memorandum, 1 May, 2001, Initial Implementation Guidance for Section 208 of the Water Resources Development Act of 2000.

**Civil Works Engineering:** See planning

**Civil Works Construction:** See planning

**Civil Works Operations:** See planning; ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, Chapter 6.

**Regulatory:** 33 C.F.R. 320 and 325, Appendix C: Processing of Department of the Army permits Procedures for the Protection of Historic Properties

**FOR MORE INFORMATION SEE:** None identified The Water Resources Development Act of 2000, Section 208.

#### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** National Park Service

**Guidance Title:** Uniform Guidance is pending, Native American Graves Protection and Repatriation Act Regulations

**Code of Federal Regulations Citation:** Title 43 - Public Lands: Interior, Subtitle A - Office of the Secretary of the Interior, Part 10 (Pending)

**MANAGEMENT OPPORTUNITIES:** Information acquired from ARPA inventories can also be incorporated into the curation management of Corps cultural resources collections. For this reason and to the extent possible, ARPA inventories should be conducted in such a manner so as to produce types of information which also can be used for curation purposes. The opportunity exists to acquire information basic to the needs of both NAGPRA and curation. This includes such items as insuring all objects are properly identified, labeled, and bagged along with identifying objects which are missing, damaged, or in need of stabilization.

# NEOTROPICAL MIGRATORY BIRD CONSERVATION ACT

**LEGISLATIVE TITLE:** Neotropical Migratory Bird Conservation Act

**UNITED STATES CODE CITATION:** 16 U.S.C. 6101, et seq.

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** The purposes of the Act are to perpetuate healthy populations of neotropical migratory birds, assist in their conservation, and to foster international cooperation for conservation initiatives in the United States, Latin America, and the Caribbean. Conservation is defined as the use of methods and procedures necessary to bring a species of neotropical migratory bird to the point at which there are sufficient populations in the wild to ensure the long-term viability of the species. Among the conservation measures identified in the Act are: protection and management of neotropical migratory bird populations, maintenance, management, protection, and restoration of their habitat, research and monitoring, law enforcement, and community outreach and education. The Act authorizes the Secretary of the Interior to establish a program to provide financial assistance in the conservation of neotropical migratory birds and outlines information on applicants, project proposal content, reporting and cost sharing, and other aspects of managing programs initiated to implement this Act. Project proposals are to be submitted to the Secretary of the Interior, and the federal share of the cost of each project shall be not greater than 25%.

**RESOURCES COVERED:** Neotropical migratory birds, which winter in Latin America and the Caribbean, and their associated habitat.

**COMPLIANCE REQUIREMENTS:** None specific to the Corps.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Secretary of the Interior, Advisory Group consisting of individuals representing public and private organizations actively involved in the conservation of neotropical migratory birds.

**Process:** Advisory group shall conduct meetings open to the public, and make minutes available to the public.

**Product:** Healthy, viable populations of neotropical migratory birds.

**Timing:** Program is funded for five years; Secretary is required to submit progress report to Congress in October, 2002.

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** None identified

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Department of the Interior

**Guidance Title:** None identified.

**Code of Federal Regulations Citation:** None applicable

**MANAGEMENT OPPORTUNITIES:** There may be opportunity for the Corps to assist the Secretary of Interior through a Cooperative Agreement with restoration of important water related neotropical migratory bird habitat.



## **NOISE CONTROL ACT OF 1972**

**LEGISLATIVE TITLE:** Noise Control Act of 1972

**UNITED STATES CODE CITATION:** 42 U.S.C. 4901 to 4918

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This Act establishes a national policy to promote an environment for all Americans free from noise that jeopardizes their health and welfare. To accomplish this, the Act establishes a means for the coordination of Federal research and activities in noise control, authorizes the establishment of Federal noise emissions standards for products distributed in commerce, and provides information to the public respecting the noise emission and noise reduction characteristics of such products (42 U.S.C. 4901). The Act authorizes and directs that Federal agencies, to the fullest extent consistent with their authority under Federal laws administered by them, carry out the programs within their control in such a manner as to further the policy declared in 42 U.S.C. 4901. Each department, agency, or instrumentality of the executive, legislative and judicial branches of the Federal Government having jurisdiction over any property or facility or engaged in any activity resulting, or which may result in, the emission of noise shall comply with Federal, State, interstate, and local requirements respecting control and abatement of environmental noise. Each Federal agency shall, upon request, furnish information to the Environmental Protection Agency (EPA) regarding the nature, scope, and results of the noise research and noise-control programs of that agency, and shall consult with EPA, as required, in prescribing standards or regulations respecting noise. Certified low-noise-emission products shall be acquired for use by the Federal Government in lieu of other products if the Administrator of General Services determines that reasonably priced, reliable substitutes exist (42 U.S.C. 4914). The Act includes provision for citizen suits (42 U.S.C. 4911(a)) whereby any person may commence civil action against the United States or any governmental instrumentality or agency who is alleged to be in violation of any noise control requirement.

**RESOURCES COVERED:** Environmental noise - intensity, duration and character of sounds from all sources

**COMPLIANCE REQUIREMENTS:** Each Federal agency is required to limit noise emissions to within compliance levels. The Corps is responsible for operating its facilities within compliance noise levels set forth in Federal regulations, and state and/or local laws. The Corps also may be required to investigate the purchase of alternative machinery or equipment that has been certified as "low-noise-emission" by the GSA.

### **REVIEW AND CONSULTATION REQUIREMENTS**

**Who Reviews or Consults:** Environmental Protection Agency, General Services Administration, Department of Transportation, Federal Aviation Administration, State and local governments  
**Process:** None specified.

**Product:** None specified.

**Timing/Schedule:** None specified.

### **CORPS GUIDANCE**

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies,  
**Civil Works Engineering:** None specific to this statute  
**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute  
**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** None identified

**IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Environmental Protection Agency  
**Guidance Title:** None identified.  
**Code of Federal Regulations Citation:** 40 C.F.R. 209-211

**MANAGEMENT OPPORTUNITIES:** None identified.

# NONINDIGENOUS AQUATIC NUISANCE PREVENTION AND CONTROL ACT

**LEGISLATIVE TITLE:** Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990

**UNITED STATES CODE CITATION:** 16 U.S.C. 4701 et seq

**OTHER TITLES AND POPULAR NAMES:** Aquatic Nuisance Prevention and Control Act of 1990

**SUMMARY:** The purposes of this Act are to: (1) prevent unintentional introduction and dispersal of nonindigenous species into waters of the United States through ballast water management and other requirements; (2) coordinate and disseminate information on Federally conducted, funded or authorized research, on the prevention and control of the zebra mussel and other aquatic nuisance species; (3) develop and carry out control methods to prevent, monitor and control unintentional introductions of nonindigenous species from pathways other than ballast water exchange; (4) understand and minimize economic and ecological impacts of established nonindigenous aquatic nuisance species; and (5) to establish a program of research and technology development and assistance to States in the management and removal of zebra mussels.

The Act establishes an Aquatic Nuisance Species Task Force (16 U.S.C. 4721) to be co-chaired by the Director of the Fish and Wildlife Service, and the Under Secretary of Commerce for Oceans and Atmosphere. Membership includes the Administrator of the Environmental Protection Agency, the Commandant of the Coast Guard, the Assistant Secretary of the Army (Civil Works), and the head of any other Federal agency that the chairpersons deem appropriate. Representatives of the Great Lakes Commission and State agencies and other governmental entities may be invited to be ex officio members of the Task Force. A memorandum of understanding was authorized to describe the role of each in jointly carrying out provisions of the Act. The Act encourages consultation with the Government of Canada to develop an effective international program for preventing the introduction and spread of aquatic nuisance species in the Great Lakes from vessel ballast waters.

A number of studies are authorized by the Act: 1) a ballast exchange study to assess the environmental effects of ballast water exchange on the diversity and abundance of native species in receiving waters, and other purposes; 2) a biological study to determine whether aquatic nuisance species threaten the ecological characteristics and economic uses of waters of the U.S. other than the Great Lakes; and, 3) a shipping study to determine the need for controls on vessels entering waters of the U.S., other than the Great Lakes, to minimize the risk of unintentional introduction and dispersal of aquatic nuisance species in those waters (16 U.S.C. 4712). The Act directs the Coast Guard to issue guidelines to prevent the introduction and spread of aquatic nuisance species into the Great Lakes through the exchange of ballast water (16 U.S.C. 4711), in consultation with the Aquatic Nuisance Species Task Force.

The Act directs the Task Force to develop and implement a program to prevent introduction and dispersal of aquatic nuisance species, to monitor, control and study such species, and to disseminate related information (16 U.S.C. 4722). The Assistant Secretary of the Army (Civil Works), is directed to develop a program of research and technology development for controlling zebra mussels in and around public facilities, and to collect and make available, information pertaining to such control methods. The Act states that the Assistant Secretary [for Civil Works] will review proposed public facility management plans for requirements to reduce infestations of zebra mussels, and approve them if they meet the requirements specified in the Act (16 U.S.C. 4724).

**RESOURCES COVERED:** Waters of the Great Lakes (defined as Lake Ontario, Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, Lake Superior, and the connecting channels (Saint Mary's River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian Border), and includes all other bodies of water within the drainage basin of such lakes and connecting channels. Nonindigenous species, defined as any species or other viable biological material that enters an ecosystem beyond its historic range, including any such organisms transferred from one country to another (16 U.S.C. 4702).

**COMPLIANCE REQUIREMENTS:** All vessels operating in waters of the Great Lakes that are equipped with ballast water tanks must comply with guidelines issued pursuant to this Act.

## **REVIEW AND CONSULTATION REQUIREMENTS**

**Who Reviews or Consults:** The Secretary of Transportation and the Aquatic Nuisance Species Task Force.

**Process:** None specified.

**Product:** None specified.

**Timing/Schedule:** None specified.

## **CORPS GUIDANCE**

**Civil Works Planning:** None specific to this statute.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** National Invasive Species Act of 1996

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** None identified.

**Guidance Title:** None identified.

**Code of Federal Regulations Citation:** None identified.

**MANAGEMENT OPPORTUNITIES:** The Corps established the Zebra Mussel Research Program in 1992 to address the control of zebra mussels, and make available information pertaining to control methods. There may be opportunities for Civil Works studies and activities in and around the waters of the Great Lakes (see "Resources Covered" above), to foster the goals of this Act through consideration of information derived from the research program and contained in State Aquatic Nuisance Species Management Plans.

# NORTH AMERICAN WETLANDS CONSERVATION ACT

**LEGISLATIVE TITLE:** North American Wetlands Conservation Act

**UNITED STATES CODE CITATION:** 16 U.S.C. 4401 et seq

**OTHER TITLES AND POPULAR NAMES:** None identified

**SUMMARY:** The Act is designed to encourage partnerships among public agencies and other interests to protect, enhance, restore, and manage an appropriate distribution and diversity of wetland ecosystems and other habitats for migratory birds and other fish and wildlife. Emphasis is on maintenance and improved distributions of migratory bird populations and North American waterfowl. The Act establishes the North American Wetlands Conservation Council (16 U.S.C. 4403) (NAWCC) to recommend wetlands conservation projects to the Migratory Bird Conservation Commission (MBCC)(16 U.S.C. 715a). In recommending such projects, consideration is given to availability of non-Federal matching funds, partnerships among public agencies and private entities, consistency with the National Wetlands Priority conservation plan (16 U.S.C. 3921), conservation of migratory nongame birds, other fish and wildlife, and species that are listed, or are candidates for listing, as threatened or endangered under the Endangered Species Act (16 U.S.C. 1531 et seq.)

Section 9 of the Act (16 U.S.C. 4408) addresses the restoration, management, and protection of wetlands and habitat for migratory birds on Federal lands. Federal agencies acquiring, managing, or disposing of Federal lands and waters are to cooperate with the Fish and Wildlife Service to restore, protect, and enhance wetland ecosystems and other habitats for migratory birds, fish and wildlife on their lands, to the extent consistent with their missions and statutory authorities.

The Fish and Wildlife Service is authorized to enter into cooperative agreements and grants with public and private agencies, organizations, institutions and individuals to implement the Act on a public-private cost- shared basis. The non-Federal share of contributions to the costs of projects undertaken pursuant to this Act may not be derived from Federal grant programs (16 U.S.C. 4407b).

**RESOURCES COVERED:** wetlands, wetland ecosystems, migratory birds, waterfowl, fish and wildlife.

**COMPLIANCE REQUIREMENTS:** The Corps should manage projects to enhance wetland habitat for waterfowl, whenever possible and practicable.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Fish & Wildlife Service, North American Wetlands Conservation Council

**Process and Product:** NAWCC submits wetlands conservation projects to the Migratory Bird Conservation Commission for joint review and consideration of those projects which should be pursued. Secretary of Interior is responsible for submitting an annual report to Congress on estimated number of acres of wetlands and habitat restored, trends in populations size of migratory birds and waterfowl, status of efforts to establish cooperative agreements for wetland habitat projects, and status of ongoing or in-progress projects.

**Timing/Schedule:** None specified.

## **CORPS GUIDANCE:**

**Civil Works Planning:** None specific to this statute.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** Fish and Wildlife Conservation Act; Migratory Bird Conservation Act; Emergency Wetland Resources Act; Endangered Species Act.

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Fish and Wildlife Service

**Guidance Title:** None identified.

**Code of Federal Regulations Citation:** None.

**MANAGEMENT OPPORTUNITIES:** There may be opportunities for the Corps to contribute to the goals of this Act through Section 1135 projects or as part of other ecosystem restoration initiatives. In addition, there may be opportunities to support the goals of this Act through Civil Works stewardship initiatives undertaken as part of Natural Resource Management programs.

## OIL POLLUTION ACT OF 1990

**LEGISLATIVE TITLE:** Oil Pollution Act of 1990

**UNITED STATES CODE CITATION:** 33 U.S. Code 2701-2761 et seq

**OTHER TITLES AND POPULAR NAMES:** OPA, Great Lakes Oil Pollution Research and Development Act

**SUMMARY:** Spurred by the March 1989 Exxon Valdez oil spill and other large spills occurring within months of that catastrophe, the Oil Pollution Act of 1990 (Public Law 301-308) represents the culmination of 15 years of congressional efforts to reach a consensus on comprehensive Federal oil spill legislation. The Act has six major provisions: an expanded Federal role in oil-spill response, contingency planning requirements for vessels and certain facilities, the establishment of the Oil Spill Liability Trust Fund, the increase of liability for spills of oil or hazardous substances from vessels and facilities, the requirements for double hulls on new tankers, and the requirements for increased research and development into spill response technologies.

**RESOURCES COVERED:** Oil and hazardous substances, damage to natural resources

**COMPLIANCE REQUIREMENTS:** Facility response plans may be required for vessels and on-shore facilities which, because of their locations, could reasonably be expected to cause “substantial harm” to the environment by discharging oil into or on navigable waters or adjoining shorelines. The regulations further discuss what facilities would be reasonably expected to cause substantial harm. Also Spill Prevention, Control and Countermeasures (SPCC), and/or Facility Response Plans may be required for certain facilities.

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** US Coast Guard and the Environmental Protection Agency

**Process and Product:** Facility Response Plan, Spill Prevention, Control and Countermeasures (SPCC) Plan

**Timing/Schedule:** None specified

### CORPS GUIDANCE:

**Civil Works Planning:** None specific to this statute

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** ER 200-2-3, Environmental Compliance Policies and EP 200-2-3, Environmental Compliance Guidance and Procedures.

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** Prior to the enactment of OPA, Federal oil spill liability law was embodied in four primary statutes: the Clean Water Act, the Outer Continental Shelf Lands Act, the Deepwater Port Act, and the Trans-Alaska Pipeline Authorization Act. OPA replaces this approach by

amending and expanding section 311 of the Clean Water Act, to create a comprehensive liability, compensation and prevention scheme under one statute.

#### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** US Coast Guard and the Environmental Protection Agency

**Guidance Title:** Executive Order 12777, Implementation of Section 311 of the Federal Water Pollution Control Act of October 18, 1972, as Amended, and the Oil Pollution Act of 1990; C.F.R. titles below.

**Code of Federal Regulations Citation:** 40 C.F.R. part 112: Oil Pollution Prevention; 33 C.F.R. Part 150 et seq.: Response Plans; 49 C.F.R. Part 106 et seq: Oil Spill Prevention and Response Plans; 15 C.F.R. 990; 33 C.F.R. 135; 33 C.F.R. 137.

**MANAGEMENT OPPORTUNITIES:** None identified.



# OUTER CONTINENTAL SHELF LANDS ACT

**LEGISLATIVE TITLE:** Outer Continental Shelf Lands Act

**UNITED STATES CODE CITATION:** 43 U.S.C. 1331 et seq; 43 U.S.C. 1801 et seq

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** The Act establishes policy for the management and exploitation of oil and natural gas in the Outer Continental Shelf, and for protecting the marine and coastal environment, in part, by creating an oil spill liability fund. The authority for the Secretary of the Army to prevent obstructions to navigation in navigable waters of the United States is extended to artificial islands and fixed structures located on the outer continental shelf (43 U.S.C. 1333(e)). In addition, the Secretary of Interior may, by agreement, utilize, with or without reimbursement, the services, personnel, or facilities of any Federal agency for environmental studies or information for assessment of management of impacts on the environment or impacts on marine biota from pollution or large spills. Federal agencies must notify the Department of Interior regarding their activities that will have a direct and significant effect on the Outer Continental Shelf or its development (43 U.S.C. 1334(h)).

43 U.S.C. 1337(k) was amended by Public Law 103-426 by authorizing the Secretary of the Interior to negotiate agreements for the use of sand, gravel and shell resources from the Outer Continental Shelf for use in 1) shore protection, beach restoration or coastal wetlands restoration programs or projects undertaken by a Federal, State or local government entity, or 2) a construction project that is funded in whole or in part by or authorized by the Federal Government. The Secretary may assess a fee based on an assessment of the value of the resources and the public interest served by promoting development of the resources. The amendment requires any Federal agency proposing to make use of sand, gravel and shell resources under provisions of this Act to enter into an MOA with the Secretary concerning the potential use of those resources; and Secretary of the Interior to notify the House Committee on Merchant Marine and Fisheries, the House Committee on Natural Resources, and the Senate Committee on Energy and Natural Resources.

**RESOURCES COVERED:** Natural resources in the subsoil and seabed of the coastal zone; oil, gas and minerals; fish and wildlife.

**COMPLIANCE REQUIREMENTS:** The Department of Interior oversees Outer Continental Shelf resources, and the Corps must develop a memorandum of Agreement with the Minerals Management Agency for coastal projects that have borrow areas extending beyond the three-mile limit.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Department of Interior (Minerals Management Agency)

**Process:** None specified.

**Product:** None specified.

**Timing/Schedule:** None specified

## CORPS GUIDANCE

**Civil Works Planning:** None specific to this statute.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** 33 C.F.R 320 and 322

**FOR MORE INFORMATION SEE:** The Submerged Land Act

**IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Department of the Interior, Department of Energy

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** None.

**MANAGEMENT OPPORTUNITIES:** None identified.

## **POLLUTION PREVENTION ACT**

**LEGISLATIVE TITLE:** Pollution Prevention Act of 1990

**UNITED STATES CODE CITATION:** 42 U.S.C. 13101 et seq

**OTHER TITLES AND POPULAR NAMES:** PPA

**SUMMARY:** The Act establishes the policy that pollution should be prevented or reduced at its source whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner (42 U.S.C. 1301(b)). The Environmental Protection Agency (EPA) is authorized to develop and implement a strategy for a multi-media approach to source reduction, and establish a standard method of measuring source reduction (42 U.S.C. 1303). The Act also authorizes grants to states for programs to promote the use of source reduction by businesses (42 U.S.C. 1304) and a Source Reduction Clearinghouse (42 U.S.C. 1305) to foster the exchange of information on source reduction techniques, and disseminate this information to businesses and provide technical assistance to businesses.

The Act required owners or operators of facilities required to file an annual toxic chemical release form under Emergency Planning and Community Right-to Know Act, Section 313 to also include with each annual filing a toxic source reduction and recycling report for the preceding calendar year. Not only did EO 12856 require Federal Agencies to comply with the provisions of EPCRA and file a Toxic Release Inventory (TRI) reports for those chemicals exceeding the threshold, it also requires Federal facilities to prepare pollution prevention plans.

**RESOURCES COVERED:** Hazardous substances, hazardous chemicals and extremely hazardous substances, toxic and radiological waste; toxic chemicals as described in 42 U.S.C. 11023.

**COMPLIANCE REQUIREMENTS:** Executive Order 12856, Federal Compliance with Right-to Know Laws and Pollution Prevention requirements, August 3, 1993, requires all executive agencies to comply with the PPA to the same extent as any private person. Each owner or operator of a facility required to file an annual toxic chemical release form under Section 313 of the Superfund Amendments and Reauthorization Act of 1986 (SARA Title III) is required by the Pollution Prevention Act to also file a toxic source reduction and recycling report.

### **REVIEW AND CONSULTATION REQUIREMENTS**

**Who Reviews or Consults:** EPA

**Process:** See Emergency Planning and Community Right-to-Know Act

**Product:** None specified

**Timing/Schedule:** None specified

### **CORPS GUIDANCE:**

**Civil Works Planning:** ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects.

**Civil Works Engineering:** ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects; Also, ER 200-2-3, Environmental Compliance Policies and EP 200-2-3, Environmental Compliance Guidance and Procedures.

**Civil Works Construction:** ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects.

**Civil Works Operations:** ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects; USACE Operated Facilities Environmental Compliance Guidance Letter No. 4, Spill Planning and Response Requirements. Also, ER 200-2-3, Environmental Compliance Policies and EP 200-2-3, Environmental Compliance Guidance and Procedures.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** EO 12856, Federal Compliance with Right-to Know Laws and Pollution Prevention requirements, August 3, 1993; EO 12872, Federal Acquisition, Recycling, and Waste Prevention, 22 Oct 1993; and EO 12780, Federal Agency Recycling and the Council on Federal Recycling and Procurement Policy.

#### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Environmental Protection Agency

**Guidance Title:** See Emergency Planning and Community Right-to-Know Act

**Code of Federal Regulations Citation:** See Emergency Planning and Community Right-to-Know Act.

**MANAGEMENT OPPORTUNITIES:** Opportunities include waste prevention and waste reduction through the use of acquisition controls, life cycle cost and analysis, process modifications, modification of contract and product specifications, recovery of spent or used material for recycling, and use of recycled materials.

## RECLAMATION PROJECTS AUTHORIZATION AND ADJUSTMENTS ACT OF 1992

**LEGISLATIVE TITLE:** Reclamation Projects Authorization and Adjustments Act of 1992

**UNITED STATES CODE CITATION:** 43 U.S.C. 390h-1 et seq; 16 U.S.C. 4601-31-4601-34; 16 U.S.C. 470a, et seq.

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This Act contains 40 titles; some of which are cited as individual acts. Most titles in this Act authorize initiatives for which the Secretary of the Interior is responsible, primarily through the Bureau of Reclamation. However, the Secretary is authorized collaborate with other Federal agencies as appropriate. Two titles of this Act amend other acts which are applicable to the Civil Works Program.

Title XXVIII (16 U.S.C. 4601-31 - 4601-34), known as the Reclamation Recreation Management Act, amends provisions of the Federal Water Project Recreation Act (P.L. 89-72). Section 2804 (16 U.S.C. 4601-32) amends P.L. 89-72 regarding cost sharing requirements for the provision of new recreation facilities, for recreation and fish and wildlife enhancement, and for the expansion or modification of existing recreation facilities. The requirement for the sponsor to assume 100 percent of operations, maintenance, and replacement costs is changed to "not less than one half the costs (16 U.S.C. 4601-13(a))." Although the original law was directed at the Bureau of Reclamation, these amendments extend to the Corps as well. Civil Works policy continues to require 100 percent non-Federal operations, maintenance, and replacement costs.

Title XL (16 U.S.C. 470a et seq, & 470 note) amends the National Historic Preservation Act (P.L. 89-665)(NHPA) by setting forth a review process for existing threats to properties on, or eligible for inclusion in, the National Register, and for periodic evaluation of State programs for consistency with the Act. Section 4006 (16 U.S.C. 470a) expands the Tribal Historic Preservation Programs to authorize the Secretary of Interior to assist Indian tribes in preserving their historic properties in consultation with the State Historic Preservation Officers through program management and grants. Section 4012 (16 U.S.C. 470h-2) addresses Federal Agency historic preservation programs and directs Federal Agencies with jurisdiction or control over historic properties listed or eligible for the National Register to manage and maintain these properties in such a way to reserve their historic, archaeological, architectural, and cultural value, and that such programs be carried out in consultation with Federal, State, and local agencies, including Indian tribes and Native Hawaiian organizations. Properties not under jurisdiction or control of a Federal agency, but may be potentially affected by an agency's actions, should also be given full consideration in the planning process as to the effects of the activity on the property. Section 4014 (16 U.S.C. 470h-4) amends the NHPA by establishing professional standards for personnel and contractors responsible for historic resources. Title XL also creates Title IV in the National Historic Preservation Act (16 U.S.C. 470x et seq.) to establish a National Center for Preservation Technology and Training to develop and distribute preservation and conservation skills and technologies, to develop and facilitate training for Federal, State and local resource preservation professionals, cultural resource managers, maintenance personnel and others working in the preservation field, and for other purposes. The center is to be established within the Department of Interior, and located at Northwestern State University of Louisiana.

**RESOURCES COVERED:** recreation; fish and wildlife; historic and cultural resources.

**COMPLIANCE REQUIREMENTS:** Title XXVIII requires sponsor to contribute at least one half funding for recreation opportunities and allows for documentation in Corps reports and

NEPA documents that recreation opportunities were considered during the planning and design processes. Title XL requires that the Corps prepare historic preservation plans for projects under its jurisdiction that discuss survey and evaluation strategies, costs, and schedules, and that establish management objectives for historic properties to ensure that tribal values are taken into account to the extent feasible. Native American and Native Hawaiian groups are authorized to establish their own culturally-specific criteria of significance. Furthermore, these groups may develop their own Section 106 compliance process for resources on lands under their jurisdiction.

## **REVIEW AND CONSULTATION REQUIREMENTS**

**Who Reviews or Consults:** Department of Interior and states (Titles XXVIII and XL)

**Process:** None specified.

**Product:** None specified.

**Timing/Schedule:** None specified.

## **CORPS GUIDANCE**

**Civil Works Planning:** None specific to this statute.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** Federal Water Project Recreation Act; National Historic Preservation Act.

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** See National Historic Preservation Act.

**Guidance Title:** None identified.

**Code of Federal Regulations Citation:** See National Historic Preservation Act.

**MANAGEMENT OPPORTUNITIES:** See the Federal Water Project Recreation Act, and the National Historic Preservation Act.

## RESERVOIR AREAS-FOREST COVER

**LEGISLATIVE TITLE:** Reservoir Areas-Forest Cover

**UNITED STATES CODE CITATION:** 16 U.S.C. 580m

**OTHER TITLES AND POPULAR NAMES:** Forest Conservation Act

**SUMMARY:** This Act establishes policy to provide that reservoir areas of projects for flood control, navigation, hydroelectric power development, and other related purposes owned in fee and under the jurisdiction of the Secretary of the Army and the Chief of Engineers be developed and maintained to encourage, promote, and assure adequate and dependable future resources of readily available timber, through sustainable yield programs, reforestation, and accepted conservation practices. The Act also provides for the increase in value of such areas for conservation, recreation, and other beneficial uses provided that such development and management are accomplished to the extent practicable and compatible with other uses of the project. The Chief of Engineers, under the supervision of the Secretary of the Army, is directed to provide for the protection and development of forest or other vegetative cover and the establishment and maintenance of other conservation measures on reservoirs under his jurisdiction, so as to yield the maximum benefit and otherwise improve such areas. Programs and policies developed pursuant to this Act shall be coordinated with the Secretary of Agriculture, and with appropriate State conservation agencies.

**RESOURCES COVERED:** Forests; forest cover; reservoir areas; timber.

**COMPLIANCE REQUIREMENTS:** Forest management programs are to be developed at Corps reservoir projects to increase the value of project lands for recreation and wildlife, and to promote natural ecological conditions by following accepted conservation practices. Where the preservation of natural conditions are the paramount consideration, there is no justification for using practices appropriate to commercial forestry production such as thinning, pruning and release cutting for stand improvement. Vegetation, living or dead, will be removed only with justification such as urgent disease control, urgent insect pest control, fire hazard reduction, wildlife management practice, removal for construction of recreational facilities or other specific essential uses (ER 1130-2-540).

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Department of Agriculture; State conservation agencies

**Process:** None specified.

**Product:** Forest conservation programs in reservoir areas.

**Timing/Schedule:** None specified.

### CORPS GUIDANCE

**Civil Works Planning:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures.

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures.

**Regulatory:** None specific to this statute

**FOR MORE INFORMATION SEE:** None identified

#### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** None identified.

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** None.

**MANAGEMENT OPPORTUNITIES:** The Act provides for management programs focusing on conservation and recreation, as well as a general category for “other beneficial uses”. Opportunities may exist for the Corps to apply ecosystem management and restoration programs to improve the forest resources associated with Civil Works reservoir projects. Forest management program development may present opportunities for collaborative efforts between the Corps and other resource agencies, where both are undertaking programs to address sustainable yield/sustainable development practices and incorporating the principals of ecosystem management.



## RESOURCE CONSERVATION AND RECOVERY ACT

**LEGISLATIVE TITLE:** Resource Conservation and Recovery Act of 1976

**UNITED STATES CODE CITATION:** 42 U.S.C. 6901 et seq

**OTHER TITLES AND POPULAR NAMES:** RCRA; Solid Waste Disposal Act; SWDA; Federal Facilities Compliance Act; FFCA

**SUMMARY:** This Federal law governs the disposal of solid waste. Subtitle D of the Act, as amended November 1984 (42 U.S.C. 6941-6949a), establishes Federal standards and requirements for state and regional solid waste authorities. The objectives of this subtitle are to assist in developing and encouraging methods for the disposal of solid waste which are environmentally sound and which maximize the utilization of valuable resources recovered from solid wastes.

Subtitle C of this law establishes standards and procedures for the handling, storage, treatment and disposal of hazardous wastes. The Act provides a "cradle to grave" approach to the regulation of solid and hazardous waste. Generators, transporters, and owners of treatment, storage, and disposal (TSD) facilities are subject to its regulatory scheme. RCRA also regulates the transportation and tracking of hazardous waste; establishes standards for the storage and treatment of hazardous wastes by generators; provides a procedure for identifying waste as hazardous; provides minimum technology standards for TSDs; provides for corrective actions for historic solid and hazardous waste management units; establishes land disposal prohibitions and restrictions; regulates the installation, testing, and removal and remediation of underground storage tanks; regulates the management of used oil; and provides an enforcement mechanism.

The Federal Facilities Compliance Act (FFCA) (P.L. 102-386, 106 STAT 1505) amended RCRA. The Act provides for a waiver of sovereign immunity with respect to Federal, state, and local procedural and substantive requirements relating to the Resource Conservation and Recovery Act (RCRA) solid and hazardous waste laws and regulations at Federal facilities (42 U.S.C. 6961). The Environmental Protection Agency is directed to make annual inspections of facilities owned or operated by the United States which treat, store, or dispose of hazardous waste to insure compliance with applicable regulations. Authorized States may also conduct inspections to insure compliance with authorized State hazardous waste programs (42 U.S.C. 6927(c)). Additionally, it defines hazardous waste in relation to public vessels, expands the definition of mixed waste, and discusses waste discharges to Federally owned treatment works.

**RESOURCES COVERED:** Solid waste; hazardous, and mixed wastes.

**COMPLIANCE REQUIREMENTS:** Federal and state laws pertaining to solid waste are applicable to Civil Works projects. Also, RCRA may impose substantial requirements on Corps projects that manage even small amounts of hazardous waste. A Corps project may be regulated as a generator and/or potentially as a storer of hazardous waste (e.g., waste solvents, waste pesticides, waste cleaning compounds, etc). Corps underground storage tanks may also be regulated under RCRA, Subtitle I. Other RCRA regulated activities may include, for example, disposal of construction debris such as cleaning solvents and paints containing lead and chromium, off-site disposal of contaminated dredge material, and maintenance activities, e.g., sandblasting debris containing lead or chromium.

The Federal Facility Compliance Act of 1992 (P.L. 102-386 (106 STAT 1505)) waived Federal sovereign immunity under Federal, state, and local laws relating to RCRA solid and hazardous waste laws and regulations for the payment of punitive and coercive fines, administrative orders

and injunctive relief, reasonable service charges and other nondiscriminatory fees. If any Corps facility generates hazardous waste, it is subject to all "Federal, state, interstate, and local or solid waste requirements, both substantive and procedural" (42 U.S.C. 6961). By Presidential Proclamation, fines are paid out of operating funds.

The EPA is required to undertake annual inspections of Federal facilities that treat, store, or disposed of hazardous wastes, and requires the Federal agency to reimburse EPA for the costs of the inspection. A state with an authorized state program may also inspect such facilities (42 U.S.C. 6927(c)). The states and EPA are able to charge fees for a wide range of activities, including inspection fees, and to assess penalties against Federal agencies. The Act also adds a provision under 42 U.S.C. 6939d, that "public vessels", vessels owned or operated by the US government, are essentially not subject to RCRA's storage, manifest, inspection, or record keeping requirements, and that the hazardous waste become regulated once they are transferred ashore. There are some exceptions.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** U.S. Environmental Protection Agency (EPA), and state and local agencies if program has been approved by EPA. Most states are currently authorized to administer the solid waste programs as well as various parts of the hazardous waste program. States laws may be more stringent than Federal requirements and must be consulted when managing solid and hazardous wastes at a Civil Works project.

**Process:** All solid wastes generated will have to be managed in accordance with state and local solid waste regulations. If a Civil Works project is generating a solid waste that is a hazardous waste, the project must determine the appropriate generator status. The project will then determine generator status according to state or Federal hazardous waste regulations and manage the waste accordingly.

**Product:** For Civil Works projects covered under RCRA or state solid and hazardous waste regulations the applicable reporting and record keeping requirements of the regulations must be met.

**Timing/Schedule:** For hazardous wastes, Federal and state regulations contain specific time and quantity limitations for various types of generators, i.e. Large Quantity Generators, Small Quantity Generators, or Conditionally Exempted Small Quantity Generators. Application of the regulations is dependant upon your generator status.

## CORPS GUIDANCE\*

ER 385-1-92, Safety and Occupational Health Document Requirements Hazardous Waste Site Remedial Act.  
AR 200-1 Environmental Protection and Enhancement (Draft)  
DOD Directive 6050.8, Storage and Disposal of Non-DOD-Owned Hazardous or Toxic Materials on DOD Installations (2/27/86)  
DODD 4165.60 Solid Waste Management; DODD 4145.19-1 Storage and Handling  
USACE Facilities Environmental Compliance Guidance Letter No. 2 FFCA of 1992, Fines and Penalties at Civil Works Funded Projects, Facilities and Activities.

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance; ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects.

**Civil Works Engineering:** ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects; EM 1110-1-502 (Apr 94) Technical Guidelines for Hazardous and Toxic Waste Treatment and Cleanup Activities. USACE Facilities Environmental Compliance Guidance Letter No. 2 FFCA of 1992, Fines and Penalties at Civil Works Funded Projects, Facilities and Activities; ER 1110-1-263, Chemical Data Quality Management for Hazardous Waste and Remedial Activities. Also, ER 200-2-3, Environmental Compliance Policies and EP 200-2-3, Environmental Compliance Guidance and Procedures.

**Civil Works Construction:** ER 200-2-3, Environmental Compliance Policies and EP 200-2-3, Environmental Compliance Guidance and Procedures; ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects. USACE Facilities Environmental Compliance Guidance Letter No. 2 FFCA of 1992, Fines and Penalties at Civil Works Funded Projects, Facilities and Activities.

**Civil Works Operations:** ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects; Environmental Review Guide for Operations (ERGO, CECW-OA, January 1995). USACE Facilities Environmental Compliance Guidance Letter No. 2 FFCA of 1992, Fines and Penalties at Civil Works Funded Projects, Facilities and Activities.

**Regulatory:** None specific to this statute.

\* Due to the complexity and often times large financial concerns associated with RCRA issues, your Office of Counsel should be consulted regarding liability and compliance with RCRA. Also, given their experience with Formerly Used Defense Sites (FUDS), Base Realignment and Closure (BRAC), and Installation Restoration (IR), the Center For Expertise in Hazardous, Toxic and Radioactive Waste should be consulted regarding legal and technical matters.

**FOR MORE INFORMATION SEE:** The Solid Waste Disposal Act of 1965, was amended in its entirety by RCRA. The 1980 Amendments to the Solid Waste Disposal Act are cited at P.L. 96-482 (42 U.S.C. 6901 et seq). Federal Facility Compliance Act of 1992 (P.L. 102-386 (106 STAT 1505)); Executive Order 12873, Federal Acquisition, Recycling, and Waste Prevention, October 1993; Executive Order 12780, Federal Agency Recycling and the Council on Federal recycling and Procurement Policy, November 1991.

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Environmental Protection Agency. The RCRA waiver of sovereign immunity (42 U.S.C. 6961) includes state and local agency requirements that are not inconsistent with RCRA. Additionally, the Federal Facility Compliance Act of 1992 (PL 102-386) modified 42 U.S.C. 6961 by waiving Federal sovereign immunity from state enforcement of state solid and hazardous waste laws including payment of punitive or coercive fines, administrative orders and injunctive relief, reasonable service charges and other nondiscriminatory fees. If EPA approves a state RCRA program or a portion thereof, then the Federal facility must follow the applicable approved state regulations rather than the Federal rules. State law and state interpretation of that law may differ substantially from Federal RCRA regulations and EPA interpretation.

**Guidance Title:** A variety of EPA guidance manuals and other environmental publications are available through National Technical Information Service (NTIS) at 800-553-6847. EPA has a contractor operated RCRA/Superfund/UST Hotline, 800-424-9346 or 703-412-9810. Department of Transportation operates a transportation (49 C.F.R.) hotline, 202-366-4488. The US Army also operates an environmental response line, 1-800-872-3845.

FFCA: Enforcement Authorities Implementation; Hazardous Waste: Technical Revision for the FFCA of 1992 Amendments

**Code of Federal Regulations Citation:** 40 C.F.R. 240-280. For transportation of hazardous waste, also see the Hazardous Materials Transportation Act and Department of Transportation (DOT) regulations 49 C.F.R. 171-179. Federal Register Vol. 58, No. 181, page 49044, September 21, 1993; Federal Register Vol.60, No.55, page 15208, March 22, 1995.

**MANAGEMENT OPPORTUNITIES:** Acquisition Planning and Procurement: in developing work plans, specifications, or product descriptions, consider the following factors: elimination of virgin material requirements; use of recovered materials; reuse of product; life cycle costs; recyclability; use of environmentally preferable materials; and waste prevention. Hazardous waste management plans to address waste management procedures as well as waste minimization plans should be developed for Civil Works projects. Facilities should make sure that they are in compliance with Federal and state hazardous waste regulations. Facilities should also self audit through the ERGO program.

## RIVERS AND HARBORS ACTS

**LEGISLATIVE TITLE:** Rivers and Harbors Appropriation Act of 1899

**UNITED STATES CODE CITATION:** 33 U.S.C. 401, 403, 407

**OTHER TITLES AND POPULAR NAMES:** River and Harbors Act of 1899

**SUMMARY:** The Rivers and Harbors Acts address projects and activities in navigable waters and harbor and river improvements. Several of these Acts provided a number of regulatory authorities, the implementation of which has evolved over time. This profile addresses only those sections that relate to the Corps Regulatory program.

Section 9 of the Rivers and Harbors Act approved March 3, 1899, (33 U.S.C. 401) prohibits the construction of any dam or dike across any navigable water of the United States in the absence of Congressional consent and approval of the plans by the Chief of Engineers and the Secretary of the Army. Where the navigable portions of the water body lie wholly within the limits of a single state, the structure may be built under authority of the legislature of that state, if the location and plans or any modification thereof are approved by the Chief of Engineers and by the Secretary of the Army. Section 9 also pertains to bridges and causeways but the authority of the Secretary of the Army and Chief of Engineers with respect to bridges and causeways was transferred to the Secretary of Transportation under the Department of Transportation Act of October 15, 1966.

Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) prohibits the unauthorized obstruction or alteration of any navigable water of the United States. This section provides that the construction of any structure in or over any navigable water of the United States, or the accomplishment of any other work affecting the course, location, condition, or physical capacity of such waters is unlawful unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army. The Secretary's approval authority has since been delegated to the Chief of Engineers.

Section 13 of the Rivers and Harbors Act of 1899 (33 U.S.C. 407) provides that the Secretary of the Army, whenever the Chief of Engineers determines that anchorage and navigation will not be injured thereby, may permit the discharge of refuse into navigable waters. In the absence of a permit, such discharge of refuse is prohibited. While the prohibition of this section, known as the Refuse Act, is still in effect, the permit authority of the Secretary of the Army has been superseded by the permit authority provided the Administrator, Environmental Protection Agency (EPA), and the states under Sections 402 and 405 of the Clean Water Act, respectively.

Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. 408) provides that the Secretary of the Army, on the recommendation of the Chief of Engineers, may grant permission for the temporary occupation or use of any sea wall, bulkhead, jetty, dike, levee, wharf, pier or other work built by the United States. This permission will be granted by an appropriate real estate instrument in accordance with existing real estate regulations.

Section 7 of the Rivers and Harbors Act approved 8 August 1917 authorizes the Secretary of the Army to promulgate regulations for the use, administration, and navigation of the navigable waters of the United States as public necessity may require for the protection of life and property or for operations of the United States in providing channel improvements. Procedures followed for promulgation of such regulations, although they do not involve issuance of permits, are similar to those for the permit program.(33 C.F.R. Part 324)

Danger Zones. Regulations can be prescribed for the use and navigation of any area likely to be endangered by Department of Defense operations. The authority to prescribe danger zone regulations is exercised so as not to interfere with or restrict unreasonably the commercial fishing industry. (33 C.F.R. Part 324)

Restricted Areas. When required for the protection of life and property at Department of Defense (DoD) installations, certain areas maybe set aside and reserved, such as naval restricted areas. Reasonable regulations may be prescribed, after public notice, restricting or prohibiting the use of such areas by vessels. The Coast Guard is authorized to establish restricted areas for safety but not restricted areas for DoD facilities. (33 C.F.R. Part 324)

Section 104 of the River and Harbor and Flood Control Act of 1958, as amended (33 U.S.C. 610), authorizes the Corps of Engineers, under the direction of the Secretary of the Army, to administer a comprehensive program to provide for control and progressive eradication of water-hyacinth, alligatorweed, Eurasian water milfoil, and other obnoxious aquatic plant growths, from the navigable waters, tributary streams, connecting channels, and other allied waters of the United States. This program is to be carried out in the combined interest of navigation, flood control, drainage, agriculture, fish and wildlife conservation, public health, and related purposes, including continued research for development of the most effective and economic control measures. The program is to be implemented in cooperation with other Federal and State agencies. (See EP 1165-2-1, Digest of Water Resources Policies and Authorities, Chapter 20; and ER 1130-2-500, and EP 1130-2-500, Chapter 14).

**RESOURCES COVERED:** Shorelines and navigable waterways, dredged material transport and disposal; all tidal waters and /or waters that have been used, are currently used, or could be used to transport interstate or foreign commerce (33 C.F.R. 329.4).

**COMPLIANCE REQUIREMENTS:** Activities that involve the construction of dams, bridges, dikes etc. across any navigable water, or placing obstructions to navigation outside established Federal lines and excavating from or depositing material in such waters, require permits from the Corps. The Act prohibits the use of Federal funds for activities which would have adverse affect on those characteristics which caused a river to be classified as wild, scenic, or recreational.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** The Corps conducts public interest reviews to ensure that proposed projects comply with Section 10, and as part of these reviews coordinates with other Federal, State, and local agencies. Final determinations are made by the Corps after consideration of this information.

**Process:** See C.F.R.

**Product:** Permits for work in or affecting navigable waters.

**Timing/Schedule:** For Section 10 permits: if the permit application is complete, the Corps should issue a public notice within 15 days, allow a comment period of 15 to 30 days, address concerns and objections, and make a permit decision shortly thereafter (33 C.F.R. 325.2).

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance. CECW Memorandum dated 19 January, 2000, Special Emphasis Given to Coral Reef Protection under the Clean Water Act, Marine Protection, Research, and Sanctuaries Act, Rivers and Harbors Act, and Federal Project Authorities.

**Civil Works Engineering:** None specific to this statute.  
**Civil Works Construction:** None specific to this statute.  
**Civil Works Operations:** None specific to this statute.

**Regulatory:** 33 C.F.R. 320-331, Sections 9, 10 and 13.; CECW Memorandum dated 19 January, 2000, Special Emphasis Given to Coral Reef Protection under the Clean Water Act, Marine Protection, Research, and Sanctuaries Act, Rivers and Harbors Act, and Federal Project Authorities.

**FOR MORE INFORMATION SEE:** None identified

#### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** None identified.  
**Guidance Title:** None identified  
**Code of Federal Regulations Citation:** None identified.

**MANAGEMENT OPPORTUNITIES:** None identified.

## SAFE DRINKING WATER ACT

**LEGISLATIVE TITLE:** Safe Drinking Water Act

**UNITED STATES CODE CITATION:** 42 U.S.C. 300f et seq, 6939b; 15 U.S.C. 1261 et seq

**OTHER TITLES AND POPULAR NAMES:** SDWA

**SUMMARY:** The primary objective of the SWDA is twofold: (1) to protect the nation's sources of drinking water, and (2) to protect public health to the maximum extent possible, using proper water treatment techniques. The Act directs the EPA and states to establish national primary and secondary drinking water standards and to establish techniques to meet those standards. States are responsible for enforcement and must submit regulatory programs to the EPA for approval. Facilities that treat drinking water supplies are regulated by the states through permits. Underground sources of drinking water are also protected through applying the same drinking water standards, identifying critical aquifer protection areas, and programs to protect wellhead areas from contaminants. The Act also requires states to submit procedures for inspection, monitoring, record-keeping, and reporting, as part of their regulatory programs.

Section 1447 of the Act (42 U.S.C. 300j-6) requires that each Federal agency having jurisdiction over any Federally owned or maintained public water system or engaged in an activity resulting, or which may result in, underground injection that endangers drinking water shall be subject to, and comply with, Federal, State, and local requirements, programs, and administrative authorities.

**RESOURCES COVERED:** Public drinking water supplies; reservoirs; aquifers.

**COMPLIANCE REQUIREMENTS:** To comply with Section 1447 (42 U.S.C. 300j-6) the Corps must ensure that any facility in their jurisdiction that is used, or may be used, for public drinking water complies with the water requirements of the state in which the facility is located. Any Corps activities that may impact or endanger underground drinking water supplies are also subject to the requirements of the state program. The Corps is also subject to any permitting requirements from EPA and/or states for operating a drinking water facility or conducting activities affecting groundwater supplies.

In addition, Corps activities that may impact underground drinking water supplies must be reviewed and approved by the state agency designated to administer drinking water quality standards, and permits may be issued. Opportunities to plan and operate activities which are sensitive to such critical areas will have increased application in environmental mitigation or restoration projects.

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Environmental Protection Agency, States

**Process:** None specified.

**Product:** Any underground injection of wastewater must be authorized by a permit from EPA.

**Timing/Schedule:** None specified.

### CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies.

**Civil Works Engineering:** ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects.



**Civil Works Construction:** ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects.

**Civil Works Operations:** ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects; ER 200-2-3, Environmental Compliance Policies and EP 200-2-3, Environmental Compliance Guidance and Procedures.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** Clean Water Act

### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Environmental Protection Agency

**Guidance Title:** Safe Drinking Water Act Regulations (primary drinking water standards, state program implementation guidance, underground injection standards, controls, implementation guidance.

**Code of Federal Regulations Citation:** 40 C.F.R. 141-148.

**MANAGEMENT OPPORTUNITIES:** Among the provisions in the 1996 amendments to the Act is Title IV -- Additional Assistance for Water Infrastructure and Watersheds (42 U.S.C. 300j-3c). These provisions authorize the Administrator of EPA to provide technical and financial assistance to States (1) in the form of grants to States for the construction, rehabilitation, and improvement of water supply systems, and (2) consistent with nonpoint source management programs established under Section 319 of the Federal Water Pollution Control Act, (33 U.S.C. 1329) (Nonpoint source management programs) for source water quality protection programs to address pollutants in navigable waters for the purpose of making such waters usable by water supply systems. There may be opportunities to contribute to the objectives of this authority through Corps watershed studies and other Civil Works studies. For example, there may be opportunities for the Corps to incorporate the some of the State point and nonpoint source management program goals as part of the considerations in watershed and comprehensive basin planning studies.

# SOIL AND WATER RESOURCES CONSERVATION ACT

**LEGISLATIVE TITLE:** Soil and Water Resources Conservation Act of 1977

**UNITED STATES CODE CITATION:** 16 U.S.C. 2001-2009

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This Act directs the Department of Agriculture to develop a National Soil and Water Conservation Program (SWCP), and to conduct an appraisal of the Nation's soil, water, and related resources at five year intervals (16 U.S.C. 2004-2005). The SWCP and the appraisals cover activities and resources under the jurisdiction of the Soil Conservation Service, now called the National Resources Conservation Service (NRCS). The appraisals involve compiling data on the quantity and quality of soil and water, State and Federal laws regarding development and use of these resources, and costs and benefits of alternative conservation techniques. The SWCP is developed to be a guide in carrying out activities of the NRCS, taking into account current and future needs of the Nation, landowners, and land users. The SWCP includes analyses of (1) the Nation's soil, water, and related resource problems, (2) ongoing Federal, State, and local programs addressing soil and water conservation (3) alternative methods for conservation, protection, improvement, or enhancement of soil and water resources (16 U.S.C. 2005). Analyses conducted by the Department of Agriculture, NRCS in carrying out the provisions of this Act are to be in conjunction with State soil and water conservation agencies, conservation districts, and appropriate citizen groups.

**RESOURCES COVERED:** Soil, water and related resources such as forestry, and fish and wildlife.

**COMPLIANCE REQUIREMENTS:** This Act imposes no requirements on Corps projects, however the Corps and the Natural Resource Conservation Service do coordinate their activities under interagency agreements. (See EP 1165-2-2, Interagency Agreements, November 1, 1979, Appendix B, and EP 1165-2-1, Digest of Water Resources Policies and Authorities, March 27, 1981, paragraphs 24-3, 25-55, 27-3(a), 27-3(d)).

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** U.S. Department of Agriculture, Natural Resources Conservation Service, State conservation districts, State soil and water conservation agencies

**Process:** Not specified

**Product:** Appraisal of the soil, water and related resources of the Nation

**Timing/Schedule:** Appraisals required every five years.

## CORPS GUIDANCE

**Civil Works Planning:** None specific to this statute.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** None identified

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Department of Agriculture

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** None.

**MANAGEMENT OPPORTUNITIES:** Authority for the Act is vested with the Secretary of Agriculture, however other Federal agencies (Corps) are encouraged to exchange Interagency Agreements as a tool for providing existing information and data exchange.

# SOLID WASTE DISPOSAL ACT

**LEGISLATIVE TITLE:** Solid Waste Disposal Act

**UNITED STATES CODE CITATION:** 42 U.S.C. 3251 et seq, 6901 et seq

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** The aim of the Act was to initiate national research and development programs for new and improved methods of disposal, with provisions for recovery and recycling. Technical and financial assistance was to be provided to state and local governments in the development of programs.

This Act was amended by the Resource Recovery Act of 1970 (Public Law 91-512) and later by the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901, et seq). Subtitle D, of RCRA, as last amended in November 1984 by 42 U.S.C. 69-41-6949a, established Federal standards and requirements for state and regional authorities respecting solid waste disposal. Current Federal requirements for solid waste management are found in RCRA, Subtitle D, Section 4001-4010 which is also referred to by its original name, the Solid Waste Disposal Act. The definition of "solid waste" is found in Subtitle A, Section 1004 of the Act. The requirements of the original Solid Waste Disposal Act of 1965 has for the most part been replaced by RCRA.

**RESOURCES COVERED:** Solid waste; garbage, refuse and other discarded solid waste materials, including solid waste material resulting from industrial, commercial, and agricultural operations, and from community activities (42 U.S.C. 3252 (4)).

**COMPLIANCE REQUIREMENTS:** Refer to Subtitle D of RCRA as amended and implementing regulations in 40 C.F.R. 240, 241, 243, 245, 246, and 258. Comply with Executive Order No. 12780 of October 31, 1991, Federal Agency Recycling and the Council on Federal Recycling and Procurement Policy and Executive Order No. 12873 of October 20, 1993, Federal Acquisition, Recycling, and Waste Prevention.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** See Resource Conservation and Recovery Act

**Process and Product:** See Resource Conservation and Recovery Act

**Timing/Schedule:** See Resource Conservation and Recovery Act

## CORPS GUIDANCE:

**Civil Works Planning:** ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects.

**Civil Works Engineering:** ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects.

**Civil Works Construction:** ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects.

**Civil Works Operations:** ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects; Memorandum, USACE, CECW-OA, 24 November 1992, subject: USACE Facilities Environmental Compliance Guidance Letter No. 1, Solid Waste Recycling.

**Regulatory:** None applicable.

**FOR MORE INFORMATION SEE:** Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq) and the Used Oil Recycling Act of 1980; Federal Facilities Compliance Act (42 U.S.C. 6901, et seq).

#### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Originally Secretary of Health, Education and Welfare, then Environmental Protection Agency after the passage of RCRA.

**Guidance Title:** See Resource Conservation and Recovery Act

**Code of Federal Regulations Citation:** Resource Conservation and Recovery Act

**MANAGEMENT OPPORTUNITIES:** The Corps may incorporate recycling initiatives into solid waste management programs for Civil Works projects, through acquisition planning and procurement actions use recovered and recycled materials. Beverage container management programs to reduce solid waste and litter will also support the goals of this Act. Work with supporting Defense Reutilization and Marketing Office (DRMO) to recycle solid wastes. Establish local recycling committees to manage solid waste such as cardboard, paper and other reusable post-consumer solid wastes. Work in concert with State and local solid waste reduction/recycling regulations and programs. Promote solid waste reduction and recycling in all phases of Civil Works activities.

## SUBMERGED LAND ACT

**LEGISLATIVE TITLE:** Submerged Land Act

**UNITED STATES CODE CITATION:** 10 U.S.C. 7421-7426, 7428-7438; 43 U.S.C. 1301-1303, 1311-1315

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This Act establishes that seaward boundaries of original coastal states extend to three geographical miles from the coastline, and are therefore, under the jurisdiction of the States in which the submerged land is located. Section 3 (a)(2) (43 U.S.C. 1311(a)) confirms the rights of states to manage, develop, administer, and lease those resources on submerged lands, including any leasing arrangements to any organization public or private, including departments or agencies of the Federal Government. Section 6 (43 U.S.C. 1314) states that the United States retains all its navigational servitude and rights, and powers of regulation and control of lands and navigable waters for the purposes of commerce, navigation, national defense and international affairs. However, these rights are not deemed to include proprietary rights of ownership, rights of management, administration, use, and development of lands and natural resources. The Act places no restrictions on the use, development, improvement, or control of lands or waters for the purposes of navigation flood control, or the production of power.

**RESOURCES COVERED:** Coastal Zone, Natural Resources; Oil, gas, minerals, fish, and wildlife on lands beneath water.

**COMPLIANCE REQUIREMENTS:** This Act imposes no restrictions on Corps water resources projects. It places no restrictions on the use, development, improvement, or control of lands or waters for the purposes of navigation or flood control.

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** None specified

**Process:** None specified

**Product:** None specified

**Timing/Schedule:** None specified

### CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute

**Regulatory:** 33 C.F.R. 320

### FOR MORE INFORMATION SEE: Outer Continental Shelf Lands Act IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** Department of the Interior, Minerals Management Agency  
(for areas outside the three-mile limit.)

**Guidance Title:** None identified.

**Code of Federal Regulations Citation:** None applicable.

**MANAGEMENT OPPORTUNITIES:** None identified.

# **SURFACE MINING CONTROL AND RECLAMATION ACT**

**LEGISLATIVE TITLE:** Surface Mining Control and Reclamation Act of 1977

**UNITED STATES CODE CITATION:** 30 U.S.C. 1201 - 1328; 18 U.S.C. 1114

**OTHER TITLES AND POPULAR NAMES:** Surface Mining Reclamation Act

**SUMMARY:** This Act establishes a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations, and to set forth reclamation guidelines for surface coal mining areas. Under Title V, Section 502 (30 U.S.C. 1253), States in which there are surface coal mining operations on non-Federal lands are directed to develop programs that provide for environmental regulations, establish permit programs, and provides for enforcement procedures for requirements of the state program. Any state which does not have a management program, approved by the Department of Interior, will be governed by the rules and regulations set forth in the Federal program, as developed by the Department of Interior. Similar programs are to be developed by the Department of Interior, in conjunction with the States, for surface mining operations on Federal lands (30 U.S.C. 1273).

Grants are provided for research in mining technology and the Abandoned Mine Reclamation fund is established (30 U.S.C. 1231) for the construction of water treatment facilities for pollution resulting from mine drainage. The Office of Surface Mining and Reclamation is established in the Department of Interior to enforce and administer this Act (30 U.S.C. 1211)

Environmental performance standards are required for permits issued to surface mining operations to maximize utilization and conservation of the resources recovered, and that future land disturbance from surface mining is minimized (30 U.S.C. 1265). The standards also include requirements for restoring the affected land (30 U.S.C. 1265), including surface area stabilization/erosion control, revegetation, creating impoundments for water quality, minimizing disturbance to original hydrologic balances, and proper disposal of mine waste products and other requirements. The Secretary of Interior and the Chief of Engineers, are to establish standards and criteria regulating the design, location, construction, operation, maintenance, enlargement, modification, removal and abandonment of new and existing coal mine waste piles when used as dams or embankments (30 U.S.C. 1265(f)).

**RESOURCES COVERED:** surface mines and adjacent lands; coal and other minerals; impoundments and other water and land resources affected by surface mining operations.

**COMPLIANCE REQUIREMENTS:** State programs must be adhered to, including appropriate permitting procedures, for any person or entity pursuing surface coal mining operations in the United States. However, 30 U.S.C. 1278 provides that extraction of coal as an incidental part of government financed highway or other construction (e.g., dam construction) is not subject to regulation under this Act.

## **REVIEW AND CONSULTATION REQUIREMENTS**

**Who Reviews or Consults:** Department of the Interior, States, other Federal agencies (as appropriate)

**Process:** None specified.

**Product:** Permit issued to surface mining operation stipulating environmental impacts, restoration/mitigation practices, environmental performance standards, and reclamation plans.

**Timing/Schedule:** Permits typically issued for 5 year increments.

## **CORPS GUIDANCE**

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** None specific to this statute

**Civil Works Construction:** None specific to this statute

**Civil Works Operations:** None specific to this statute

**Regulatory:** 33 C.F.R. 330

**FOR MORE INFORMATION SEE:** None identified.

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Office of Surface Mining and Reclamation, Department of the Interior

**Guidance Title:** None identified

**Code of Federal Regulations Citation:** Chapter VII of 30 C.F.R. (Sections 700-899)

**MANAGEMENT OPPORTUNITIES:** The Corps has opportunities to provide technical expertise (personnel) to the Secretary of Interior in developing technical standards and criteria for coal mine waste dams, or embankments. There also may be the potential for the Corps to assist or collaborate with the Department of Interior in the restoration of ecosystems degraded due to surface mining operations.



## SUSTAINABLE FISHERIES ACT

**LEGISLATIVE TITLE:** Sustainable Fisheries Act

**UNITED STATES CODE CITATION:** 16 U.S.C. 1801 et seq.

**OTHER TITLES AND POPULAR NAMES:** 1996 Amendments to the Magnuson Fishery Conservation and Management Act, Magnuson-Stevens Act

**SUMMARY:** This Act amends the Magnuson Fishery Conservation and Management Act to authorize appropriations, to provide for sustainable fisheries, and for other purposes. Among the new findings presented in the Act are that certain stocks of fish have declined to the point where their survival is threatened, and other stocks of fish have been so substantially reduced in number that they could become similarly threatened as a consequence of (A) increased fishing pressure, (B) the inadequacy of fishery resource conservation and management practices and controls, or (C) direct and indirect habitat losses which have resulted in a diminished capacity to support existing fishing levels (16 U.S.C. 1801). This amendment adds the facilitation of long-term protection of essential fish habitats to the purposes of the Magnuson Act.

The Act directs the Secretary of Commerce to establish regulation guidelines (16 U.S.C. 1855) to assist the Regional Fishery Management Councils (16 U.S.C. 1852) in describing and identifying essential fish habitat in fishery management plans (including adverse impacts on such habitat) and in considering actions to ensure the conservation and enhancement of such habitat. The term “essential fish habitat” means those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity (16 U.S.C. 1802). The Secretary of Commerce is to coordinate with and provide information to other Federal agencies to further the conservation and enhancement of essential fish habitat. The Act directs Federal agencies to consult with the Secretary of Commerce with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any essential fish habitat identified under this Act.

The Regional Fishery Management Councils may comment on and make recommendations to the Secretary of Commerce and Federal or State agencies concerning any activity authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, that, in the view of the Council, may affect the habitat, including essential fish habitat, of a fishery resource under its authority. The Regional Council may also comment on and make recommendations to the Secretary and any Federal or State agency concerning any such activity that, in the view of the Council, is likely to substantially affect the habitat, including essential fish habitat, of an anadromous fishery resource under its authority (16 U.S.C. 1852).

If the Secretary of Commerce receives information from a Council or Federal or State agency or determines from other sources that an action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by any State or Federal agency would adversely affect any essential fish habitat identified under this Act, the Secretary shall recommend measures that can be taken by such agency to conserve such habitat (16 U.S.C. 1855).

**RESOURCES COVERED:** Fishery resources found off the coast of the U.S., anadromous species (defined as species of fish which spawn in fresh or estuarine waters of the U.S. and which migrate to ocean waters), and Continental Shelf fishery resources.

**COMPLIANCE REQUIREMENTS:** Within 30 days after receiving a recommendation from a Regional Council, a Federal agency shall provide a detailed response in writing to any Council providing comments and the Secretary regarding the matter. Responses are to include a

description of measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on such habitat. In the case of a response that is inconsistent with the recommendations of the Secretary, the Federal agency shall explain its reasons for not following the recommendations (16 U.S.C. 1855).

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** The Secretary of the Commerce Department; Regional Management Councils (New England; Mid-Atlantic; South Atlantic; Caribbean; Gulf of Mexico; Pacific; North Pacific; Western Pacific).

**Process and Product:** The Secretary of Commerce develops advisory guidelines, and regulations for implementation of this Act, and evaluates the plans prepared by the Regional Councils. The Regional Fishery Management Councils prepare and submit fishery management plans, periodic reports to the Secretary of Commerce, and provide comments or recommendations to state or Federal agencies regarding actions that may affect the habitat of resources their jurisdiction.

**Timing/Schedule:** Agencies must respond in writing to comments or recommendations from a Council within 30 days.

## CORPS GUIDANCE

**Civil Works Planning:** None specific to this statute.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** Magnuson Fishery Conservation and Management Act

## IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** Department of Commerce (National Oceanic and Atmospheric Administration)

**Guidance Title:** Magnuson-Stevens Act Provisions; Essential Fish Habitat (published in the Federal Register January 2002, Vol. 67, No. 12, page 2343).

**Code of Federal Regulations Citation:** 50 C.F.R. 600-695, excluding Part 697.

**MANAGEMENT OPPORTUNITIES:** There may be opportunities to facilitate the restoration and protection of essential fish habitats through Civil Works authorities and programs. Ecosystem restoration initiatives may complement the fishery management plans, and there may be opportunities to contribute to regional coordination and assistance efforts.

# TOXIC SUBSTANCES CONTROL ACT

**LEGISLATIVE TITLE:** Toxic Substances Control Act

**UNITED STATES CODE CITATION:** 15 U.S.C. 2601 - 2671

**OTHER TITLES AND POPULAR NAMES:** TSCA; ToSCA; The Asbestos Hazard Emergency Response Act of 1986

**SUMMARY:** Concern about many toxic chemicals lead Congress to pass the Toxic Substances Control Act in 1976. This Act, as last amended in 1986, is the Federal legislation which deals with the control of toxic substances. The Act consists of three subchapters, one of which regulates the control of toxic substances (such as polychlorinated biphenyls (PCBs)), another governs asbestos hazard emergency response, and another subchapter regulates indoor radon abatement. TSCA was designed to establish a system in which all chemicals would be evaluated before they are used to ensure they pose no unnecessary risk to human health, other living organisms and the environment. The risks and benefits of the chemicals "use" are to be balanced. The Administrator can waive compliance with any provision of this Act upon a request and determination by the President that the requested waiver is necessary in the interest of National Defense (15 U.S.C. 2621).

TSCA was also designed to mitigate the hazards of certain chemicals already in use. Because environmental contamination caused by stable PCB compounds and ozone layer destruction caused by chlorofluorocarbons could not be controlled under existing environmental legislation, Congress specifically included bans on the manufacture of PCBs and bans on the use of chlorofluorocarbon propellants under TSCA. By regulating these substances, Congress intended to control these problems at the source rather than legislating corrective actions once the materials were released to the environment.

**RESOURCES COVERED:** PCBs, asbestos in schools, lead-based paint hazards, and indoor radon abatement; chlorofluorocarbon propellants.

**COMPLIANCE REQUIREMENTS:** State and local regulations should be consulted when engaging in PCB, Asbestos, Radon, or Lead-Based Paint activities on Civil Works projects or properties.

The Environmental Protection Agency has worked for several years to discover and reduce PCB related risks, and these efforts have produced many rules on the chemicals. Environmental Protection Agency regulations are specific and complex regarding the requirements for PCB use, servicing, marking, storage for disposal, disposal, registration, spill cleanup, reporting, record keeping and manifesting. Environmental Protection Agency considers PCBs to be toxic, persistent, and bioaccumulative, and Environmental Protection Agency and industry are using the PCB rules to minimize many of the dangers of PCB exposure. (TSCAs primary impact on Federal facilities is in the management of PCB articles, equipment, transformers, capacitors, and wastes, which includes paints, waterproofing materials, light ballasts, and dielectric fluid in transformers and capacitors.)

PCBs - Any substance with a PCB concentration of 50 ppm or greater must be controlled. TSCA bans the manufacture, processing, distribution in commerce, and the use of PCBs unless the PCBs are totally enclosed. In some cases, state regulations are in place that regulate PCBs more stringently than the Federal Program (40 C.F.R. 761). State regulations may supersede Federal Regulations in areas such as regulating PCBs as a hazardous waste. Also, Federal regulations, as well as some state regulations are very stringent regarding PCB spill reporting, and spill clean up levels.

Asbestos - Many states have enacted asbestos standards that are more stringent than the Federal Program (40 C.F.R. 61 and 763) concerning the certification of asbestos workers and the disposal of asbestos wastes. Asbestos in schools is regulated under TSCA. Renovation and Demolition involving asbestos is regulated under the Clean Air Act.

Radon and Lead - Many states have radon control standards and restrictions on the use of lead-based paint in place.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Environmental Protection Agency and State regulatory agencies.

**Process:** At a minimum, Civil Works study and project managers must know where their PCBs are, their quantities, how they are being used, and what Environmental Protection Agency rules affect their activities. They must insure safe and proper PCB disposal, and must also keep an inventory of PCBs to maintain an annual report onsite. The rules also give them long and short term storage requirements, and specifications for marking, labeling, and record keeping. In addition, transformers must now be registered with local fire departments.

For Civil Works projects involved in PCB activities (such as using, storing, or disposing of PCBs), certain regulatory requirements must be met. TSCA regulations specify marking requirements for PCB equipment; inspection requirements to identify PCB leaks; special handling requirements for storage and disposal of PCBs; decontamination requirements for PCB spills; manifesting requirements; prohibitions on use or storage of PCB transformers in areas that may contaminate food or feed; requirements for registering PCB transformers with fire response personnel with primary jurisdiction, and prohibitions on installation of PCB transformers except in emergency situations.

**Product, Timing/Schedule:** PCB spills have special notification requirements and clean up requirements. Any PCB spill which poses a substantial risk to human health or environment or equals or exceeds 1 lb or more must be reported to the National Response Center (NRC) at (800) 424-8802. All spills, except minor leaks, should be reported. The criteria for cleanup is based on whether the spill is of high or low concentration of PCBs (40 C.F.R. 761.120, 761.123, and 761.125). Spill clean up should be initiated within 24 hours (48 hours for a transformer).

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies; ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects

**Civil Works Engineering:** ER 200-2-3, Environmental Compliance Policies and EP 200-2-3, Environmental Compliance Guidance and Procedures; Engineer Technical Letter (ETL) 1110-1-118 (Hazards involved with use of asbestos containing material (ACM) and prohibition on use of friable asbestos); CECW-ON and CEEC-S Memorandum, 30 Jan 1989, Guidance for Radon Assessment and Mitigation for USACE Civil Research and Development and Military Missions; ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects.

**Civil Works Construction:** ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects.

**Civil Works Operations:** ER 1165-2-132, Hazardous, Toxic and Radioactive Waste for Civil Works Projects. Also, ER 200-2-3, Environmental Compliance Policies and EP 200-2-3, Environmental Compliance Guidance and Procedures.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** Memorandum, Secretary of the Army (Installations, Logistics and Environment), 28 April 1993, Lead-Based Paint Policy Guidance.

## **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** Environmental Protection Agency

**Guidance Title:** A Guide on Remedial Actions at Superfund Sites with PCB Contamination, Environmental Protection Agency Fact Sheet, August 1990; Superfund Records of Decision Update (Guidance on Remedial Actions with PCB Contamination), Environmental Protection Agency Fact Sheet, September 1990; Environmental Protection Agency Part V: Guidance on Identification of Lead-Based Paint Hazards; Notice (60 Federal Register 47257); C.F.R. titles below.

**Federal Register Citation:** 60 F.R. 47257

**Code of Federal Regulations Citation:** 40 C.F.R. Part 761: Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; 40 C.F.R. Part 61: National Emission Standards for Hazardous Air Pollutants; 40 C.F.R. Part 763: Asbestos; 40 C.F.R. 766 Dibenzo-para-dioxins/dibenzofurans; 40 C.F.R. 790-2: Procedures Governing Test Consent Agreements and Test Rules; 40 C.F.R. 795: Provisional Test Guidelines; 40 C.F.R. 796: Chemical Fate Testing Guidelines; 40 C.F.R. 797: Environmental Effects Testing Guidelines; 40 C.F.R. 798: Health Effects Testing Guidelines; 40 C.F.R. 799: Identification of Specific Chemical Substance and Mixture Testing Requirements; 40 C.F.R. Part 403 Lead-based Paint Hazards.

**MANAGEMENT OPPORTUNITIES:** Good management practices include complying with the Use, Marking and Record keeping requirements; preparing a PCB Risk Management Plan; Complying with PCB Storage for Disposal and Disposal Requirements; keeping records of PCB inventories, shipments and disposal, preparing Annual Document Logs, and responding to PCB spills in accordance with the Spill Cleanup Policy. Survey all operations to determine where PCBs or PCB items are, or could be used, stored, or disposed of at your facility. If PCBs are present at any concentration, identify and record the source of contamination. Establishment of site specific plans/procedures for PCB equipment replacement with non-PCB equipment, e.g., transformer, ballasts, capacitors. Replacement of asbestos containing material (ACM) with non-AMC during routine operation and maintenance (O&M) activities on civil works projects. Inspecting Corps of Engineering owned/leased housing or buildings for indoor radon, asbestos in schools and lead-based paint hazards. Implementing abatement projects for property found to have lead-based paint or radon exceeding established health risk criteria.

## WATER RESOURCES DEVELOPMENT ACTS

The Water Resource Development Acts authorize the Secretary of the Army to study and/or implement various projects and programs for improvements to rivers and harbors of the United States and for other purposes. While not specifically environmental laws, a number of Water Resources Development Acts contain general environmental provisions pertinent to the Civil Works water resources development program or to the management of environmental resources. This section provides summaries of these provisions, as well as statements about implementation guidance where available. A number of other sections from these Acts pertain to specific projects or studies for environmental purposes. These provisions are not included with these summaries.

### **Water Resources Development Act of 1976 (PL 94-587)**

**Section 150** (42 U.S.C. 1962d-5e) Water Resources Planning, Wetland Areas, authorizes the Chief of Engineers to plan and establish wetland areas as part of an authorized water resources development project under his jurisdiction. The Act identifies several conditions in which the Chief of Engineers may establish wetland areas under this authority: 1) environmental, economic and social benefits of the wetland area justify the increased cost thereof above the cost required for alternative methods of disposing of dredged material for such water resources project; 2) the increased cost of such wetland area shall not exceed \$400,000; and 3) there is reasonable evidence that the wetland area to be established will not be substantially altered or destroyed by natural or man-made causes. This provision does not include any requirement for non-Federal cost-sharing and has been supplanted with the partnership principles established by WRDA 1986. Instead, Section 204 of WRDA 1992 (33 U.S.C. 2326) is currently the primary authority for implementation of projects for the use of dredged material to protect, restore, or create aquatic and related habitats. See: ER 1105-2-100

### **Water Resources Development Act of 1986 (PL 99-662)**

**Section 704(b)** (33 U.S.C. 2263) Study of Corps Capability to Conserve Fish and Wildlife, authorizes the Secretary of the Army to conduct projects of alternative or beneficially modified habitats for fish and wildlife, including but not limited to man-made reefs for fish. A non-Federal cost share of 25 percent is required. A limit was not placed on the Federal expenditures per project; however, a \$5 million limit on total Federal expenditures for the program was established.

**Section 906** (33 U.S.C. 2283) Fish and Wildlife Mitigation. This section provides that, for new projects, necessary mitigation measures shall be undertaken before or concurrently with project construction, as determined appropriate by the Secretary of the Army. It provides general authority to undertake mitigation measures for projects, whether completed, underway or unstarted, including acquisition of any needed related lands (excluding condemnation in connection with projects already completed or well underway). Mitigation costs shall be allocated to the project purposes and cost shared accordingly. It requires that feasibility reports contain a specific plan to mitigate fish and wildlife losses, unless a determination is made that there would be negligible adverse impact. Section 906(a)(2) states that projects authorized prior to the enactment of this Act on which more than 50 percent of the land needed for the project, exclusive of mitigation lands, has been acquired shall be deemed to have commenced construction under this subsection.

**Subsection 906(b)** authorized the Secretary to provide limited mitigation for projects under his jurisdiction without project-specific congressional legislation. The limitations are: (1) Land acquisition will be on a willing seller basis if 10 percent or more of the project is physically completed as of 17 November 1986; (2) Acquisition of water or interest therein shall not be by condemnation; and (3) No more than \$30,000,000 may be obligated in any fiscal year to study and implement fish and wildlife mitigation under this authority, with a single project limit of \$7,500,000 or 10 percent of total project

costs (including the mitigation), whichever is greater. Policy under current budget constraints does not provide for implementation of subsection 906(b).

**Subsection 906(c)** requires that costs for implementation and operation, maintenance, and rehabilitation to mitigate damages to fish and wildlife shall be allocated among the purposes which caused the need for mitigation, and cost shared to the same extent as other costs for such project purposes are shared or reimbursed. These provisions apply to all costs incurred after the date of the Act for the above specified purposes. When such costs are covered by contracts entered into prior to the date of enactment of this Act, the costs shall not be recovered without the consent of the non-Federal sponsor, or when costs are recovered when the contracts are complied with or renegotiated.

**Subsection 906(d)** requires that reports to Congress contain either a determination by the Secretary that such projects will have negligible adverse impacts on fish and wildlife, or a recommendation with a specific plan to mitigate fish and wildlife losses created by the project. Mitigation plans are to ensure that impacts to bottomland hardwood forests are mitigated in-kind, to the extent possible. The requirement for justification of measures as outlined in ER 1105-2-100 was not rescinded, and the extent of mitigation is still dependent upon the extent of justifiable measures. (See WRDA 2000, Section 224, which amends this section)

**Section 906(e)** provides that for any project measures recommended to enhance fish and wildlife, the first costs of such enhancement shall be a Federal cost when the benefits are determined to be national, including: 1) benefits to species that are identified to be of national economic importance, as identified by the National Marine Fisheries Service, species that are subject to treaties or international convention, and anadromous fish; 2) benefits to listed threatened or endangered species, as listed by the Secretary of the Interior; and, 3) activities on lands managed as national wildlife refuges. When benefits do not qualify under the preceding criteria, non-Federal interests are to reimburse 25 percent of the costs. The non-Federal share of operations, maintenance and rehabilitation costs will, in all cases, be 25 percent. Policy under current budgetary constraints does not provide for implementation of subsection 906(e). (See WRDA 1999, Section 221, which amends this section by inserting after the second sentence the following: “Not more than 80 percent of the non-Federal share of such first costs may be satisfied through in-kind contributions, including facilities, supplies, and services that are necessary to carry out the enhancement project.”)

**Section 906(g)** states that subsections (a), (b) and (d) shall be deemed to supplement the responsibility and authority for the Secretary pursuant to the Fish and Wildlife Coordination Act (16 U.S.C. 661), and nothing in this section is intended to affect that Act.

**Section 907** (33 U.S.C. 2284) Benefits and Costs Attributable to Environmental Measures, states that in the evaluation of benefits and costs of a water resources project, the benefits attributable to environmental quality, including improvement of the environment and fish and wildlife enhancement, shall be deemed equal to the costs for measures to produce those benefits.

Corps guidance states that the purpose of this language is to prevent the costs of fish and wildlife (EQ) measures included in a project from depressing the benefit-cost ratio of a project below 1.0 because benefits attributable to such EQ features are not expressed in monetary terms. Environmental measures, whether for mitigation or for ecosystem restoration, must still be justified, with consideration given to both non-monetary and monetary benefits and costs. At this time, traditional benefit cost analysis are not utilized because benefits from environmental measures are generally not quantified in dollars. Instead, benefits are quantified in appropriate units, and “with” and “without” conditions are described. A cost effectiveness analysis is conducted to ensure that least cost alternatives are identified for various levels of environmental output. Subsequently, an incremental cost analysis is conducted to compare the relative changes in outputs and costs for the various levels of expenditures being considered. If, in conjunction with ecosystem restoration alternatives, monetary benefits can be identified (e.g., commercial fishing or

recreation), these benefits are described as incidental outputs. (See ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, ER 1165-2-501, Civil Works Ecosystem Restoration Policy, and EP 1165-2-502, Ecosystem Restoration-Supporting Policy Information; also, Cost Effectiveness and Incremental Analysis, IWR Report 95-R-1.)

**Section 908** (33 U.S.C. 2285) Mitigation Fund, authorizes establishment of an Environmental Protection and Mitigation Fund, intended to support authorized pre-construction fish and wildlife mitigation activities for which the Fund would be reimbursed from initial project construction implementation funding. Section 908 has not been implemented since normal project funding would allow for accomplishing mitigation as an early project implementation item.

**Section 924** (33 U.S.C. 2294) Office of Environmental Policy, authorizes establishment of the Office of Environmental Policy in the Directorate of Civil Works in the Office of the Chief of Engineers. The section states that the Office shall be responsible for formulation, coordination, and implementation of all matters concerning environmental quality and policy as they relate to the water resources program of the Corps of Engineers. As implemented, the Office is intended to serve an internal and external coordination role for ensuring compliance with policies relating to environmental aspects of planning projects.

**Section 943** (33 U.S.C. 2303) Historical Properties, authorizes the Secretary to preserve, restore, and maintain those historic properties on water resource development project lands under the jurisdiction of the Department of the Army, if such properties have been entered into the National Register of Historic Places. (See ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and Procedures, chapter 6; also the National Historic Preservation Act, Historic Sites, Buildings and Antiquities Act, and the Historical and Archeological Data Preservation Act)

**Section 1103**. Upper Mississippi River Plan. This section recognized the Upper Mississippi River System as a nationally significant ecosystem and a nationally significant commercial navigation system. It directed the Secretary of the Army, in consultation with the Secretary of the Interior and the states of Illinois, Iowa, Minnesota, Missouri, and Wisconsin to undertake a program for the planning, construction, and evaluation of measures for fish and wildlife habitat rehabilitation and enhancement.

**Section 1135** (33 U.S.C. 2294 note) Project Modifications for Improvement of Environment. Subsection 1135(a) authorizes the review of existing water resources projects to determine the need for modifications in the structures and operations of projects constructed prior to the date of enactment\* of this Act for the purpose of improving the quality of the environment in the public interest.

**Subsection 1135(b)** initially authorized a two year demonstration\* program for the purposes of making such modifications, in the structures and operations of water resources projects which are feasible and consistent with the authorized project purposes, and will improve the environment. A non-Federal cost share of 25 percent was specified. Subsection 1135(e) authorized appropriations not to exceed \$25 million for this section. \* (Section 304 of the Water Resources Development Act of 1990 (33 U.S.C. 2309a) amended this section by: a. Striking “before the date of enactment of this Act”; b. Striking references to a demonstration program, making it a continuing program; and c. Changing the appropriations limit to a \$15 million annual limit .) Corps guidance on implementing this section is provided in ER 1105-2-100 (See also WRDA 1990, 1992 and 1996). (This section was further amended by Section 506 of WRDA 1999, extending the use of this authority to the control of sea lamprey at any Great Lakes basin location.)



**Section 304** (33 U.S.C. 2309a) Project Modifications for Improvement of Environment, amended Section 1135 (33 U.S.C. 2294 note) of WRDA 1986 from a "demonstration program" to a continuing program. Maximum annual appropriations were established as \$15,000,000. This section also amended WRDA 1986 so that provisions are applicable to all water resources projects constructed by the Secretary, not just those constructed prior to enactment of WRDA 1986.

**Section 306** (33 U.S.C. 2316) Environmental Protection Mission, directs the Secretary to include environmental protection as one of the primary missions of the Corps of Engineers in planning, designing, constructing, operating, and maintaining water resources projects. (See ER 1165-2-501, Civil Works Ecosystem Restoration Policy, and EP 1165-2-502, Ecosystem Restoration-Supporting Policy Information).

**Section 307** (33 U.S.C. 2317) Wetlands, established, as part of the Corps water resources development program, an interim goal of no overall net loss of the Nation's remaining wetland base, as defined by acreage and function, and a long-term goal to increase the quality and quantity of the Nation's wetlands as defined by acreage and function. The section directs the Secretary to utilize all appropriate authorities, including those to restore and create wetlands, in meeting the interim and long-term goals. See ER 1105-2-100, ER 1165-2-501, Civil Works Ecosystem Restoration Policy, and EP 1165-2-502, Ecosystem Restoration-Supporting Policy Information. Subsection 307(e) authorizes the Secretary to establish a training and certification program for wetland delineators.

**Section 312.** Environmental Dredging. This section authorized the Secretary of the Army to remove contaminated sediments from the navigable waters of the United States. There were two distinct authorities in Section 312. Section 312(a) provided for removal of contaminated sediments outside the boundaries of and adjacent to a Federal navigation project as part of the operation and maintenance of the project. Section 312(b) provided for removal of contaminated sediments for the purpose of environmental enhancement and water quality improvement if such removal was requested by a non-Federal sponsor and the sponsor agreed to pay 50 percent of the cost of removal and 100 percent of the cost of disposal. Section 312 had an annual authorization of appropriations limit of \$10 million for Section 312(b) and a 5-year effective life. The authorities of Section 312 originally had an expiration date of 29 November 1995, but this terminating date was deleted in WRDA 1996. Also, see WRDA 1999, Section 224. (See ER 1165-2-501 or EP 1165-2-502). Guidance for implementing this section is contained in Policy Guidance Letter (PGL) No. 49, Section 312 of the Water Resources Development Act of 1990, Environmental Dredging, as amended by Section 205 of the Water Resources Development Act of 1996.

**Section 313** (33 U.S.C. 2320) Protection of Recreational and Commercial Uses. Directs the Secretary of Army to consider recreational impacts in planning projects and in operating and maintaining them. The Secretary may expend up to \$2 million annually to mitigate for adverse recreational impacts of maintenance, repair, rehabilitation, or reconstruction activities. A non-Federal sponsor must agree to share the costs. Policy Guidance Letter No. 33, Protection of Recreational Uses at Civil Works Projects, provides implementation guidance for this section.

### **Water Resources Development Act of 1992 (PL 102-580)**

**Section 202** amended Section 1135 of WRDA 1986 (33 U.S.C. 2309a) by increasing the annual appropriation limit for the program to \$25,000,000, and specifying that Congressional approval is required for modifications with costs estimated to exceed \$5,000,000.

**Section 203** (33 U.S.C. 2325) Voluntary Contributions for Environmental and Recreation Projects. This section authorizes the Secretary, in carrying out water resource projects for environmental protection and restoration, or a water resources project for recreation, to accept contributions of cash funds, materials, and services from persons, including governmental entities, but excluding the project sponsor. Under the authority of this section, the Corps may accept and use contributions (cash, funds, materials, and services) to provide for operation and/or maintenance of recreation areas and the protection and restoration of natural resources at water resource development projects. (See ER 1130-2-500, Partners and Support (Work Management Policies), and EP 1130-2-500, Partners and Support (Guidance and Procedures)).

**Section 204** (33 U.S.C. 2326) Beneficial Uses of Dredged Material. This section authorizes implementation of projects for the protection, restoration, and creation of aquatic and ecologically related habitats, including wetlands, in connection with dredging for construction, operation or maintenance of an authorized navigation project. Section 204(c) requires that projects can be undertaken pursuant to this section only after non-Federal interests have entered into a cooperative agreement in accordance with the requirements of Section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b) in which the non-Federal interests to agree to provide 25 percent of construction costs including all lands, easements rights-of-way, and necessary relocations, as well as 100 percent of operations, maintenance, replacement, and rehabilitation costs associated with the project for the protection, restoration, and creation of aquatic and ecologically related habitats. Section 204(e) establishes an annual program limit of \$15 million. (See ER 1105-2-100) (See also WRDA 96, and Section 209 of WRDA 99, which amends this section)

**Section 225** (33 U.S.C. 2328) Challenge Partnership Program for the Management of Recreation Facilities. This section authorizes the Secretary of Army to develop and implement a program to accept contributions of funds, materials, and services from non-Federal public and private entities to be used in operating and managing recreation facilities and natural resources. The Corps is authorized to enter into cooperative agreements with non-Federal public and private entities to provide for operation and/or management and development of recreation facilities and natural resources where such facilities and resources are being maintained at complete Federal expense. The Corps' Challenge Partnership Program (formerly known as the Challenge Cost-Share Program) provides many opportunities for non-Federal public and private groups and individuals to contribute to and participate in the operation and/or management of recreation facilities and natural resources at Corps water resource development projects (see ER 1130-2-500, Partners and Support (Work Management Policies), and EP 1130-2-500, Partners and Support (Guidance and Procedures)).

**Section 333** amended Section 906(c) (33 U.S.C. 2283(c)) of WRDA 86 (Public Law 99-662) to provide that costs of lands, easements, rights-of-way, and relocations, required for fish and wildlife mitigation shall be allocated the same as other costs specified in the section, i.e., among the purposes which caused the need for mitigation, and cost shared to the same extent as other costs for such project purposes are shared or reimbursed.

## **Title V Contaminated Sediment and Ocean Dumping.**

**Section 502** (33 U.S.C. 1271) established a National Contaminated Sediment Assessment and Management Task Force, co-chaired by the Administrator of the Environmental Protection Agency, the Secretary of the Army, with membership consisting of representatives of the, the National Oceanic and Atmospheric Administration, the U.S. Fish and Wildlife Service, the Geological Survey, and the Department of Agriculture. The Administrator and the Secretary can add a limited number of state representatives, representatives of ports, agriculture, and manufacturing, as well as representatives from limited public interest organizations. In addition to advising the Administrator and the Secretary, Section 502 (33 U.S.C. 1271 note) states that Task Force shall: review and comment on reports concerning aquatic sediment quality and aquatic sediment contamination throughout the Nation, programs for the research and development of sediment restoration methods, practices and technologies, selection of pollutants for development of aquatic sediment criteria and the schedule of development of such criteria;

advise appropriate officials in development of guidelines for restoration of contaminated sediments; make recommendations to appropriate officials concerning practices and measures to prevent contamination of aquatic sediments and to control sources of sediment contamination; review and assess means and methods for locating and constructing permanent, cost-effective, long-term disposal sites for dredged material not suitable for ocean dumping (as determined under the Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1401 et seq)).

### **Water Resources Development Act of 1996 (PL 104-303)**

**Section 204** (33 U.S.C. 2309a(a)) Restoration of Environmental Quality. This section amends Section 1135 of WRDA 1986. It includes provisions authorizing measures for restoration of environmental quality and measures for enhancement of environmental quality that are associated with the restoration, through modifications either at the project site or other locations that have been affected by the construction or operation of the project, if such measures do not conflict with authorized project purposes. The section also addresses non-Federal cost sharing and clarifies the Federal limit on individual projects. Not more than 80 percent of the non-Federal share may be in kind, including a facility, supply, or service that is necessary to carry out the modification or measure. Not more than \$5,000,000 in Federal funds may be expended on any single modification or measure carried out or undertaken pursuant to this section. The section also defines 'water resources project' to include a water resources project constructed or funded jointly by the Secretary and the head of any other Federal agency (including the Natural Resources Conservation Service). Preliminary guidance on this Section was provided in CECW-PM, Planning Guidance Letter #97-1 WRDA 96 Implementation, dated 19 November 1996. [More detailed implementation guidance is provided in ER 1105-2-100]

**Section 205** Environmental Dredging This section reestablished and amended the authorities of Section 312 of WRDA 90 by: (1) providing for removal and remediation of contaminated sediments under the authorities of Section 312(a) and Section 312(b); (2) raising the annual appropriation authorization from \$10 million to \$20 million; (3) deleting the termination date for the authorities of Section 312; and (4) giving priority to work at five locations: Brooklyn Waterfront, NY; Buffalo Harbor and River, NY; Ashtabula River, OH; Mahoning River, OH; and Lower Fox River, WI. Guidance for implementing this section (and Section 312 of WRDA 90) is contained in Policy Guidance Letter (PGL) No. 49, Section 312 of the Water Resources Development Act of 1990, Environmental Dredging, as amended by Section 205 of the Water Resources Development Act of 1996.

**Section 206** (22 U.S.C. 2330) Aquatic Ecosystem Restoration. This section provides a new authority to carry out projects to restore and protect aquatic ecosystems if the projects will improve the quality of the environment and is in the public interest, and is cost-effective. Non-Federal interests are required to provide 35% of the construction costs for these projects, including lands easements, rights-of-way and necessary relocations. Non-Federal interests also must agree to pay 100% of the operation, maintenance, replacement and rehabilitation costs of the project in accordance with regulations prescribed by the Secretary. Preliminary guidance on this section was provided in CECW-PM, Planning Guidance Letter #97-5 - Implementation of the Water Resources Development Act of 199 (WRDA 96), Section 206, Aquatic Ecosystem Restoration, dated 18 February 1997. [Additional guidance for implementing this provision is published in ER 1105-2-100] (See also Section 210 of WRDA 99, which amends this section)

**Section 207** (33 U.S.C. 2326; 106 Stat. 4826) Beneficial Uses of Dredged Material. This section amends Section 204 of WRDA 1992 by adding the following after subsection (d): (e) selection of dredged material disposal method. -- In developing and carrying out a project for navigation involving the disposal of dredged material, the Secretary may select, with the consent of the non-Federal interest, a disposal method that is not the least-cost option if the Secretary determines that the incremental costs of such disposal method are reasonable in relation to the environmental benefits, including the benefits to the

aquatic environment to be derived from the creation of wetlands and control of shoreline erosion. The Federal share of such incremental costs shall be determined in accordance with subsection (c). [Guidance for implementing this provision is currently being developed. Guidance for implementing this section is contained in Policy Guidance Letter (PGL) No. 56, 5 November 1999, Beneficial Use of Dredged Material.

**Section 221** (42 U.S.C. 1962d-16) Planning and Assistance to States. This section expands the Corps' authority to provide planning assistance to states under the Section 22 Program (Water Resources Development Act of 1974, 42 U.S.C. 1962d-16) by expanding areas of planning assistance to include watersheds and ecosystems. The annual program funding authorization limit has been expanded from \$6 million to \$10 million, with an increase in per state expenditure from \$300,000 to \$500,000. Guidance on this section was provide via CECW-PF Memorandum, Implementation of Section 221, Planning Assistance to States, of the Water Resources Development Act of 1996, dated 7 January 1997. The memorandum notes revision of the existing authorization to include development, utilization, and conservation of the water and related resources of drainage basins, watersheds, and ecosystems within the boundaries of the states and Indian tribes. It encourages districts to look for opportunities to perform studies of these needs and opportunities, when identified as a state or tribal priority. The guidance also discusses cost-sharing provisions and appropriations limits.

**Section 225** (33 U.S.C. 610(a)) Melaleuca. This section adds the Melaleuca tree to the list of plants addressed under the Aquatic Plant Program, Section 104 of the Rivers and Harbors Act, as amended. Guidance on this section was provided via CECW-ON Memorandum, Implementation of Section 225 of the Water Resources Development Act of 1996" -- INFORMATION PAPER, dated 19 May 1997, which described the characteristics of the plant and likely problem areas, and informed major subordinate commands and district commands that the Melaleuca tree is now included in the list of aquatic plants considered under the Aquatic Plant Control Program.

**Section 232** (33 U.S.C. 2284b) Scenic and Aesthetic Considerations. This section states that [i]n conducting studies of potential water resources projects, the Secretary shall consider measures to preserve and enhance scenic and aesthetic qualities in the vicinity of such projects. Guidance on this Section was provide via CECW-PD Planning Guidance Letter No. 97-9, Scenic and Aesthetic Considerations, dated 1 July 1997. The guidance letter identifies existing guidance for the consideration of scenic and aesthetic qualities for proposed water resources projects and states that this guidance remains in effect. This guidance includes: ER 200-2-2, Procedures for Implementing NEPA; ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies; and Policy Guidance Letter No. 29, Expenditures on Aesthetics at Civil Works Projects.

### **Water Resources Development Act of 1999 ( PL 106-53)**

**Section 203** Contributions by States and Political Subdivisions. This section amends Section 5 of the Flood Control Act of June 22, 1936 (33 U.S.C. 701h) by inserting "or environmental restoration" after "flood control."

**Section 209** (33 U.S.C. 2326) Beneficial Uses of Dredged Material. This section amends Section 204 of the Water Resources Development Act of 1992 in subsection (c) by striking "cooperative agreement in accordance with the requirements of section 221 of the Flood Control Act of 1970" and inserting "binding agreement with the Secretary"; and by adding at the end the following: (g) Nonprofit entities— Notwithstanding section 221 of the Flood control Act of 1970 (42 U.S.C. 1962d-5b), for any project carried out under this section, a non-Federal interest may include a nonprofit entity, with the consent of the affected local government."

**Section 210. Aquatic Ecosystem Restoration.** This section amends Section 206 of the Water Resources Development Act of 1996 (33 U.S.C. 2330) by adding at the end the following : “(2) Nonprofit entities—Notwithstanding section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d—5b), for any project carried out under this section, a non-Federal interest may include a nonprofit entity, with the consent of the affected local government.”

**Section 211. Watershed Management, Restoration, and Development.** This section amends Section 503 of the Water Resources Development Act of 1996 by adding the following watersheds: Regional Atlanta, GA; Clear Lake, CA; Fresno Slough, CA; Hayward Marsh, S. San Francisco Bay, CA; Kaweah River, CA; Lake Tahoe, CA/NV; Malibu Creek, CA; Lower St. Johns River, FL; Illinois River, IL; Truckee River, NV; Walker River, NV; Bronx River, NY; Catawba River, NC; Columbia Slough, OR; Cabin Creek, WV. It also states that nonprofit entities may be non-Federal sponsors for these projects, with the consent of the affected local government.

**Section 212. (33 U.S.C. 2332) Flood Mitigation and Riverine Restoration Program.** This section authorizes a Civil Works program for dual-purpose projects to: a) reduce flood hazards; and b) restore the natural functions and values of rivers in the U.S. Studies and projects carried out under this section shall be done in consultation and coordination with the Federal Emergency Management Agency, other appropriate Federal agencies, State and local agencies, and tribes. Studies conducted under this section shall be subject to cost sharing in accordance with section 105 of WRDA 1986 (33 U.S.C. 2215). Cost sharing for environmental restoration and non-structural flood control projects shall be as follows: A) non-Federal interests shall pay 35% of the project cost; B) non-Federal interests shall provide all land, easements, rights-of-way, dredged material disposal areas, and relocations necessary for such projects; and C) the value of such land, easements, rights-of-way, dredged material disposal areas, and relocations shall be credited toward the payment required under this paragraph. Also, the non-Federal interests shall be responsible for all costs associated with operating, maintaining, replacing, repairing, and rehabilitating all projects carried out under this section. Nonstructural approaches to preventing or reducing flood damages are emphasized, particularly projects that conserve, restore, and manage hydrologic hydraulic regimes and restore the natural functions and values of floodplains. Priority areas are listed for this program, and an independent review is called for, to evaluate the efficacy of the program in achieving the dual goals of flood hazard mitigation and riverine restoration. The Secretary of the Army must submit a report on the findings of the review to the Committee on Transportation and Infrastructure of the House of Representatives not later than April 15, 2003.

**Section 221. Enhancement of Fish and Wildlife Resources.** Section 906(e) of the Water Resources Development Act of 1986 (33 U.S.C. 2283(e)) is amended by inserting after the second sentence the following: “Not more than 80 percent of the non-Federal share of such first costs may be satisfied through in-kind contributions, including facilities, supplies, and services that are necessary to carry out the enhancement project.”

**Section 224 Environmental Dredging.** This section amends Section 312 of the Water Resources Development Act of 1990 (33 U.S.C. 1272) by reducing the non-Federal cost share from 50% to 35% of the cost of removal and remediation of contaminated sediments. Costs of disposal of contaminated sediments removed under this section (formerly a non-Federal responsibility) are to be shared as a cost of construction. The annual appropriations limit is raised from \$20 million to \$50 million. Three additional areas are listed for priority work under this section: Passaic River and Newark Bay, NJ, Snake Creek, Bixby, OK, and Wilamette River, OR. See PGL No. 49 for Guidance on Environmental Dredging under this section.

**Section 506 Projects for Improvement of the Environment.** Section 1135(c) of the Water Resources Development Act of 1986 (33 U.S.C. 2309a(c)) is amended by adding at the end the following: “(2) Control of Sea Lamprey – Congress finds that (A) the Great Lakes navigation system has been

instrumental in the spread of sea lamprey and the associated impacts on its fishery; and (B) the use of the authority under this subsection for control of sea lamprey at any Great Lakes basin location is appropriate."

**Section 509.** Upper Mississippi River Environmental Management Program. This section amends Section 1103 of the Water Resources Development Act of 1986 (33 U.S.C. 652(e)). The Secretary of the Army is authorized to undertake, in consultation with the Secretary of the Interior and the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin: "(i) a program for the planning, construction, and evaluation of measures for fish and wildlife habitat rehabilitation and enhancement; and (ii) implementation of a long-term resource monitoring, computerized data inventory and analysis, and applied research program." It also calls for the establishment of an independent technical advisory committee to review projects, monitoring plans, and habitat and natural resource needs assessments. The Secretary of the Army must submit a report to Congress not later than December 31, 2004, and every sixth year thereafter, which evaluates the program, identifies accomplishments and needed adjustments.

**Section 515.** (33 U.S.C. 2333) Irrigation Diversion Protection and Fisheries Enhancement Assistance. This section authorizes the Secretary of the Army to provide technical planning and design assistance (not construction) to non-Federal interests and to conduct other site-specific studies to formulate and evaluate fish screens, fish passage devices, and other measures to decrease the incidence of juvenile and adult fish inadvertently entering irrigation systems. Not later than two years after the date of enactment of this Act, the Secretary shall submit to Congress a report on—1) fish mortality caused by irrigation water intake devices; 2) appropriate measures to reduce fish mortality; 3) the extent to which those measures are currently being employed in arid States; 4) the construction costs associated with those measures; and 5) the appropriate Federal role, if any, to encourage the use of those measures.

**Section 516.** (33 U.S.C. 2334) Innovative Technologies for Watershed Restoration. This section states that the Secretary of the Army shall examine using, and, if appropriate, encourage the use of, innovative treatment technologies, including membrane technologies, for watershed and environmental restoration and protection projects involving water quality.

**Section 559.** (33 U.S.C. 2335) Coastal Aquatic Habitat Management. This section authorizes the Secretary of the Army to cooperate with other agencies, and affected private entities, in the development of a management strategy to address problems associated with toxic microorganisms and the resulting degradation of ecosystems in the tidal and nontidal wetlands and waters of the U.S.

**Section 560.** (33 U.S.C. 2336) Abandoned and Inactive Noncoal Mine Restoration. This section authorized the Secretary to provide technical, planning, and design assistance to Federal and non-Federal interests for carrying out projects to address water quality problems caused by drainage and related activities from abandoned and inactive noncoal mines.

### **Water Resources Development Act of 2000 (P.L. 106-541)**

**Section 202.** (33 U.S.C. 2267a) Watershed and River Basin Assessments. This section authorizes the Secretary of the Army to assess the water resources needs of river basins and watersheds of the United States, including needs relating to: "(1) ecosystem protection and restoration; (2) flood damage reduction; (3) navigation and ports; (4) watershed protection; (5) water supply; and (6) drought preparedness." These assessments are to be carried out in coordination with the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Administrator of the Environmental Protection Agency, and the heads of other appropriate agencies, and in consultation with Federal, tribal, State, interstate, and local governmental entities. Priority is to be given to the Delaware, Kentucky, Potomac, Susquehanna, and Willamette River basins. The non-Federal share of the costs of an

assessment carried out under this section shall be 50 percent. Up to 25% of the costs of the assessment may be in the form of in-kind contributions provided by the non-Federal interests, such as services, materials, supplies, or other in-kind contributions. Guidance on this section is provided in CECW-BW Memorandum entitled Implementation Guidance for Section 202 of the Water Resources Development Act 2000, Watershed and River Basin Assessments, which Amends Section 729, WRDA 86, Study of Water Resources Needs of River Basins and Regions, dated 29 May 2001. The basic policy related to watershed activities is found in Policy Guidance Letter No. 61, Application of Watershed Perspective to Corps of Engineers Civil Works Programs and Activities.

**Section 203.** (33 U.S.C. 2269) Tribal Partnership Program. This section authorizes the Secretary of the Army, in cooperation with Indian tribes and the heads of other Federal agencies, to study and determine the feasibility of carrying out water resources development projects that will benefit tribes, and that are located within Indian country. These studies may address projects for flood damage reduction, environmental restoration and protection, and preservation of cultural and natural resources. This section also provides for consultation and coordination with the Secretary of the Interior, for cost-sharing subject to the ability of the non-Federal interest to pay, and credit for in-kind contributions. Guidance on this section is provided in CECW-PG Memorandum entitled Implementation of Sections 203(d)(1) and 204 of the Water Resources Development Act of 2000 – Ability to Pay, dated 27 February 2001.

**Section 208** (33 U.S.C. 2338) Reburial and Conveyance Authority. This section authorizes the Secretary of the Army, in consultation with affected Indian tribes, to identify and set aside areas at civil works projects that may be used to rebury Native American remains that have been discovered on project land, and that have been rightfully claimed by a lineal descendant or Indian tribe in accordance with applicable Federal law. The Secretary may also convey to an Indian tribe these areas to be used as a cemetery, subject to the retention by the Secretary of any property interests necessary to carry out the authorized purposes of the project. Recovery, preparation and reburial costs will be performed at Federal expense. Guidance for this section is provided in CECW-PG Memorandum dated 1 May, 2001, Initial Implementation Guidance for Section 208 of the Water Resources Development Act of 2000—Reburial and Conveyance Authority for Native American Remains, see: [http://www.usace.army.mil/inet/functions/cw/cecwp/branches/mp\\_and\\_dev/WRDA2001guidanceindex.htm](http://www.usace.army.mil/inet/functions/cw/cecwp/branches/mp_and_dev/WRDA2001guidanceindex.htm)

**Section 210.** Nonprofit entities. This section provides the authority by which nonprofit entities may act as a non-Federal sponsor for certain projects undertaken by the Corps. The three provisions that are amended by this section are Section 312 of the WRDA 1990, Environmental Dredging; Section 602 of the WRDA 1986, Lakes Program; and Section 1135 of WRDA 1986, Project Modifications for Improvement of Environment. A sponsor may be any nonprofit organization that is financially capable of providing the non-Federal share of the project costs and undertaking any required operation, maintenance, repair, replacement, and rehabilitation of the project. Additionally, a potential sponsor must also be able to provide the required lands, easements, rights-of-way, relocations and dredged or excavated material disposal areas. Another requirement is that the affected local government must consent, in writing, to the non-profit entity being a sponsor. Guidance on this section is provided in CECW-PD Memorandum dated 2 March 2001, Implementation Guidance for Section 210 of the Water Resources Development Act of 2000.

**Section 223.** (33 U.S.C. 2201 note) Monitoring. This section directs the Secretary of the Army to conduct a monitoring program of the economic and environmental results of up to 5 eligible projects. The monitoring shall be carried on for 12 years, with performance reports every three years.

**Section 224.** Fish and Wildlife Mitigation. This section amends section 906(d) of the Water Resources Development Act of 1986 (33 U.S.C. 2283(d)), requiring that Corps mitigation projects be designed to reflect contemporary understanding of the science of mitigating the adverse environmental impacts of

water resources projects. This section also directs the Comptroller General to conduct an investigation of the effectiveness of the concurrent mitigation requirements of Section 906 of the Water Resources Development Act of 1986 (33 U.S.C. 2283). A panel of independent scientists is established to assist with the study. The study shall determine whether or not there are instances in which less than 50 percent of required mitigation is completed before initiation of project construction and the number of such instances, and the extent to which mitigation projects restore natural hydrologic conditions, restore native vegetation, and otherwise support native fish and wildlife species. It shall also assess the methods used by the Corps to monitor and evaluate mitigation projects, and compare Corps mitigation project design, construction, monitoring, and evaluation practices with those used in other publicly and privately financed mitigation projects. A report is due not later than one year after the date of enactment of this Act.



## **WATER RESOURCES PLANNING ACT**

**LEGISLATIVE TITLE:** Water Resources Planning Act

**UNITED STATES CODE CITATION:** 42 U.S.C. 1962 et seq

**OTHER TITLES AND POPULAR NAMES:** WRPA

**SUMMARY:** The Act provides for the optimum development of the Nation's natural resources through the coordinated planning of water and related land resources, through the establishment of a water resources council (42 U.S.C. 1962a) and river basin commissions (42 U.S.C. 1962b), and by providing financial assistance to the States in order to increase State participation in such planning (42 U.S.C. 1962c). It established a policy to encourage the conservation, development, and utilization of the water and related land resources of the United States on a comprehensive and coordinated basis by the Federal government, states, localities, and private enterprise with the cooperation of all affected agencies, governments, individuals, corporations, business enterprises, and others concerned (42 U.S.C. 1962).

The U.S. Water Resources Council, (42 U.S.C. 1962a) includes the Secretaries of Interior, Agriculture, Army Health, Education and Welfare, and the Chairman of the Federal Power Commission, with the heads of other agencies participating when matters affecting their responsibilities are to be considered by the Council. The Chairman of the Council is to be designated by the President.

The Council was charged with (a) maintaining a continuing study and preparing biennial assessments, or at such less frequent intervals as the Council may determine, of the adequacy of supplies of water necessary to meet the water requirements in each water resource region in the United States and the national interest therein; and (b) maintaining a continuing study of the relation of regional or river basin plans and programs to the requirements of larger regions of the Nation and of the adequacy of administrative and statutory means for the coordination of the water and related land resources policies and programs of the several Federal agencies. It was also to appraise the adequacy of existing and proposed policies and programs to meet such requirements and make recommendations to the President with respect to Federal policies and programs. The Council was to review plans developed by the river basin commissions for (1) the efficacy of such plan or revision in achieving optimum use of the water and related land resources in the area involved; (2) the effect of the plan on the achievement of other programs for the development of agricultural, urban, energy, industrial, recreational, fish and wildlife, and other resources of the entire Nation; and (3) the contributions which such plan or revision will make in obtaining the Nation's economic and social goal (42 U.S.C. 1962a-3).

The Act required the Council to establish principles, standards, and procedures for Federal participants in the preparation of comprehensive regional or river basin plans and for the formulation and evaluation of Federal water and related land resources projects (42 U.S.C. 1962a-2). Such procedures could include provision for Council revision of plans for Federal projects intended to be proposed in any plan or revision thereof being prepared by a river basin planning commission. The Council was also instructed to develop standards and criteria for economic evaluation of water resource projects (42 U.S.C. 1962a-2).

**RESOURCES COVERED:** Water and land related resources.

**COMPLIANCE REQUIREMENTS:** The Principles and Standards were replaced by the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies in 1983. The Corps must follow these Principles and Guidelines in formulating and evaluating water resources implementation studies as part of the Civil Works program. Guidance is found in ER 1105-2-100.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** Water Resources Council; other Federal and state agencies, localities, and private enterprise.

**Process:** Assessment of water supply and demand; review of river basin plans. The Council was not given a project review function.

**Product:** Reports and recommendations. Principles and Standards.

**Timing/Schedule:** Biennial assessments, or at such less frequent intervals as the Council may determine.

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies Unified Federal Policy for a Watershed Approach to Federal Land and Resource Management. Federal Register/Vol 65, No. 202/Wed. October 18, 2000 p. 62566.

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** None identified

## IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** None identified.

**Guidance Title:** None identified.

**Code of Federal Regulations Citation:** 18 C.F.R. 701

**MANAGEMENT OPPORTUNITIES:** While the Water Resources Council has not been funded in a number of years, some of the river basin commissions continue. There may be opportunities for the Corps to work with these commissions as part of ecosystem restoration initiatives, watershed studies and other comprehensive planning and management initiatives, as well as through the Section 22, Planning Assistance to States Program.

# WATERSHED PROTECTION AND FLOOD PREVENTION ACT

**LEGISLATIVE TITLE:** Watershed Protection and Flood Prevention Act

**UNITED STATES CODE CITATION:** 16 U.S.C. 1001 et seq; 33 U.S.C. 701b

**OTHER TITLES AND POPULAR NAMES:** None identified.

**SUMMARY:** This Act authorizes the Secretary of Agriculture to cooperate with states and other public agencies in works for flood prevention and soil conservation, as well as the conservation, development, utilization, and disposal of water. It established the Small Watershed Program through which the Natural Resource Conservation Service (NRCS) (formerly the Soil Conservation Service)(7 U.S.C. 6962) constructs dams and implements other measures in upstream watershed for a variety of purposes including flood control.

**RESOURCES COVERED:** water use, disposal, control, soil conservation

**COMPLIANCE REQUIREMENTS:** This Act imposes no requirements on Corps Civil Works projects. The Corps cooperates fully with the NRCS in carrying out its program and strives to bring about coordination between the this program and the programs of the Corps through interagency agreements. (See EP 1165-2-2, Interagency Agreements, Appendix B.)

**REVIEW AND CONSULTATION REQUIREMENTS:** Any plans for works of improvement involving an estimated Federal contribution to construction costs in excess of \$5 million or including any structure having total capacity in excess of 2500 acre-feet [which affects public land or health, or water pollution] shall be submitted to the Secretary of the Interior, Secretary of the Army, Secretary of Health and Human Services, or the Administrator of the EPA for his views and recommendations at least 30 days prior to transmission of the plan to the Congress through the President. The views and recommendations of [the above mentioned Secretaries], if received by the Secretary [of Agriculture] prior to the expiration of the above 30 day period shall accompany the plan transmitted by the Secretary to the Congress through the President (16 U.S.C. 1005(4)).

**Who Reviews or Consults:** US Department of Agriculture, Natural Resources Conservation Service

**Process:** None specified.

**Product:** None specified.

**Timing/Schedule:** None specified.

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute.

**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** Executive Order 10913, 18 January 1961, Amending Executive Order No. 10584 Prescribing Rules and Regulations Relating to the Administration of the Watershed Protection and Flood Prevention Act. Sections 3 and 4 provide for notification and coordination of agencies in the use, conservation, and development of water and related land resources.

#### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** US Department of Agriculture (Natural Resources Conservation Service)

**Guidance Title:** None identified.

**Code of Federal Regulations Citation:** 7 C.F.R. 622; 33 C.F.R. 222

**MANAGEMENT OPPORTUNITIES:** The Corps can coordinate with the NRCS as part of water resources planning activities. Watershed studies and comprehensive studies in particular provide opportunities to share information and coordinate initiatives.

# WILD AND SCENIC RIVERS ACT

**LEGISLATIVE TITLE:** Wild and Scenic Rivers Act

**UNITED STATES CODE CITATION:** 16 U.S.C. 1271 et seq.

**OTHER TITLES AND POPULAR NAMES:** WSRA

**SUMMARY:** The Act establishes the policy that certain rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations (16 U.S.C. 1271). The Act both identifies specific river reaches for designation as wild or scenic, and provides criteria to be used for classifying additional river reaches (16 U.S.C. 1272). “Wild river areas” are those rivers or sections of rivers that are free from impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent the vestiges of primitive America. “Scenic river areas” are those rivers or sections of rivers that are free from impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads. “Recreational river areas” are those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past. (16 U.S.C. 1273)

The National Wild and Scenic River System was established to protect the environmental values of free-flowing streams from degradation by impacting activities, including water resources projects. The system is administered jointly by the U.S. Forest Service, Department of Agriculture, and the National Park Service, Department of the Interior. Corps activities on the streams included in the system are subject to review by whichever of these agencies is responsible for the specific stream. In all planning for the use and development of water and related land resources, consideration shall be given to potential national wild, scenic and recreational river areas, and all river basin and project plan reports submitted to the Congress shall consider and discuss such potentials (16 U.S.C. 1276(d)).

**RESOURCES COVERED:** Free flowing streams; Scenic, recreational, geologic, fish and wildlife, historic, cultural, or similar values of streams.

**COMPLIANCE REQUIREMENTS:** Discharges into streams, impoundments, diversions, channel alterations, and other measures can alter the stream discharge, velocity, and channel dimensions. These hydraulic changes may cause modifications to the free-flowing character of the stream, resulting in loss or diminution of its environmental values. The Wild and Scenic River Act requires consideration of the impacts and consultation with the responsible agency prior to implementation of a project. Corps activities on the streams included in the National Wild and Scenic River System are subject to review by whichever of these agencies is responsible for the specific stream. Plans to avoid or minimize impacts to wild and scenic rivers must be disclosed and evaluated in project reports and NEPA documents. Operation plans may be required to ensure that impacts are avoided or minimized.

**Regulatory program:** In any 404 permit application, the Corps should consult with the National Park Service or the Forest Service as appropriate to determine if the proposed project will be compatible with the Wild & Scenic designation. As for nationwide permits, it would be advisable to coordinate unofficially with these two agencies. Candidate rivers should also be considered during consultation.

## REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** National Park Service, Department of the Interior; U.S. Forest Service, Department of Agriculture.

**Process:** Consult the Act and amendments, as well as with the appropriate agency to identify designated wild and scenic rivers (including potential rivers), or portions thereof, during the planning phases of water resources projects. Coordination shall be carried out with the agency having management or program responsibility for the particular river.

**Product:** Project reports and NEPA documents should include a description of potential impacts on designated rivers or reaches of designated rivers if applicable.

**Timing/Schedule:** For Corps projects, initial identification of designated rivers or river reaches in the vicinity of the project is done during the reconnaissance phase, with follow-up review of current listings during the feasibility and detailed design phases.

## CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance; EP 1165-2-1, Digest of Water Resources Policies and Authorities

**Civil Works Engineering:** None specific to this statute.

**Civil Works Construction:** None specific to this statute.

**Civil Works Operations:** None specific to this statute

**Regulatory:** 33 C.F.R. 320 and 325

**FOR MORE INFORMATION SEE:** The Wilderness Act

## IMPLEMENTING GUIDANCE OF OTHER AGENCIES

**Agency:** Department of the Interior (National Park Service) and the Department of Agriculture (U.S. Forest Service).

**Guidance Title:** National Wild and Scenic Rivers System; Final Revised Guidelines for Eligibility, Classification and Management of River Areas, F.R. Volume 47, No. 173, September 7, 1982

**Federal Register Citation:** 47 F.R., No. 173

**Code of Federal Regulations Citation:** 36 C.F.R. 297

**MANAGEMENT OPPORTUNITIES:** The Corps may transfer jurisdiction of any project lands which include all or portions of a wild and scenic river to the Secretary of the Interior for administration in accordance with the environmental preservation aspects of the Act. Federal agencies, like the Corps, may provide assistance to States in developing plans for preserving and managing wild and scenic rivers under their jurisdiction.

## WILDERNESS ACT

**LEGISLATIVE TITLE:** The Wilderness Act

**UNITED STATES CODE CITATION:** 16 U.S.C. 1131 et seq

**OTHER TITLES AND POPULAR NAMES:** WA

**SUMMARY:** This Act establishes a National Wilderness Preservation System to be composed of Federally owned areas designated by Congress as “wilderness areas”, which are to be managed in a manner that will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character. With certain exceptions, the Act prohibits motorized equipment, structures, installations, roads, commercial enterprises, aircraft landings, and mechanical transport. The Act permits mining on valid claims, access to private lands, fire control, insect and disease control, grazing, water-resource structures (upon the approval of the President), and visitor use (16 U.S.C. 1133). Except as otherwise provided in this Act, each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area.

**RESOURCES COVERED:** National wilderness areas, and their associated ecological, geological and other features.

**COMPLIANCE REQUIREMENTS:** In planning a project, Federal agencies must determine whether or not the activity will affect a designated wilderness area. In making this determination, the Corps should consult with the appropriate administering agency. Typically, wilderness areas are located within either National Parks (administered by the National Park Service), National Wildlife Refuges (administered by U.S. Fish and Wildlife Service), National Forests (administered by the U.S. Forest Service), or public lands (administered by Bureau of Land Management). These contacts can assist the Corps in determining whether a proposed project falls among the activities prohibited in the wilderness area; how proposed activities may be mitigated; and whether exemptions to the prohibitions are necessary and can be obtained. For example, it may be possible to substitute temporary structures and roads, or certain kinds of equipment in order to avoid adverse effects on a wilderness area. The Corps of Engineers must get the appropriate agency approval and for some activities, a permit may be required.

### REVIEW AND CONSULTATION REQUIREMENTS

**Who Reviews or Consults:** National Park Service, Fish and Wildlife Service, Forest Service, and Bureau of Land Management, Department of Agriculture, Department of the Interior

**Process and Product:** In planning a project, the Corps consults with the appropriate administering agency Federal agencies to determine whether or not the activity will affect a designated wilderness area.

**Timing/Schedule:** None specified.

### CORPS GUIDANCE

**Civil Works Planning:** ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.

**Civil Works Engineering:** None specific to this statute.  
**Civil Works Construction:** None specific to this statute.  
**Civil Works Operations:** None specific to this statute.  
**Regulatory:** None specific to this statute.

**FOR MORE INFORMATION SEE:** Wild and Scenic Rivers Act

#### **IMPLEMENTING GUIDANCE OF OTHER AGENCIES**

**Agency:** U.S. Department of Interior; U.S. Forest Service; Bureau of Land Management

**Guidance Title:** See below

**Code of Federal Regulations Citation:** 50 C.F.R. 35; 43 C.F.R. 19: Office of the Secretary of Interior. Wilderness Preservation; 36 C.F.R. 293: U.S. Forest Service, Wilderness and Primitive Areas; 36 C.F.R. 261: U.S. Forest Service, Prohibitions; 36 C.F.R. 219: National Forest System Land & Resource Management Planning. 43 C.F.R. 8560: Bureau of Land Management, Designated Wilderness Areas; Procedures for Management.

**MANAGEMENT OPPORTUNITIES:** While unlikely, it is not impossible that Corps land could be included in a Wilderness Bill. The main requirement is that it consists of 5,000 acres of land in a generally roadless state. If a piece of land was found to be such a size on a Corps project, it could be kept in its primitive state so that it may included in a Wilderness Bill. This means no developments (campgrounds, roads, etc.) should take place in that property.



XXXXXXXXXXXX

## PART II

# EXECUTIVE ORDERS

XXXXXXXXXXXX

## • Executive Order 11472 - ESTABLISHING THE ENVIRONMENTAL QUALITY COUNCIL AND THE CITIZENS' ADVISORY COMMITTEE ON ENVIRONMENTAL QUALITY

May 29, 1969

By virtue of the authority vested in me as President of the United States, it is ordered as follows:

### **PART I. ENVIRONMENTAL QUALITY COUNCIL**

#### **Section 101. *Establishment of the Council.***

(a) There is hereby established the Environmental Quality Council (hereinafter referred to as 'the Council').

(b) The President of the United States shall preside over meetings of the Council. The Vice President shall preside in the absence of the President.

(c) The Council shall be composed of the following members: The Vice President of the United States; Secretary of Agriculture; Secretary of Commerce; Secretary of Health, Education and Welfare; Secretary of Housing and Urban Development; Secretary of the Interior; Secretary of Transportation and such other heads of departments and agencies and others as the President may from time to time direct.

(d) Each member of the Council may designate an alternate, who shall serve as a member of the Council whenever the regular member is unable to attend any meeting of the Council.

(e) When matters which affect the interest of Federal agencies the heads of which are not members of the Council are to be considered by the Council, the President or his representative may invite such agency heads or their alternates to participate in the deliberations of the Council.

(f) The Director of the Bureau of the Budget, the Chairman of the Council of Economic Advisers, and the Executive Secretary of the Council for Urban Affairs or their representatives may participate in the deliberations of the Environmental Quality Council as observers.

(g) The Science Adviser to the President shall be the Executive Secretary of the Council and shall assist the President in directing the affairs of the Council.

#### **Section 102. *Functions of the Council.***

(a) The Council shall advise and assist the President with respect to environmental quality matters and shall perform such other related duties as the President may from time to time prescribe. In addition thereto, the Council is directed to:

(1) Recommend measures to ensure that Federal policies and programs, including those for development and conservation of natural resources, take adequate account of environmental effects.

(2) Review the adequacy of existing systems for monitoring and predicting environmental changes so as to achieve effective coverage and efficient use of facilities and other resources.

(3) Foster cooperation between the Federal Government, State and local governments, and private organizations in environmental programs.

(4) Seek advancement of scientific knowledge of changes in the environment and encourage the development of technology to prevent or minimize adverse effects endanger man's health and well-being.

(5) Stimulate public and private participation in programs and activities to protect against pollution of the Nation's air, water, and land and its living resources.

(6) Encourage timely public disclosure by all levels of government and by private parties of plans that would affect the quality of environment.

(7) Assure assessment of new and changing technologies for their potential effects on the environment.

(8) Facilitate coordination among departments and agencies of the Federal Government in protecting and improving the environment.

(b) The Council shall review plans and actions of Federal agencies affecting outdoor recreation and natural beauty. The Council may conduct studies and make recommendations to the President on matters of policy in the fields of outdoor recreation and natural beauty. In carrying out the foregoing provisions of this subsection, the Council shall, as far as may be practical, advise Federal agencies with respect to the effect of their respective plans and programs on recreation and natural beauty, and may suggest to such agencies ways to accomplish the purposes of this order. For the purposes of this order, plans and programs may include, but are not limited to, those for or affecting: (1) Development, restoration, and preservation of the beauty of the countryside, urban and suburban areas, water resources, wild rivers, scenic roads, parkways and highways, (2) the protection and appropriate management of scenic or primitive areas, natural wonders, historic sites, and recreation areas, (3) the management of Federal land and water resources, including fish and wildlife, to enhance natural beauty and recreational opportunities consistent with other essential uses, (4) cooperation with the States and their local subdivisions and private organizations and individuals in areas of mutual interest, (5) interstate arrangements, including Federal participation where authorized and necessary, and (6) leadership in a nationwide recreation and beautification effort.

(c) The Council shall assist the President in preparing periodic reports to the Congress on the subjects of this order.

**Section 103. *Coordination.*** The Secretary of the Interior may make available to the Council for coordination of outdoor recreation the authorities and resources available to him under the Act of May 28, 1963, 77 Stat. 49; to the extent permitted by law, he may make such authorities and resources available to the Council also for promoting such coordination of other matters assigned to the Council by this order.

**Section 104. *Assistance for the Council.*** In compliance with provisions of applicable law, and as necessary to serve the purposes of this order, (1) the Office of Science and Technology shall provide or arrange for necessary administrative and staff services, support, and facilities for the Council, and (2) each department and agency which has membership on the Council under Section 101(c) hereof shall furnish the Council such information and other assistance as may be available.

## **PART II. CITIZENS' ADVISORY COMMITTEE ON ENVIRONMENTAL QUALITY**

**Section 201. *Establishment of the Committee.*** There is hereby established the Citizens' Advisory Committee on Environmental Quality (hereafter referred to as 'Committee'). The Committee shall be composed of a chairman and not more than 14 other members appointed by the President. Appointments to membership on the Committee shall be for staggered terms, except that the chairman of the Committee shall serve until his successor is appointed.

**Section 202. *Functions of the Committee.*** The Committee shall advise the President and the Council on matters assigned to the Council by the provisions of this order.

**Section 203. Expenses.** Members of the Committee shall receive no compensation from the United States by reason of their services under this order but shall be entitled to receive travel and expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5701-5708) for persons in the Government service employed intermittently.

**Section 204. Continuity.** Persons who on the date of this order are members of the Citizens' Advisory Committee on Recreation and Natural Beauty established by Executive Order No. 11278 of May 4, 1966, as amended, shall, until the expirations of their respective terms and without further action by the President, be members of the Committee established by the provisions of this Part in lieu of an equal number of the members provided for in section 201 of this order.

### **PART III. GENERAL PROVISIONS**

**Section 301. Construction.** Nothing in this order shall be construed as subjecting any department, establishment, or other instrumentality of the executive branch of the Federal Government or the head thereof, or any function vested by law in or assigned pursuant to law to any such agency or head, to the authority of any other such agency or head or as abrogating, modifying, or restricting any such function in any manner.

**Section 302. Prior bodies and orders.** The President's Council on Recreation and Natural Beauty and the Citizens' Advisory Committee on Recreation and Natural Beauty are hereby terminated and the following are revoked:

- (1) Executive Order No. 11278 of May 4, 1966.
- (2) Executive Order No. 11359A of June 29, 1967.
- (3) Executive Order No. 11402 of March 29, 1968.

Richard Nixon  
THE WHITE HOUSE,  
May 29, 1969.  
34 FR 8693, 1969 WL 9659 (Pres.)

## • Executive Order 11514 - PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

March 5, 1970

By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (Public Law No. 91-190, approved January 1, 1970), it is ordered as follows:

### **Section 1.** *Policy*

The Federal Government shall provide leadership in protecting and enhancing the quality of the Nation's environment to sustain and enrich human life. Federal agencies shall initiate measures needed to direct their policies, plans and programs so as to meet national environmental goals. The Council on Environmental Quality, through the Chairman, shall advise and assist the President in leading this national effort.

### **Section 2.** *Responsibilities of Federal agencies.*

Consonant with Title I of the National Environmental Policy Act of 1969, hereafter referred to as the "Act", the heads of Federal agencies shall:

(a) Monitor, evaluate, and control on a continuing basis their agencies' activities so as to protect and enhance the quality of the environment. Such activities shall include those directed to controlling pollution and enhancing the environment and those designed to accomplish other program objectives which may affect the quality of the environment. Agencies shall develop programs and measures to protect and enhance environmental quality and shall assess progress in meeting the specific objectives of such activities. Heads of agencies shall consult with appropriate Federal, State and local agencies in carrying out their activities as they affect the quality of the environment.

(b) Develop procedures to ensure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties. These procedures shall include, whenever appropriate, provision for public hearings, and shall provide the public with relevant information, including information on alternative courses of action. Federal agencies shall also encourage State and local agencies to adopt similar procedures for informing the public concerning their activities affecting the quality of the environment.

(c) Insure that information regarding existing or potential environmental problems and control methods developed as part of research, development, demonstration, test, or evaluation activities is made available to Federal agencies, States, counties, municipalities, institutions, and other entities, as appropriate.

(d) Review their agencies' statutory authority, administrative regulations, policies, and procedures, including those relating to loans, grants, contracts, leases, licenses, or permits, in order to identify any deficiencies or inconsistencies therein which prohibit or limit full compliance with the purposes and provisions of the Act. A report on this review and the corrective actions taken or planned, including such measures to be proposed to the President as may be necessary to bring their authority and policies into conformance with the intent, purposes, and procedures of the Act, shall be provided to the Council on Environmental Quality not later than September 1, 1970.

(e) Engage in exchange of data and researches results, and cooperate with agencies of other governments to foster the purposes of the Act.

(f) Proceed, in coordination with other agencies, with actions required by section 102 of the Act.

(g) In carrying out their responsibilities under the Act and this Order, comply with the regulations issued by the Council except where such compliance would be inconsistent with statutory requirements.

### **Section 3.** *Responsibilities of Council on Environmental Quality.*

The Council on Environmental Quality shall:

(a) Evaluate existing and proposed policies and activities of the Federal Government directed to the control of pollution and the enhancement of the environment and to the accomplishment of other objectives, which affect the quality of the environment. This shall include continuing review of procedures employed in the development and enforcement of Federal standards affecting environmental quality. Based upon such evaluations the Council shall, where appropriate, recommend to the President polices and programs to achieve more effective protection and enhancement of environmental quality and shall, where appropriate, seek resolution of significant environmental issues.

(b) Recommend to the President and to the agencies priorities among programs designed for the control of pollution and for enhancement of the environment.

(c) Determine the need for new policies and programs for dealing with environmental problems not being adequately addressed.

(d) Conduct, as it determines to be appropriate, public hearings or conferences on issues of environmental significance.

(e) Promote the development and use of indices and monitoring systems (1) to assess environmental conditions and trends, (2) to predict the environmental impact of proposed public and private actions, and (3) to determine the effectiveness of programs for protecting and enhancing environmental quality.

(f) Coordinate Federal programs related to environmental quality.

(g) Advise and assist the President and the agencies in achieving international cooperation for dealing with environmental problems, under the foreign policy guidance of the Secretary of State.

(h) Issue regulations to Federal agencies for the implementation of the procedural provisions of the Act (42 USC 4332(2)). Such regulations shall be developed after consultation with affected agencies and after such public hearings as may be appropriate. They will be designed to make the environmental impact statement process more useful to decision makers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives. They will require impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses. The Council shall include in its regulations procedures (1) for the early preparation of environmental impact statements, and (2) for the referral to the Council of conflicts between agencies concerning the implementation of the National Environmental Policy Act of 1969, as amended, and Section 309 of the Clean Air Act, as amended, for the Council's recommendation as to their prompt resolution.

(i) Issue such other instructions to agencies, and request such reports and other information from them, as may be required to carry out the Council's responsibilities under the Act.

(j) Assist the President in preparing the annual Environmental Quality Report provided for in section 201 of the Act.

(k) Foster investigations, studies, surveys, research, and analyses relating to (i) ecological systems and environmental quality, (ii) the impact of new and changing technologies thereon, and (iii) means of preventing or reducing adverse effects from such technologies.

SECTION 4 Amendments of E.O. 11472.

[EDITOR'S NOTE: E.O. 11472 expired January 5, 1977.]

Richard Nixon  
THE WHITE HOUSE  
March 5, 1970

## • Executive Order 11593 - PROTECTION AND ENHANCEMENT OF THE CULTURAL ENVIRONMENT

May 13, 1971

By virtue of the authority vested in me as President of the United States and in furtherance of the purposes and policies of the National Environmental Policy Act of 1969 (83 Stat. 852, 42 U.S.C. 4321 et seq.), the National Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 470 et seq.), the Historic Sites Act of 1935 (49 Stat. 666, 16 U.S.C. 461 et seq.), and the Antiquities Act of 1906 (34 Stat. 225, 16 U.S.C. 431 et seq.), it is ordered as follows:

### **Section 1. Policy.**

The Federal Government shall provide leadership in preserving, restoring and maintaining the historic and cultural environment of the Nation. Agencies of the executive branch of the Government (hereinafter referred to as 'Federal agencies') shall:

- (1) administer the cultural properties under their control in a spirit of stewardship and trusteeship for future generations,
- (2) initiate measures necessary to direct their policies, plans and programs in such a way that federally owned sites, structures, and objects of historical, architectural or archaeological significance are preserved, restored and maintained for the inspiration and benefit of the people, and
- (3), in consultation with the Advisory Council on Historic Preservation (16 U.S.C. 470i), institute procedures to assure that Federal plans and programs contribute to the preservation and enhancement of non-federally owned sites, structures and objects of historical, architectural or archaeological significance.

**Section 2. Responsibilities of Federal agencies.** Consonant with the provisions of the acts cited in the first paragraph of this order, the heads of Federal agencies shall:

(a) no later than July 1, 1973, with the advice of the Secretary of the Interior, and in cooperation with the liaison officer for historic preservation for the State or territory involved, locate, inventory, and nominate to the Secretary of the Interior all sites, buildings, districts, and objects under their jurisdiction or control that appear to qualify for listing on the National Register of Historic Places.

(b) exercise caution during the interim period until inventories and evaluations required by subsection (a) are completed to assure that any federally owned property that might qualify for nomination is not inadvertently transferred, sold, demolished or substantially altered. The agency head shall refer any questionable actions to the Secretary of the Interior for an opinion respecting the property's eligibility for inclusion on the National Register of Historic Places. The Secretary shall consult with the liaison officer for historic preservation for the State or territory involved in arriving at his opinion. Where, after a reasonable period in which to review and evaluate the property, the Secretary determines that the property is likely to meet the criteria prescribed for listing on the National Register of Historic Places, the Federal agency head shall reconsider the proposal in light of national environmental and preservation policy. Where, after such reconsideration, the Federal agency head proposes to transfer, sell, demolish or substantially alter the property he shall not act with respect to the property until the Advisory Council on Historic Preservation shall have been provided an opportunity to comment on the proposal.

(c) initiate measures to assure that where as a result of Federal action or assistance a property listed on the National Register of Historic Places is to be substantially altered or demolished, timely steps be taken to make or have made records, including measured drawings, photographs and maps, of the property, and that copy of such records then be deposited in the Library of Congress as part of the Historic American Buildings Survey or Historic American Engineering Record for future use and reference. Agencies may call on the Department of the Interior for advice and technical assistance in the completion of the above records.

(d) initiate measures and procedures to provide for the maintenance, through preservation, rehabilitation, or restoration, of federally owned and registered sites at professional standards prescribed by the Secretary of the Interior.

(e) submit procedures required pursuant to subsection (d) to the Secretary of the Interior and to the Advisory Council on Historic Preservation no later than January 1, 1972, and annually thereafter, for review and comment.

(f) cooperate with purchasers and transferees of a property listed on the National Register of Historic Places in the development of viable plans to use such property in a manner compatible with preservation objectives and which does not result in an unreasonable economic burden to public or private interests.

**Section 3.** *Responsibilities of the Secretary of the Interior.*

The Secretary of the Interior shall:

(a) encourage State and local historic preservation officials to evaluate and survey federally owned historic properties and, where appropriate, to nominate such properties for listing on the National Register of Historic Places.

(b) develop criteria and procedures to be applied by Federal agencies in the reviews and nominations required by section 2(a). Such criteria and procedures shall be developed in consultation with the affected agencies.

(c) expedite action upon nominations to the National Register of Historic Places concerning federally owned properties proposed for sale, transfer, demolition or substantial alteration.

(d) encourage State and Territorial liaison officers for historic preservation to furnish information upon request to Federal agencies regarding their properties which have been evaluated with respect to historic, architectural or archaeological significance and which as a result of such evaluations have not been found suitable for listing on the National Register of Historic Places.

(e) develop and make available to Federal agencies and State and local governments information concerning professional methods and techniques for preserving, improving, restoring and maintaining historic properties.

(f) advise Federal agencies in the evaluation, identification, preservation, improvement, restoration and maintenance of historic properties.

(g) review and evaluate the plans of transferees of surplus Federal properties transferred for historic monument purposes to assure that the historic character of such properties is preserved in rehabilitation, restoration, improvement, maintenance and repair of such properties.

(h) review and comment upon Federal agency procedures submitted pursuant to section 2(e) of this order.

Richard Nixon  
THE WHITE HOUSE,  
May 13, 1971.  
Exec. Order No. 11593, 36 FR 8921, 1971 WL 17202 (Pres.)



## • Executive Order 11735 - ASSIGNMENT OF FUNCTIONS UNDER SECTION 311 OF THE FEDERAL WATER POLLUTION CONTROL ACT, AS AMENDED

August 3, 1973

By virtue of the authority vested in me by section 311 of the Federal Water Pollution Control Act, as amended by the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500; 86 Stat. 816 at 862; 33 U.S.C. 1321), hereinafter referred to as the act, by section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

### **Section 1.** *Administrator of the Environment Protection Agency.*

The Administrator of the Environmental Protection Agency is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the following:

(1) the authority of the President under subsection (b)(3) and (b)(4) of section 311 of the act relating to the determination of those quantities of oil and hazardous substances the discharge of which, at such times, locations, circumstances, and conditions, will be harmful to the public health or welfare of the United States and those which will not be harmful;

(2) the authority of the President under subsection (c)(2)(G) of section 311 of the act, relating to identification of dispersants and other chemicals to be used;

(3) the authority of the President under subsection (e) of section 311 of the act, relating to determinations of imminent and substantial threat because of actual or threatened discharges of oil or hazardous substances from non- transportation-related onshore and offshore facilities, and relating to securing relief necessary to abate such actual or threatened discharges through court action; and

(4) the authority of the President under subsection (j)(1)(C) of section 311 of the act, relating to the establishment of procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from non-transportation-related onshore and offshore facilities, and to contain such discharges.

### **Section 2.** *Secretary of Department in which the Coast Guard is Operating.*

The Secretary of the Department in which the Coast Guard is operating is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the following:

(1) the authority of the President under subsection (e) of section 311 of the act, relating to determinations of imminent and substantial threat because of actual or threatened discharges of oil or hazardous substances from transportation-related onshore and offshore facilities, and relating to securing relief necessary to abate such actual or threatened discharges through court action;

(2) the authority of the President under subsection (j)(1)(C) of section 311 of the act, relating to the establishment of procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and transportation-related onshore and offshore facilities, and to contain such discharges;

(3) the authority of the President under subsection (j)(1)(D) of section 311 of the act, relating to the inspection of vessels carrying cargoes of oil and hazardous substances and the inspection of such cargoes;

(4) the authority to administer the revolving fund established pursuant to subsection (k) of section 311 of the act; and

(5) the authority under subsection (m) of section 311 of the act, relating to the boarding and inspection of vessels, the arrest of persons violating section 311, and the execution of warrants or other process pursuant to that section.

### **Section 3.** *Federal Maritime Commission.*

The Federal Maritime Commission is designated and empowered to exercise, without the approval, ratification, or other action of the President, the following:

(1) the authority of the President under subsection (p)(1) of section 311 of the act, relating to the issuance of regulations governing evidence of financial responsibility for vessels to meet liability to the United States; and

(2) the authority under subsection (p)(2) of section 311 of the act, relating to the administration of subsection (p).

#### **Section 4. *Council on Environmental Quality.***

The Council on Environmental Quality is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority under subsection (c)(2) of section 311 of the act, providing for the preparation, publication, revision or amendment of a National Contingency Plan for the removal of oil and hazardous substance discharges (hereinafter referred to as the National Contingency Plan).

#### **Section 5. *Other Assignments.***

(a) The head of each Federal department and agency having responsibilities under the National Contingency Plan (36 FR 16215), as now or hereafter amended, is designated and empowered to exercise, without the approval, ratification, or other action of the President, in accordance with that plan, the authority under subsection (c)(1) of section 311 of the act, relating to the removal of oil and hazardous substances discharged into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone.

(b) The Administrator of the Environmental Protection Agency and the Secretary of the Department in which the Coast Guard is operating, respectively, in and for the waters and areas for which each has responsibility for providing or furnishing on-scene-coordinators under the National Contingency Plan, are designated and empowered to exercise, without approval, ratification, or other action of the President, the following:

(1) the authority under subsection (c)(2)(C) of section 311 of the act, relating to the determination of major ports for establishment of emergency task forces;

(2) the authority under subsection (d) of section 311 of the act, relating to the coordination and direction of the removal or elimination of threats of pollution hazards from discharges, or imminent discharges, of oil or hazardous substances, and the removal and destruction of vessels;

(3) the authority of the President under subsection (j)(1)(A) of section 311 of the act, relating to the establishment of methods and procedures for the removal of discharged oil and hazardous substances; and

(4) the authority of the President under subsection (j)(1)(B) of section 311 of the act, relating to the establishment of criteria for the development and implementation of local and regional oil and hazardous substance removal contingency plans.

(c) The Administrator of the Environmental Protection Agency and the Secretary of the Department in which the Coast Guard is operating are designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority of the President under section 311(j)(2) with respect to assessing and compromising civil penalties in connection with enforcement of the respective regulations issued by each pursuant to this order.

#### **Section 6. *Consultation.***

Authorities and functions delegated or assigned by this order shall be exercised subject to consultation with the Secretaries of departments and the heads of agencies with operating or regulatory responsibilities which may be significantly affected.

#### **Section 7. *Agency to Receive Notices of Discharges of Oil or Hazardous Substances.***

The Coast Guard is hereby designated the 'appropriate agency' for the purpose of receiving the notice of discharge of oil or hazardous substances required by subsection (b)(5) of section 311 of the act. The Commandant of the Coast Guard shall issue regulations implementing this designation.

**Section 8.** Without derogating from any action heretofore taken there under, Executive Order No. 11548 of July 20, 1970, is hereby superseded.

Richard Nixon  
THE WHITE HOUSE,  
August 3, 1973.  
Exec. Order No. 11735, 38 FR 21243, 1973 WL 20499 (Pres.)

Revoked by EO 13112

• **Executive Order 11987 - EXOTIC ORGANISMS**

May 24, 1977

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the purposes and policies of the Lacey Act (18 U.S.C. 42) and the National Environmental Policy Act of 1969, as amended (42 USC 4321 et seq.), it is hereby ordered as follows:

**Section 1.** As used in this Order:

(a) "United States" means all of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(b) "Introduction" means the release, escape, or establishment of an exotic species into a natural ecosystem.

(c) "Exotic species" means all species of plants and animals not naturally occurring, either presently or historically, in any ecosystem of the United States.

(d) "Native species" means all species of plants and animals naturally occurring, either presently or historically, in any ecosystem of the United States.

**Section 2.**

(a) Executive agencies shall, to the extent permitted by law, restrict the introduction of exotic species into the natural ecosystems on lands and waters which they own, lease, or hold for purposes of administration; and, shall encourage the States, local governments, and private citizens to prevent the introduction of exotic species into natural ecosystems of the United States.

(b) Executive agencies, to the extent they have been authorized by statute to restrict the importation of exotic species, shall restrict the introduction of exotic species into any natural ecosystem of the United States.

(c) Executive agencies shall, to the extent permitted by law, restrict the use of Federal funds, programs, or authorities used to export native species for the purpose of introducing such species into ecosystems outside the United States where they do not naturally occur.

(d) This Order does not apply to the introduction of any exotic species, or the export of any native species, if the Secretary of Agriculture or the Secretary of the Interior finds that such introduction or exportation will not have an adverse effect on natural ecosystems.

**Section 3.** The Secretary of the Interior, in consultation with the Secretary of Agriculture and the heads of other appropriate agencies, shall develop and implement, by rule or regulation, a system to standardize and simplify the requirements, procedures and other activities appropriate for implementing the provisions of this Order. The Secretary of the Interior shall ensure that such rules or regulations are in accord with the performance by other agencies of those functions vested by law, including this Order, in such agencies.

Jimmy Carter  
THE WHITE HOUSE  
May 24, 1977

42 FR 26949, 3 CFR, 1977 Comp., p. 116

## • Executive Order 11988 - FLOODPLAIN MANAGEMENT

May 24, 1977

[EDITOR'S NOTE: Executive Order 12148 --Federal Emergency Management, July 20, 1979, substituted "Director of the Federal Emergency Management Agency" for "Federal Insurance Administration" in Section 2(d).]

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 USC 4321 et seq.), the National Flood Insurance Act of 1968, as amended (42 USC 4001 et seq.), and the Flood Disaster Protection Act of 1973 (Public Law 93-234, 87 Stat. 975), in order to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative, it is hereby ordered as follows:

**Section 1.** Each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

**Section 2.** In carrying out the activities described in Section 1 of this Order, each agency has a responsibility to evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of this Order, as follows:

(a)

(1) Before taking an action, each agency shall determine whether the proposed action will occur in a floodplain -- for major Federal actions significantly affecting the quality of the human environment, the evaluation required below will be included in any statement prepared under Section 102(2)(C) of the National Environmental Policy Act. This determination shall be made according to a Department of Housing and Urban Development (HUD) floodplain map or a more detailed map of an area, if available. If such maps are not available, the agency shall make a determination of the location of the floodplain based on the best available information. The Water Resources Council shall issue guidance on this information not later than October 1, 1977.

(2) If an agency has determined to, or proposes to, conduct, support, or allow an action to be located in a floodplain, the agency shall consider alternatives to avoid adverse effects and incompatible development in the floodplains. If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in this Order requires siting in a floodplain, the agency shall, prior to taking action, (i) design or modify its action in order to minimize potential harm to or within the floodplain, consistent with regulations issued in accord with Section 2(d) of this Order, and (ii) prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

(3) For programs subject to the Office of Management and Budget Circular A-95, the agency shall send the notice, not to exceed three pages in length including a location map, to the state and area wide A-95 clearinghouses for the geographic areas affected. The notice shall include: (i) the reasons why the action is proposed to be located in a floodplain; (ii) a statement indicating whether the action conforms to applicable state or local floodplain protection standards and (iii) a list of the alternatives considered. Agencies shall endeavor to allow a brief comment period prior to taking any action.

(4) Each agency shall also provide opportunity for early public review of any plans or proposals for actions in floodplains, in accordance with Section 2(b) of Executive Order No. 11 514, as amended, including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended.

(b) Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in a floodplain, whether the proposed action is in accord with this Order.

(c) Each agency shall take floodplain management into account when formulating or evaluating any water and land use plans and shall require land and water resources use appropriate to the degree of hazard involved. Agencies shall include adequate provision for the evaluation and consideration of flood hazards in the regulations and operating procedures for the licenses, permits, loan or grants-in-aid programs that they administer. Agencies shall also encourage and provide appropriate guidance to applicants to evaluate the effects of their proposals in floodplains prior to submitting applications for Federal licenses, permits, loans or grants.

(d) As allowed by law, each agency shall issue or amend existing regulations and procedures within one year to comply with this Order. These procedures shall incorporate the Unified National Program for Floodplain Management of the Water Resources Council, and shall explain the means that the agency will employ to pursue the non-hazardous use of riverine, coastal and other floodplains in connection with the activities under its authority. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order. Agencies shall prepare their procedures in consultation with the Water Resources Council, the Director of the Federal Emergency Management Agency, and the Council on Environmental Quality, and shall update such procedures as necessary.

**Section 3.** In addition to the requirements of Section 2, agencies with responsibilities for Federal real property and facilities shall take the following measures:

(a) The regulations and procedures established under Section 2(d) of this Order shall, at a minimum, require the construction of Federal structures and facilities to be in accordance with the standards and criteria and to be consistent with the intent of those promulgated under the National Flood Insurance Program. They shall deviate only to the extent that the standards of the Flood Insurance Program are demonstrably inappropriate for a given type of structure or facility.

(b) If, after compliance with the requirements of this Order, new construction of structures or facilities are to be located in a floodplain, accepted flood proofing and other flood protection measures shall be applied to new construction or rehabilitation. To achieve flood protection, agencies shall, wherever practicable, elevate structures above the base flood level rather than filling in land.

(c) If property used by the general public has suffered flood damage or is located in an identified flood hazard area, the responsible agency shall provide on structures, and other places where appropriate, conspicuous delineation of past and probable flood height in order to enhance public awareness of and knowledge about flood hazards.

(d) When property in floodplains is proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, the Federal agency shall (1) reference in the conveyance those uses that are restricted under identified Federal, State or local floodplain regulations; and (2) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successors, except where prohibited by law; or (3) withhold such properties from conveyance.

**Section 4.** In addition to any responsibilities under this Order and Sections 202 and 205 of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4106 and 4128), agencies which guarantee, approve, regulate, or insure any financial transaction which is related to an area located in a floodplain shall, prior to completing action on such transaction, inform any private parties participating in the transaction of the hazards of locating structures in the floodplain.

**Section 5.** The head of each agency shall submit a report to the Council on Environmental Quality and to the Water Resources Council on June 30, 1978, regarding the status of their procedures and the impact of this Order on the agency's operations. Thereafter, the Water Resources Council shall periodically evaluate agency procedures and their effectiveness.

**Section 6.** As used in this Order:

(a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting floodplains.

(b) The term "base flood" shall mean that flood which has a one percent or greater chance of occurrence in any given year.

(c) The term "floodplain" shall mean the lowland and relatively flat areas adjoining inland and coastal waters including flood prone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year.

**Section 7.** Executive Order No. 11296 of August 10, 1966, is hereby revoked. All actions, procedures, and issuances taken under that Order and still in effect shall remain in effect until modified by appropriate authority under the terms of this Order.

**Section 8.** Nothing in this Order shall apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

**Section 9.** To the extent the provisions of Section 2(a) of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decision making, and action pursuant to the National Environmental Policy Act of 1969, as amended.

Jimmy Carter  
THE WHITE HOUSE  
May 24, 1977

42 FR 26951, 3 CFR, 1977 Comp., p. 117; Amended by Executive Order 12148, July 20, 1979; 44 FR 43239, 3 CFR, 1979 Comp., p. 412

## • Executive Order 11990 - PROTECTION OF WETLANDS

May 24, 1977

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 USC 4321 et seq.), in order to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative, it is hereby ordered as follows:

### **Section 1.**

(a) Each agency shall provide leadership and shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

(b) This Order does not apply to the issuance by Federal agencies of permits, licenses, or allocations to private parties for activities involving wetlands on non-Federal property.

### **Section 2.**

(a) In furtherance of Section 101(b)(3) of the National Environmental Policy Act of 1969 (42 USC 4331(b)(3)) to improve and coordinate Federal plans, functions, programs and resources to the end that the Nation may attain the widest range of beneficial uses of the environment without degradation and risk to health or safety, each agency, to the extent permitted by law, shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding the head of the agency may take into account economic, environmental and other pertinent factors.

(b) Each agency shall also provide opportunity for early public review of any plans or proposals for new construction in wetlands, in accordance with Section 2(b) of Executive Order No. 11514, as amended, including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended.

**Section 3.** Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in wetlands, whether the proposed action is in accord with this Order.

**Section 4.** When Federally-owned wetlands or portion wetlands are proposed for lease, easement, right-of or disposal to non-Federal public or private parties Federal agency shall (a) reference in the conveyance those uses that are restricted under identified Federal, State or local wetlands regulations; and (b) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successor, except where prohibited by law; or (c) withhold such properties from disposal.

**Section 5.** In carrying out the activities described in Section 1 of this Order, each agency shall consider factors relevant to a proposal's effect on the survival and quality of the wetlands. Among these factors are:

(a) public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion;



(b) maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and

(c) other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

**Section 6.** As allowed by law, agencies shall issue or amend their existing procedures in order to comply with this Order. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order.

**Section 7.** As used in this Order:

(a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting wetlands.

(b) The term "new construction" shall include draining, dredging, channeling, filling, diking, impounding, and related activities and any structures or facilities begun or authorized after the effective date of this Order.

(c) The term "wetlands" means those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

**Section 8.** This Order does not apply to projects presently under construction, or to projects for which all of the funds have been appropriated through Fiscal Year 1977, or to projects and programs for which a draft or final environmental impact statement will be filed prior to October 1, 1977. The provisions of Section 2 of this Order shall be implemented by each agency not later than October 1, 1977.

**Section 9.** Nothing in this Order shall apply to assistance provided for emergency work, essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

**Section 10.** To the extent the provisions of Sections 2 and 5 of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decision making, and action pursuant to the National Environmental Policy Act of 1969, as amended.

Jimmy Carter  
THE WHITE HOUSE  
May 24, 1977  
42 FR 26961, 3 CFR, 1977 Comp., p. 121

## • Executive Order 11991 - RELATING TO PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

May 24, 1977

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the purpose and policy of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the Environmental Quality Improvement Act of 1970 (42 U.S.C. 4371 et seq.), and Section 309 of the Clean Air Act, as amended (42 U.S.C. 1857h-7), it is hereby ordered as follows:

**Section 1.** Subsection (h) of Section 3 (relating to responsibilities of the Council on Environmental Quality) of Executive Order No. 11514, as amended, is revised to read as follows:

(h) Issue regulations to Federal agencies for the implementation of the procedural provisions of the Act (42 U.S.C. 4332(2)). Such regulations shall be developed after consultation with affected agencies and after such public hearings as may be appropriate. They will be designed to make the environmental impact statement process more useful to decision makers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives. They will require impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses. The Council shall include in its regulations procedures (1) for the early preparation of environmental impact statements, and (2) for the referral to the Council of conflicts between agencies concerning the implementation of the National Environmental Policy Act of 1969, as amended, and Section 309 of the Clean Air Act, as amended, for the Council's recommendation as to their prompt resolution.'

**Section 2.** The following new subsection is added to Section 2 (relating to responsibilities of Federal agencies) of Executive Order No. 11514, as amended:

(g) In carrying out their responsibilities under the Act and this Order, comply with the regulations issued by the Council except where such compliance would be inconsistent with statutory requirements.

Jimmy Carter  
THE WHITE HOUSE,  
May 24, 1977.

Exec. Order No. 11991, 42 FR 26967, 1977 WL 23622 (Pres.)

*Revoked by EO 13148 (in part)*

## **• Executive Order 12088 - FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS**

*(Amended by Executive Order 12580)*

October 13, 1978; January 23, 1987

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 22 of the Toxic Substances Control Act (15 USC 2621), Section 313 of the Federal Water Pollution Control Act, as amended (33 USC 1323), Section 1447 of the Public Health Service Act, as amended by the Safe Drinking Water Act (42 USC 300j-6), Section 118 of the Clean Air Act, as amended (42 USC 7418(b)), Section 4 of the Noise Control Act of 1972 (42 USC 4903), Section 6001 of the Solid Waste Disposal Act, as amended (42 USC 6961), and Section 301 of Title 3 of the United States Code, and to ensure Federal compliance with applicable pollution control standards, it is hereby ordered as follows:

### 1-1. Applicability of Pollution Control Standards.

1-101. The head of each Executive agency is responsible for ensuring that all necessary actions are taken for the prevention, control, and abatement of environmental pollution with respect to Federal facilities and activities under the control of the agency.

1-102. The head of each Executive agency is responsible for compliance with applicable pollution control standards, including those established pursuant to, but not limited to, the following:

- (a) Toxic Substances Control Act (15 USC 2601 et seq.).
- (b) Federal Water Pollution Control Act, as amended (33 USC 1251 et seq.).
- (c) Public Health Service Act, as amended by the Safe Drinking Water Act (42 USC 300f et seq.).
- (d) Clean Air Act, as amended (42 USC 7401 et seq.).
- (e) Noise Control Act of 1972 (42 USC 4901 et seq.).
- (f) Solid Waste Disposal Act, as amended (42 USC 6901 et seq.).
- (g) Radiation guidance pursuant to Section 274(h) of the Atomic Energy Act of 1954, as amended (42 USC 2021(h); see also, the Radiation Protection Guidance to Federal Agencies for Diagnostic X Rays approved by the President on January 26, 1978 and published at page 4377 of the FEDERAL REGISTER on February 1, 1978).
- (h) Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 USC 1401, 1402, 1411-1421, 1441-1444 and 16 U.S.C. 1431-1434).
- (i) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 USC 136 et seq.).

1-103. "Applicable pollution control standards" means the same substantive, procedural, and other requirements that would apply to a private person.

### 1-2. Agency Coordination.

1-201. Each Executive agency shall cooperate with the Administrator of the Environmental Protection Agency, hereinafter referred to as the Administrator, and State, interstate, and local agencies in the prevention, control, and abatement of environmental pollution.

1-202. Each Executive agency shall consult with the Administrator and with State, interstate, and local agencies concerning the best techniques and methods available for the prevention, control, and abatement of environmental pollution.

### 1-3. Technical Advice and Oversight.

1-301. The Administrator shall provide technical advice and assistance to Executive agencies in order to ensure their cost effective and timely compliance with applicable pollution control standards.

1-302. The administrator shall conduct such reviews and inspections as may be necessary to monitor compliance with applicable pollution control standards by Federal facilities and activities.

#### 1-4. Pollution Control Plan.

1-401. Each Executive agency shall submit to the Director of the Office of Management and Budget, through the Administrator, an annual plan for the control of environmental pollution. The plan shall provide for any necessary improvement in the design, construction, management, operation, and maintenance of Federal facilities and activities, and shall include annual cost estimates. The Administrator shall establish guidelines for developing such plans.

1-402. In preparing its plan, each Executive agency shall ensure that the plan provides for compliance with all applicable pollution control standards.

1-403. The plan shall be submitted in accordance with any other instructions that the Director of the Office of Management and Budget may issue.

#### 1-5. Funding.

1-501. The head of each Executive agency shall ensure that sufficient funds for compliance with applicable pollution control standards are requested in the agency budget.

1-502. The head of each Executive agency shall ensure that funds appropriated and apportioned for the prevention, control and abatement of environmental pollution are not used for any other purpose unless permitted by law and specifically approved by the Office of Management and Budget.

#### 1-6. Compliance With Pollution Controls.

1-601. Whenever the Administrator or the appropriate State, interstate, or local agency notifies an Executive agency that it is in violation of an applicable pollution control standard (see Section 1-102 of this Order), the Executive agency shall promptly consult with the notifying agency and provide for its approval a plan to achieve and maintain compliance with the applicable pollution control standard. This plan shall include an implementation schedule for coming into compliance as soon as practicable.

1-602. The Administrator shall make every effort to resolve conflicts regarding such violation between Executive agencies and, on request of any party, such conflicts between an Executive agency and a State, interstate, or a local agency. If the Administrator cannot resolve a conflict, the Administrator shall request the Director of the Office of Management and Budget to resolve the conflict.

1-603. The Director of the Office of Management and Budget shall consider unresolved conflicts at the request of the Administrator. The Director shall seek the Administrator's technological judgment and determination with regard to the applicability of statutes and regulations.

1-604. These conflict resolution procedures are in addition to, not in lieu of, other procedures, including sanctions, for the enforcement of applicable pollution control standards.

1-605. Except as expressly provided by a Presidential exemption under this Order, nothing in this Order, nor any action or inaction under this Order, shall be construed to revise or modify any applicable pollution control standard.

#### 1-7. Limitation on Exemptions.

1-701. Exemptions from applicable pollution control standards may only be granted under statutes cited in Section 1-102(a) through 1-102(f) if the President makes the required appropriate statutory determination:

that such exemption is necessary (a) in the interest of national security, or (b) in the paramount interest of the United States.

1-702. The head of an Executive agency may, from time to time, recommend to the President through the Director of the Office of Management and Budget, that an activity or facility, or uses thereof, be exempt from an applicable pollution control standard.

1-703. The Administrator shall advise the President, through the Director of the Office of Management and Budget, whether he agrees or disagrees with a recommendation for exemption and his reasons therefor.

1-704. The Director of the Office of Management and Budget must advise the President within sixty days of receipt of the Administrator's views.

#### 1-8. General Provisions.

1-801. The head of each Executive agency that is responsible for the construction or operation of Federal facilities outside the United States shall ensure that such construction or operation complies with the environmental pollution control standards of general applicability in the host country or jurisdiction.

1-802. Nothing in this Order shall create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person. [New 1-802 added by Executive Order 12580, 52 FR 2923]

1-803. Executive Order No. 11752 of December 17, 1973, is revoked. [Former 1-802 redesignated as 1-803 by Executive Order 12580, 52 FR 2923]

Jimmy Carter

THE WHITE HOUSE

October 13, 1978

43 FR 47707, 3 CFR, 1978 Comp., p. 243;

Amended by Executive Order 12580, Jan. 23, 1987, 52 FR 2923, 3 CFR, 1987

Comp. p. 193

## • Executive Order 12114 - ENVIRONMENTAL EFFECTS ABROAD OF MAJOR FEDERAL ACTIONS

January 4, 1979

By virtue of the authority vested in me by the Constitution and the laws of the United States, and as President of the United States, in order to further environmental objectives consistent with the foreign policy and national security policy of the United States, it is ordered as follows:

**Section 1.** *Purpose and Scope.* The purpose of this Executive Order is to enable responsible officials of Federal agencies having ultimate responsibility for authorizing and approving actions encompassed by this Order to be informed of pertinent environmental considerations and to take such considerations into account, with other pertinent considerations of national policy in making decisions regarding such actions. While based on independent authority, this Order furthers the purpose of the National Environmental Policy Act and the Marine Protection Research and Sanctuaries Act and the Deepwater Port Act consistent with the foreign policy and national security policy of the United States and represents the United States government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purpose of the National Environmental Policy Act, with respect to the environment outside the United States, its territories and possessions.

### **Section 2.**

2-1. Agency Procedures. Every Federal agency taking major Federal actions encompassed hereby and not exempted here from having significant effects on the environment outside the geographical borders of the United States and its territories and possessions shall within eight months after the effective date of this Order have in effect procedures to implement this Order. Agencies shall consult with the Department of State and the Council on Environmental Quality concerning such procedures prior to placing them in effect.

2-2. Information Exchange. To assist in effectuating the foregoing purpose, the Department of State and the Council on Environmental Quality in collaboration with other interested Federal agencies and other nations shall conduct a program for exchange on a continuing basis of information concerning the environment. The objectives of this program shall be to provide information for use by decision makers, to heighten awareness of and interest in environmental concerns and, as appropriate, to facilitate environmental cooperation with foreign nations.

2-3 Actions Included. Agencies in their procedures under Section 2-1 shall establish procedures by which their officers having ultimate responsibility for authorizing and approving actions in one of the following categories encompassed by this Order, take into consideration in making decisions concerning such actions, a document described in Section 2-4(a):

- (a) major Federal actions significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans or Antarctica;)
- (b) major Federal actions significantly affecting the environment of a foreign nation not participating with the United States and not otherwise involved in the action;
- (c) major Federal actions significantly affecting the environment of a foreign nation which provide to that nation:
  - (1) a product or physical project producing a principal product or an emission or effluent which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk; or
  - (2) a physical project which in the United States is prohibited or strictly regulated by Federal law to protect the environment against radioactive substances.
- (d) major Federal actions outside the United States, its territories and possessions which significantly affect natural or ecological resources of global importance designated for protection under this

subsection by the President, or, in the case of such a resource protected by international agreements binding on the United States by the Secretary of State. Recommendations to the President under this subsection shall be accompanied by the views of the Council of Environmental Quality and the Secretary of State.

#### 2-4 Applicable Procedures.

(a) There are the following types of documents to be used in connection with actions described in Section 2-3:

(i) environmental impact statements (including generic program and specific statements);

(ii) bilateral or multilateral environmental studies, relevant or related to the proposed action, by the United States and one more foreign nations, or by an international body or organization in which the United States is a member or participant; or

(iii) concise reviews of the environmental, issues involved, including environmental assessments, summary environmental analyses or other appropriate documents.

(b) Agencies shall in their procedures provide for preparation of documents described in Section 2-4(a), with respect to actions described in Section 2-3 as follows:

(i) for effects described in Section 2-3(a), an environmental impact statement described in Section 2-4(a)(1).

(ii) for effects described in Section 2-3(b), a document described in Section 2-4(a)(ii) or (iii), as determined by the agency;

(iii) for effects described in Section 2-3(c), a document described in Section 2-4(a)(ii) or (iii), as determined by the agency;

(iv) for effects described in Section 2-3(d), a document described in Section 2-4(a)(i), (ii) or (iii), as determined by the agency. Such procedures may provide that an agency need not prepare a new document when a document described in Section 2-4(a) already exists.

(c) Nothing in this Order shall serve to invalidate any existing regulations of any agency which have been adopted pursuant to court order or pursuant to judicial settlement of any case or to prevent any agency from providing in its procedures for measures in addition to those provided for herein to further the purpose of the National Environmental Policy Act and other environmental laws, including the Marine Protection Research and Sanctuaries Act and the Deepwater Port Act, consistent with the foreign and national security policies of the United States.

(d) Except as provided in Section 2-5(b), agencies taking action encompassed by this Order shall, as soon as feasible, inform other Federal agencies with relevant expertise of the availability of environmental documents prepared under this Order. Agencies in their procedures under Section 2-1 shall make appropriate provision for determining when an affected nation shall be informed in accordance with Section 3-2 of this Order of the availability of environmental documents prepared pursuant to those procedures. In order to avoid duplication of resources, agencies in their procedures shall provide for appropriate utilization of the resources of other Federal agencies with relevant environmental jurisdiction or expertise.

#### 2-5 Exemptions and Considerations.

(a) Notwithstanding Section 2-3, the following actions are exempt from this Order;

(i) actions not having a significant effect on the environment outside the United States as determined by the agency;

(ii) actions taken by the President;

(iii) actions taken by or pursuant to the direction of the President or Cabinet officer when the national security or interest is involved or when the action occurs in the course of an armed conflict;

(iv) intelligence activities and arms transfers;

(v) export licenses or permits or export approvals, and actions relating to nuclear activities except actions providing to a foreign nation a nuclear production or utilization facility as defined in the Atomic Energy Act of 1954, as amended, or a nuclear waste management facility;

- (vi) votes and other actions in international conferences and organizations;
- (vii) disaster and emergency relief action.

(b) Agency procedures under Section 2-1 implementing Section 2-4 may provide for appropriate modifications in the contents, timing and availability of documents to other affected Federal agencies and affected nations, where necessary to:

- (i) enable the agency to decide and act promptly as and when required;
- (ii) avoid adverse impacts on foreign relations or infringement in fact or appearance of other nations, sovereign responsibilities, or
- (iii) ensure appropriate reflection of:
  - (1) diplomatic factors;
  - (2) international commercial, competitive and export promotion factors;
  - (3) needs for governmental or commercial confidentiality;
  - (4) national security considerations;
  - (5) difficulties of obtaining information and agency ability to analyze meaning-fully environmental effects of a proposed action; and
  - (6) the degree to which the agency is involved in or able to affect a decision to be made.

(c) Agency procedure under Section 2-1 may provide for categorical exclusions and for such exemptions in addition to those specified in subsection (a) of this Section as may be necessary to meet emergency circumstances, situations involving exceptional foreign policy and national security sensitivity and other such special circumstances. In utilizing such additional exemptions agencies shall, as soon as feasible, consult with the Department of State and the Council on Environmental Quality.

(d) The provisions of Section 2-5 do not apply to actions described in Section 2-3(a) unless permitted by law.

### **Section 3.**

3-1. Rights of Action. This Order is solely for the purpose of establishing internal procedures for Federal agencies to consider the significant effects of their actions on the environment outside the United States, its territories and possessions, and nothing in this Order shall be construed to create a cause of action.

3-2. Foreign Relations. The Department of State shall coordinate all communications by agencies with foreign governments concerning environmental agreements and other arrangements in implementation of this Order.

3-3. Multi-Agency Actions. Where more than one Federal agency is involved in an action or program, a lead agency, as determined by the agencies involved, shall have responsibility for implementation of this Order.

3-4. Certain Terms. For purposes of this Order, "environment" means the natural and physical environment and excludes social, economic and other environments; and an action significantly affects the environment if it does significant harm to the environment even though on balance the agency believes the action to be beneficial to the environment. The term "export approvals" in Section 2-5(a)(v) does not mean or include direct loans to finance exports.

3-5. Multiple Imports. If a major Federal action having effects on the environment of the United States or the global commons requires preparation of an environmental impact statement, and if the action also has effects on the environment of a foreign nation, an environmental impact statement need not be prepared with respect to the effects on the environment of the foreign nation.

Jimmy Carter

THE WHITE HOUSE

January 4, 1979 44 FR 1957, 3 CFR, 1979 Comp. p. 356



## • Executive Order 12148 - FEDERAL EMERGENCY MANAGEMENT

July 20, 1979

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Civil Defense Act of 1950, as amended (50 U.S.C.App. 2251 et seq.), the Disaster Relief Act of 1970, as amended (42 U.S.C. Chapter 58 note), the Disaster Relief Act of 1974 (88 Stat. 143; 42 U.S.C. 5121 et seq.), the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.), Section 4 of Public Law 92-385 (86 Stat. 556), Section 43 of the Act of August 10, 1956, as amended (50 U.S.C.App. 2285), the National Security Act of 1947, as amended, the Defense Production Act of 1950, as amended (50 U.S.C.App. 2061 et seq.), Reorganization Plan No. 1 of 1958, Reorganization Plan No. 1 of 1973, the Strategic and Critical Materials Stock Piling Act, as amended (50 U.S.C. 98 et seq.), Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c), and Section 301 of Title 3 of the United States Code, and in order to transfer emergency functions to the Federal Emergency Management Agency, it is hereby ordered as follows:

### **Section 1.** *Transfers or Reassignments*

#### 1-1. Transfer or Reassignment of Existing Functions.

1-101. All functions vested in the President that have been delegated or assigned to the Defense Civil Preparedness Agency, Department of Defense, are transferred or reassigned to the Director of the Federal Emergency Management Agency.

1-102. All functions vested in the President that have been delegated or assigned to the Federal Disaster Assistance Administration, Department of Housing and Urban Development, are transferred or reassigned to the Director of the Federal Emergency Management Agency, including any of those functions are delegated or reassigned to the Department of Commerce with respect to assistance to communities in the development of readiness plans for severe weather-related emergencies.

1-103. All functions vested in the President that have been delegated or assigned to the Federal Preparedness Agency, General Services Administration, are transferred or reassigned to the Director of the Federal Emergency Management Agency.

1-104. All functions vested in the President by the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.), including those functions performed by the Office of Science and Technology Policy, are delegated, transferred, or reassigned to the Director of the Federal Emergency Management Agency.

#### 1-2. Transfer or Reassignment of Resources.

1-201. The records, property, personnel and positions, and unexpended balances of appropriations, available or to be made available, which relate to the functions transferred, reassigned, or are delegated by this Order are hereby transferred to the Director of the Federal Emergency Management Agency.

1-202. The Director of the Office of Management and Budget shall make such determinations, issue such orders, and take all actions necessary or appropriate to effectuate the transfers or reassignments provided by this Order, including the transfer of funds, records, property, and personnel.

#### 2-1. General.

2-101. The Director of the Federal Emergency Management Agency shall establish Federal policies for, and coordinate, all civil defense and civil emergency planning, management, mitigation, and assistance functions of the Executive agencies.

2-102. The Director shall periodically review and evaluate the civil defense and civil emergency functions of the Executive agencies. In order to improve the efficiency and effectiveness of those functions, the Director shall recommend to the President alternative methods of providing Federal planning, management, mitigation, and assistance.

2-103. The Director shall be responsible for the coordination of efforts to promote dam safety, for the coordination of natural and nuclear disaster warning systems, and for the coordination or preparedness and planning to reduce the consequences of major terrorist incidents.

2-104. The Director shall represent the President in working with State and local governments and private sector to stimulated vigorous participation in civil emergency preparedness, mitigation, response, and recovery programs.

2-105. The Director shall provide an annual report to the President for subsequent transmittal to the Congress on all functions of the Federal Emergency Management Agency. The report shall assess the current overall state of effectiveness of Federal civil defense and civil emergency functions, organizations, resources, and systems and recommend measures to be taken to improve planning, management, assistance, and relief by all levels of governments, the private sector, and volunteer organizations.

## 2-2. Implementation.

2-201. In executing the functions under this Order, the Director shall develop policies which provide that all civil defense and civil emergency functions, resources and systems of Executive agencies are:

- (a) Founded on the use of existing organizations, resources, and systems to the maximum extent practicable;
- (b) Integrated effectively with organizations, resources, and programs of State and local governments, the private sector, and volunteer organizations; and,
- (c) Developed tested and utilized to prepare for, mitigate, respond to and recover from the effects on the population of all forms of emergencies.

2-202. Assignments of civil emergency functions shall, whenever possible, be based on extensions (under emergency conditions) of the regular missions of the Executive agencies.

2-203. For purposes of this Order, “civil emergency” means any accidental, natural, man-caused, or wartime emergency or threat thereof, which causes or may cause substantial injury or harm to the population or substantial damage to or loss of property.

2-204. In order that civil defense planning continues to be fully compatible with the Nation’s overall strategic policy, and in order to maintain an effective link between strategic nuclear planning and nuclear attack preparedness planning, the development of civil defense policies and programs by the Director of the Federal Emergency Management Agency shall be subject to oversight by the Secretary of Defense and the National Security Council.

2-205. To the extent authorized by law and within available resources, the Secretary of Defense shall provide the Director of the Federal Emergency Management Agency with support for civil defense programs in the areas of program development and administration, technical support, research, communications, transportation, intelligence, and emergency operations.

2-206. All Executive agencies shall cooperate with and assist the Director in the performance of his functions.

## 2-3. Transition Provisions.

2-301. The functions which have been transferred, reassigned, or are delegated by Section 1 of this Order are recodified and revised as set forth in this Order at Section 4, and as provided by the amendments made at Section 5 to the provisions of other Orders.

2-302. Notwithstanding the revocations, revisions, codifications, and amendments made by this Order, the Director may continue to perform the functions transferred to him by Section 1 of this Order, except where they may otherwise be inconsistent with the provisions of this Order.

**Section 3. Federal Emergency Management Council.**

3-1. Establishment of the Council.

3-101. There is hereby established the Emergency Management Council.

3-102. The Council shall be composed of the Director of the Federal Emergency Management Agency, who shall be the Chairman, the Director of the Office of Management and Budget and such others as the President may designate.

3-2. Functions of the Council.

3-201. The Council shall advise and assist the President in the oversight and direction of Federal emergency programs and policies.

3-202. The Council shall provide guidance to the Director of the Federal Emergency Management Agency in the performance of functions vested in him.

3-3. Administrative and General Provisions.

3-301. The heads of Executive agencies shall cooperate with and assist the Council in the performance of its functions.

3-302. The Director of the Federal Emergency Management Agency shall provide the Council with such administrative services and support as may be necessary or appropriate.

**Section 4. Delegations.**

4-1. Delegation of Functions Transferred to the President.

4-101. The following functions were transferred to the Director of the Office of Defense Mobilization by Section 2 of Reorganization Plan No. 3 of 1953 (50 U.S.C. 404 note); they were subsequently transferred to the President by Section 1(a) of Reorganization Plan No. 1 of 1958, as amended (50 U.S.C. App. 2271 note), and they are hereby delegated to the Director of the Federal Emergency Management Agency:

(a) The functions vested in the Secretaries of Army, Navy Air Force, and Interior by the Strategic and Critical Materials Stock Piling Act, as amended (50 U.S.C. 98 et seq.), including the functions vested in the Army and Navy Munitions Board by item (2) of Section 6 (a) of that Act (50 U.S.C. 98e(a)(2)), but excluding the functions vested in the Secretary of the Interior by Section 7 of the Act (50 U.S.C. 98f).

(b) The functions vested in the Munitions Board of the Department of Defense by Section 4 (h) of the commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714b(h)).

(c) The function vested in the Munitions Board of the Department of Defense by Section 204(f) [originally 204(e)] of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 485(f)).

4-102. The functions vested in the Director of the Office of Defense Mobilization by Sections 103 and 303 of the National Security Act of 1947, as amended by Sections 8 and 50 of the Act of September 3, 1954 (Public Law 779; 68 Stat. 128 and 1244) (50 U.S.C. 404 and 405), were transferred to the President by Section 1(a) of Reorganization Plan No. 1 of 1958, as amended (50 U.S.C. App. 2771 note), and they are hereby delegated to the Director of the Federal Emergency Management Agency.

4-103. (a) The functions vested in the Federal Civil Defense Administration or its Administrator by the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 et seq.), were transferred to the

President by Reorganization Plan No. 1 of 1958, and they are hereby delegated to the Director of the Federal Emergency Management Agency.

(b) Excluded from the delegation in subsection (a) is the function under Section 205(a)(4) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2286 (a) (4)), relating to the establishment and maintenance of personnel standards on the merit basis that was delegated to the Director of the Office of Personnel Management by Section 1(b) of Executive Order No. 11589, as amended (Section 2-101(b) of Executive Order No. 12107).

4-104. The Director of the Federal Emergency Management Agency is authorized to re-delegate, in accord with the provisions of Section 1(b) of Reorganization Plan No. 1 of 1958 (50 U.S.C.App. 2271 note), any of the functions delegated by Sections 4-101, 4-102, and 4-103 of this Order.

4-105. The functions vested in the Administrator of the Federal Civil Defense Administration by Section 43 of the Act of August 10, 1956 (70A Stat. 636) were transferred to the President by Reorganization Plan No. 1 of 1958, as amended (50 U.S.C. App. 2271 note), were subsequently re-vested in the Director of the Office of Civil and Defense Mobilization by Section 512 of Public Law 86-500 (50 U.S.C. App. 2285) [the office was changed to Office of Emergency Planning by Public Law 87-296 (75 Stat. 630) and then to the Office of Emergency Preparedness by Section 402 of Public Law 90-608 (82 Stat. 1194)], were again transferred to the President by Section 1 of Reorganization Plan No. 1 of 1973 (50 U.S.C. App. 2271 note), and they are hereby delegated to the Director of the Federal Emergency Management Agency.

4-106. The functions vested in the Director of the Office of Emergency Preparedness by Section 16 of the Act of September 23, 1950, as amended (20 U.S.C. 646), and by Section 7 of the Act of September 30, 1950, as amended (20 U.S.C. 241-1), were transferred to the President by Section 1 of Reorganization Plan No.1 of 1973 (50 U.S.C. App. 2271 note), and they are hereby delegated to the Director of the Federal Emergency Management Agency.

4-107. That function vested in the Director of the Office of Emergency Preparedness by Section 762(a) of the Education Amendments of 1972, and as further amended (20 U.S.C. 1132d-1(a)), to the extent transferred to the President by Reorganization Plan No. 1 of 1973 (50 U.S.C.App. 2271 note), is hereby delegated to the Director of the Federal Emergency Management Agency.

#### 4-2. Delegation of Functions Vested in the President.

4-201. The functions vested in the President by the Disaster Relief Act of 1970, as amended (42 U.S.C. Chapter 58 note), are hereby delegated to the Director of the Federal Emergency Management Agency.

4-202. The functions (related to grants for damages resulting from hurricane and tropical storm Agnes) vested in the President by Section 4 of Public Law 92-385 (86 Stat. 556) are hereby delegated to the Director of the Federal Emergency Management Agency.

4-203. The functions vested in the President by the Disaster Relief Act of 1974 (88 Stat. 143; 42 U.S.C. 5121 et seq.), except those functions vested in the President by Sections 301 (relating to the declaration of emergencies and major disasters), 401 (relating to the repair, reconstruction, restorations, or replacement of Federal facilities), and 409 (related to food coupons and surplus commodities), are hereby delegated to the Director of the Federal Emergency Management Agency.

4-204. The functions vested in the President by the Earthquake Hazards Reduction Act of 1977 (91 Stat. 1098; 42 U.S.C. 7701 et seq.) Are hereby delegated to the Director of the Federal Emergency Management Agency.

**Section 5. Other Executive Orders.**

**5-1. Revocations.**

5-101. Executive Order No. 10242, as amended, entitled "Prescribing Regulations Governing the Exercise by the Federal Civil Defense Administrator of Certain Administrative Authority Granted by the Federal Civil Defense Act of 1950", is revoked.

5-102. Sections 1 and 2 of Executive Order No. 10296, as amended, entitled "Providing for the Performance of Certain Defense Housing and Community Facilities and Service Functions", is revoked.

5-103. Executive Order No. 10494, as amended, relating to the dispositions of remaining functions, is revoked.

5-104. Executive Order No. 10529, as amended, relating to federal employee participation in State and local civil defense programs, is revoked.

5-105. Section 3 of Executive Order No. 10601, as amended, which concerns the Commodity Set Aside, is revoked.

5-106. Executive Order No. 10634, as amended, relating to loans for facilities destroyed or damaged by a major disaster, is revoked.

5-107. Section 4(d)(2) of Executive Order No. 10900, as amended, which concerns foreign currencies made available to make purchases for the supplemental stockpile, is revoked.

5-108. Executive Order No. 10952, as amended, entitled "Assigning Civil Defense Responsibilities to the Secretary of Defense and Others", is revoked.

5-109. Executive Order No. 11051, as amended, relating to responsibilities of the Office of Emergency Preparedness, is revoked.

5-110. Executive Order No. 11415, as amended, relating to the Health Resources Advisory Committee, is revoked.

5-111. Executive Order No. 11795, as amended, entitled "Delegating Disaster Relief Functions Pursuant to the Disaster Relief Act of 1974", is revoked.

5-112. Executive Order No. 11725, as amended, entitled "Transfer of Certain Functions of the Office of Emergency Preparedness", is revoked.

5-113. Executive Order No. 11749, as amended, entitled "Consolidating Disaster Relief Functions Assigned to the Secretary of Housing and Urban Development", is revoked.

**5-2. Amendments.**

5-201. Executive Order No. 10421, as amended, relating to physical security of defense facilities is further amended by (a) substituting the "Director of the Federal Emergency Management Agency" for "Director of the Office of Emergency Planning" in Sections 1(a), 1(c) and 6(b); and (b) substituting "Federal Emergency Management Agency" for "Office of Emergency Planning" in Sections 6(b) and 7(b).

5-202. Executive Order No. 10480, as amended, is further amended by (a) substituting the "Director of the Federal Emergency Management Agency" for "Director of the Office of Emergency Planning" in Sections 101(a), 101(b), 201(a), 201(b), 301, 304, 307, 308, 310 (b), 311(b), 312, 313, 401(b), 401(e) and

605; and (b) substituting “Director of the Federal Emergency Management Agency” for “Administrator of General Services” in Section 610.

5-203. Section 3(d) of Executive Order No. 10582, as amended, which relates determinations under the Buy American Act is amended by deleting “Director of the Office of Emergency Planning” and substituting therefore “Director of the Federal Emergency Management Agency”.

5-204. Paragraph 21 of Executive Order No. 10789, as amended, is further amended by adding “the Federal Emergency Management Agency” after “Government Printing Office”.

5-205. Executive Order No. 11179, as amended, concerning the National Defense Executive Reserve, is further amended by deleting “Director of the Office of Emergency Planning” in Section 2 and substituting therefore “Director of the Federal Emergency Management Agency”.

5-206. Section 7 of Executive Order No. 11912, as amended, concerning energy policy and conservation, is further amended by deleting “Administrator of General Services” and substituting therefore “Director of the Federal Emergency Management Agency”.

5-207. Section 2(d) of Executive Order No. 11988, entitled “Floodplain Management” is amended by deleting “Federal Insurance Administration” and substituting therefor “Director of the Federal Emergency Management Agency”.

5-208. Section 5-3 of Executive Order No. 12046 of March 29, 1978, is amended by deleting “General Services Administration” and substituting therefor “Federal Emergency Management Agency” and by deleting “Administrator of General Services”: and substituting therefor “Director of the Federal Emergency Management Agency”.

5-209. Section 1-201 of Executive Order No. 12065 is amended by adding “The Director of the Federal Emergency Management Agency” after “The Administrator, National Aeronautics and Space Administration” and by deleting “Director, Federal Preparedness Agency and to the” from the parentheses after “The Administrator of General Services”.

5-210. Section 1-102 of Executive Order No. 12075 of August 16, 1978, is amended by adding in alphabetical order “(p) Federal Emergency Management Agency”.

5-211. Section 1-102 of Executive Order No. 12083 of September 27, 1978 is amended by adding in alphabetical order “(x) the Director of the Federal Emergency Management Agency”.

5-212. Section 9.11(b) of Civil Service Rule IX (5 CFR Part 9) is amended by deleting “the Defense Preparedness Agency and”.

5-213. Section 3(2) of each of the following described Executive orders is amended by adding “Federal Emergency Management Agency” after “Department of Transportation”.

(a) Executive Order No. 11331 establishing the Pacific Northwest River Basins Commission.

(b) Executive Order No. 11345, as amended, establishing the Great Lakes Basin Commission.

(c) Executive Order No. 11371, as amended, establishing the New England River Basins Commission.

(d) Executive Order No. 11578, as amended, establishing the Ohio River Basin Commission.

(e) Executive Order No. 11658, as amended, establishing the Mississippi River Basin Commission.

(f) Executive Order No. 11669, as amended, establishing the Upper Mississippi River Basin Commission.

5-214. Executive Order No. 11490, as amended, is further amended as follows:

(a) Delete the last sentence of Section 102(a) and substitute therefor the following: "The activities undertaken by the departments and agencies pursuant to this Order, except as provided in Section 3003, shall be in accordance with guidance provided by, and subject to, evaluations by the Director of the Federal Emergency Management Agency".

(b) Delete Section 103 entitled "Presidential Assistance" and substitute the following new Section 103: "Sec. 103. General Coordination. The Director of the Federal Emergency Management Agency (FEMA) shall determine national preparedness goals and policies for the performance of functions under this Order and coordinate the performance of such functions with the total national preparedness programs".

(c) Delete the portion of the first sentence of Section 401 prior to the colon and insert the following: "The Secretary of Defense shall perform the following emergency functions".

(d) Delete "Director of the Federal Preparedness Agency (GSA)" or "the Federal Preparedness Agency (GSA)" and substitute there for "Director, FEMA", in Sections 401(3), 401(4), 401(5), 401(9), 401(10), 401(14), 401(15), 401(16), 401(19), 401(21), 401(22), 501(8), 601(2), 904(2), 1102(2), 1203(2), 1401(a), 1701, 1702, 2003, 2004, 2801(5), 3001, 3002(2), 3004, 3005, 3006, 3008, 3010, and 3013.

(e) The number assigned to this Order shall be substituted for "11051 of September 27, 1962" in Section 3001, and for "11051" in Sections 1802, 2002(3), 3002, and 3008(1).

(f) The number assigned to this Order shall be substituted for "10952" in Sections 1103, 1104, 1205, and 3002.

(g) Delete "Department of Defense" in Sections 502, 601(1), 804, 905, 1003, 1004, 1006(4), 1205, 2002(8), the first sentence of Section 3002, and Sections 3008(1) and 3010 and substituted therefor "Director of the Federal Emergency Management Agency".

**Section 6.** This Order is effective July 15, 1979.

Jimmy Carter  
THE WHITE HOUSE  
July 20, 1979  
44 F.R. 43239

## • Executive Order 12555 - PROTECTION OF CULTURAL PROPERTY

March 10, 1986

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Convention on Cultural Property Implementation Act (Title III of Public Law 97-446; hereinafter referred to as the "Act"), and Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

### **Section 1.** *United States Information Agency.*

The following functions conferred upon the President by the Act are hereby delegated to the Director of the United States Information Agency, acting in consultation with the Secretary of State and the Secretary of the Treasury:

(a) The functions conferred by section 303(a)(1) concerning determinations to be made prior to initiation of negotiations of bilateral or multilateral agreements.

(b) The functions conferred by section 303(d) with respect to the determinations concerning the failure of other parties to an agreement to take any or satisfactory implementation action on their agreement; provided, however, that the Secretary of State will remain responsible for interpretation of the agreement.

(c) The functions conferred by section 303(e) relating to the determinations to be made prior to the initiation of negotiations for the extension of any agreement.

(d) The functions conferred by section 303(f) relating to the actions to be taken upon receipt of a request made by a State Party to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property adopted by the Sixteenth General Conference of the United Nations Educational, Scientific and Cultural Organization (hereinafter referred to as the "Convention").

(e) The functions conferred by section 303(g)(1)(B) relating to the notification of Presidential action and the furnishing of reports to the Congress.

(f) The functions conferred by section 304(b) to the extent that they involve determinations by the President that an emergency condition applies with respect to any archeological or ethnological material of any State Party to the Convention, subject to the limitations of section 304(c)(1), 304(c)(2), and 304(c)(3).

(g) The functions conferred by section 304(c)(3) to the extent that they involve determinations to be made and the receipt and consideration of an advisory report from the Cultural Property Advisory Committee by the President prior to extensions of emergency import restrictions.

(h) The functions conferred by sections 306(f)(6) and 306(g) relating to the receipt of reports prepared by the Cultural Property Advisory Committee.

(i) The functions conferred by section 306(h) relating to the determinations to be made about the disclosure of matters involved in the Cultural Property Advisory Committee proceedings.

### **Section 2.** *Department of State.*

The following functions conferred upon the President in the Act are hereby delegated to the Secretary of State, acting in consultation with and with the participation of the Director of the United States Information Agency and in consultation with the Secretary of the Treasury:

(a) The functions conferred by section 303(a)(2) relating to the negotiation and conclusion of bilateral or multilateral agreements under the Act, subject to the restrictions of section 303(c).

(b) The functions conferred by section 303(a)(4) relating to obtaining a commitment on the exchange of archeological and ethnological materials from a party to an agreement.

(c) The functions conferred by section 303(e) relating only to negotiation and conclusion of extensions of agreements under the Act.

(d) Except with respect to subsection 303(g)(1)(B), the functions conferred by section 303(g), relating to notification of Presidential action and the furnishing of reports to the Congress.



(e)The functions conferred by section 304(c)(4) to the extent that they involve the negotiation and conclusion of agreements subject to advice and consent to ratification by the Senate.

**Section 3.** *Department of the Treasury.*

The following functions conferred upon the President by the Act are hereby delegated to the Secretary of the Treasury, acting in consultation with the Director of the United States Information Agency and the Secretary of State:

(a) Subject to subsection (b) of Section 1 above, the functions conferred by section 303(d) to the extent that they involve suspension of import restrictions.

(b) Subject to subsection (f) and (g) of Section 1 above, the functions conferred by section 304 to the extent that they involve the application of import restrictions set forth in section 307 and the extension of such import restrictions pursuant to section 304(c)(3).

**Section 4.** *Enforcement in Territories and Other Areas.*

The Secretary of the Interior is designated to carry out the enforcement functions in section 314.

Ronald Reagan  
THE WHITE HOUSE  
March 10, 1986  
51 F.R. 8475

## • Executive Order 12580 - SUPERFUND IMPLEMENTATION

*Amended by 13016*

Jan. 23, 1987

By the authority vested in me as President of the United States of America by Section 115 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 USC 9615 et seq.) ("the Act"), and by Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

### **Section 1.** *National Contingency Plan.*

(a)(1) The National Contingency Plan ("the NCP"), shall provide for a National Response Team ("the NRT") composed of representatives of appropriate Federal departments and agencies for national planning and coordination of preparedness and response actions, and Regional Response Teams as the regional counterparts to the NRT for planning and coordination of regional preparedness and response actions.

(2) The following agencies (in addition to other appropriate agencies) shall provide representatives to the National and Regional Response Teams to carry out their responsibilities under the NCP: Department of State, Department of Defense, Department of Justice, Department of the Interior, Department of Agriculture, Department of Commerce, Department of Labor, Department of Health and Human Services, Department of Transportation, Department of Energy, Environmental Protection Agency, Federal Emergency Management Agency, United States Coast Guard, and the Nuclear Regulatory Commission.

(3) Except for periods of activation because of response action, the representative of the Environmental Protection Agency ("EPA") shall be the chairman, and the representative of the United States Coast Guard shall be the vice chairman, of the NRT and these agencies' representative shall be co-chairs of the Regional Response Teams ("the RRTs"). When the NRT or an RRT is activated for a response action, the EPA representative shall be the chairman when the release or threatened release or discharge or threatened discharge occurs in the inland zone, and the United States Coast Guard representative shall be the chairman when the release or threatened release or discharge or threatened discharge occurs in the coastal zone, unless otherwise agreed upon by the EPA and the United States Coast Guard representatives (inland and coastal zones are defined in the NCP).

(4) The RRTs may include representatives from State governments, local governments (as agreed upon by the States), and Indian tribal governments. Subject to the functions and authorities delegated to executive departments and agencies in other sections of this order, the NRT shall provide policy and program direction to the RRTs.

(b)(1) The responsibility for the revision of the NCP and all the other functions vested in the President by Sections 105(a), (b), (c), and (g), 125, and 301(f) of the Act, by Section 311(d)(1) of the Federal Water Pollution Control Act, and by Section 4201(c) of the Oil Pollution Act of 1990 is delegated to the Administrator of the Environmental Protection Agency ("the Administrator").

(2) The function vested in the President by Section 118(p) of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499) ("SARA") is delegated to the Administrator.

(c) In accord with Section 107(f)(2)(A) of the Act, Section 311(f)(5) of the Federal Water Pollution Control Act, as amended (33 USC 1321(f)(5)), and Section 1006(b)(1) and (2) of the Oil Pollution Act of 1990, the following shall be among those designated in the NCP as Federal trustees for natural resources:

- (1) Secretary of Defense;
- (2) Secretary of the Interior;
- (3) Secretary of Agriculture;
- (4) Secretary of Commerce;
- (5) Secretary of Energy.

In the event of a spill, the above named Federal trustees for natural resources shall designate one trustee to act as Lead Administrative Trustee, the duties of which shall be defined in the regulations promulgated pursuant to Section 1006(e)(1) of OPA. If there are natural resource trustees other than those designated

above which are acting in the event of a spill, those other trustees may join with the Federal trustees to name a Lead Administrative Trustee which shall exercise the duties defined in the regulations promulgated pursuant to Section 1006(e)(1) of OPA.

(d) Revisions to the NCP shall be made in consultation with members of the NRT prior to publication for notice and comment.

(e) All revisions to the NCP, whether in proposed or final form, shall be subject to review and approval by the Director or the Office of Management and Budget ("OMB"). [Section 1 revised by E.O. 12777, Oct. 18, 1991]

## **Section 2. *Response and Related Authorities.***

(a) The functions vested in the President by the first sentence of Section 104(b)(1) of the Act relating to "illness, disease, or complaints thereof" are delegated to the Secretary of Health and Human Services who shall, in accord with Section 104(i) of the Act, perform those functions through the Public Health Service.

(b) The functions vested in the President by Sections 104(e)(7)(C), 113(k)(2), 119(c)(7), and 121(f)(1) of the Act, relating to promulgation of regulations and guidelines, are delegated to the Administrator, to be exercised in consultation with the NRT.

(c)(1) The functions vested in the President by Sections 104(a) and the second sentence of 126(b) of the Act, to the extent they require permanent relocation of residents, businesses, and community facilities or temporary evacuation and housing of threatened individuals not otherwise provided for, are delegated to the Director of the Federal Emergency Management Agency.

(2) Subject to subsection (b) of this Section, the functions vested in the President by Sections 117(a) and (c) and 119 of the Act, to the extent such authority is needed to carry out the functions delegated under paragraph (1) of this subsection, are delegated to the Director of the Federal Emergency Management Agency.

(d) Subject to subsections (a), (b) and (c) of this Section, the functions vested in the President by Sections 104(a), (b) and (c)(4), 113(k), 117(a) and (c), 119, and 121 of the Act are delegated to the Secretaries of Defense and Energy, with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of their departments, respectively, including vessels bare-boat chartered and operated. These functions must be exercised consistent with the requirements of Section 120 of the Act.

(e)(1) Subject to subsections (a), (b), (c), and (d) of this Section, the functions vested in the President by Sections 104(a), (b), and (c)(4), and 121 of the Act are delegated to the heads of Executive departments and agencies, with respect to remedial actions for releases or threatened releases which are not on the National Priorities List ("the NPL") and removal actions other than emergencies, where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of those departments and agencies, including vessels bare-boat chartered and operated. The Administrator shall define the term "emergency", solely for the purposes of this subsection, either by regulation or by a memorandum of understanding with the head of an Executive department or agency.

(2) Subject to subsections (b), (c), and (d) of this Section, the functions vested in the President by Sections 104(b)(2), 113(k), 117(a) and (c), and 119 of the Act are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of those departments and agencies, including vessels bare-boat chartered and operated.

(f) Subject to subsections (a), (b), (c), (d), and (e) of this Section, the functions vested in the President by Sections 104(a), (b) and (c)(4), 113(k), 117(a) and (c), 119, and 121 of the Act are delegated to the Secretary of the Department in which the Coast Guard is operating ("the Coast Guard"), with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(g) Subject to subsections (a), (b), (c), (d), (e), and (f) of this Section, the functions vested in the President by Sections 101(24), 104(a), (b), (c)(4) and (c)(9), 113(k), 117(a) and (c), 119, 121, and 126(b) of the Act are delegated to the Administrator. The Administrator's authority under Section 119 of the Act is retroactive to the date of enactment of SARA.

(h) The functions vested in the President by Section 104(c)(3) of the Act are delegated to the Administrator, with respect to providing assurances for Indian tribes, to be exercised in consultation with the Secretary of the Interior.

(i) Subject to subsections (d), (e), (f), (g) and (h) of this Section, the functions vested in the President by Section 104(c) and (d) of the Act are delegated to the Coast Guard, the Secretary of Health and Human Services, the Director of the Federal Emergency Management Agency, and the Administrator in order to carry out the functions delegated to them by this Section.

(j)(1) The functions vested in the President by Section 104(e)(5)(A) are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of those departments and agencies, to be exercised with the concurrence of the Attorney General.

(2) Subject to subsection (b) of this Section and paragraph (1) of this subsection, the functions vested in the President by Section 104(e) are delegated to the heads of Executive departments and agencies in order to carry out their functions under this Order or the Act.

(k) The functions vested in the President by Sections 104(f), (g), (h), (i)(11), and (j) of the Act are delegated to the heads of the Executive departments and agencies in order to carry out the functions delegated to them by this Section. The exercise of authority under Section 104(h) of the Act shall be subject to the approval of the Administrator of the Office of Federal Procurement Policy.

### **Section 3. *Cleanup Schedules.***

(a) The functions vested in the President by Sections 116(a) and the first two sentences of 105(d) of the Act are delegated to the heads of Executive departments and agencies with respect to facilities under the jurisdiction, custody or control of those departments and agencies.

(b) Subject to subsection (a) of this Section, the functions vested in the President by Sections 116 and 105(d) are delegated to the Administrator.

### **Section 4. *Enforcement.***

(a) The functions vested in the President by Sections 109(d) and 122(e)(3)(A) of the Act, relating to development of regulations and guidelines, are delegated to the Administrator, to be exercised in consultation with the Attorney General.

(b)(1) Subject to subsection (a) of this Section, the functions vested in the President by Section 122 (except subsection (b)(1)) are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases no on the NPL where either the release is on or the sole source of release is from any facility under the jurisdiction, custody or control of those Executive departments and agencies. These functions may be exercised only with the concurrence of the Attorney General.

(2) Subject to subsection (a) of this Section, the functions vested in the President by Section 109 of the Act, relating to violations of Section 122 of the Act, are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases no on the NPL where either the release is on or the sole source of the release is from any facility under the jurisdiction, custody or control of those Executive departments and agencies. These functions may be exercised only with the concurrence of the Attorney General.

(c)(1) Subject to subsection (a) and (b)(1) of this Section, the functions vested in the President by Sections 106(a) and 122 of the Act are delegated to the Coast Guard with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, or harbors.

(2) Subject to subsection (a) and (b)(2) of this Section, the functions vested in the President by Section 109 of the Act, relating to violations of Section 103 (a) and (b), and 122 of the Act, are delegated to the Coast Guard with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(d)(1) Subject to subsections (a), (b)(2), and (c)(2) of this Section, the functions vested in the President by Sections 106 and 122 of the Act are delegated to the Administrator.

(2) Subject to subsections (a), (b)(2), and (c)(2) of this Section, the functions vested in the President by Section 109 of the Act, relating to violations of Sections 103 and 122 of the Act, are delegated to the Administrator.

(3) Notwithstanding any other provision of this Order, the authority under Sections 104(e)(5)(A) and 106(a) of the Act to seek information, entry, inspection, samples, or response actions from Executive departments and agencies may be exercised only with the concurrence of the Attorney General.

#### **Section 5. *Liability.***

(a) The function vested in the President by Section 107(c)(1)(C) of the Act is delegated to the Secretary of Transportation.

(b) The functions vested in the President by Section 107(c)(3) of the Act are delegated to the Coast Guard with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(c) Subject to subsection (b) of this Section, the functions vested in the President by Section 107 (c)(3) of the Act are delegated to the Administrator.

(d) The functions vested in the President by Section 107(f)(1) of the Act are delegated to each of the Federal trustees for natural resources designated in the NCP for resources under their trusteeship.

(e) The functions vested in the President by Section 107(f)(2)(B) of the Act, to receive notification of the state natural resources trustee designations, are delegated to the Administrator.

#### **Section 6. *Litigation.***

(a) Notwithstanding any other provision of this Order, any representation pursuant to or under this Order in any judicial proceedings shall be by or through the Attorney General. The conduct and control of all litigation arising under the Act shall be the responsibility of the Attorney General.

(b) Notwithstanding any other provision of this Order, the authority under the Act to require the Attorney General to commence litigation is retained by the President.

(c) The functions vested in the President by Section 113(g) of the Act, to receive notification of a natural resource trustee's intent to file suit, are delegated to the heads of Executive departments and agencies with respect to response actions for which they have been delegated authority under Section 2 of this Order. The Administrator shall promulgate procedural regulations for providing such notification.

(d) The functions vested in the President by Sections 310(d) and (e) of the Act, relating to promulgation of regulations, are delegated to the Administrator.

#### **Section 7. *Financial Responsibility.***

(a) The functions vested in the President by Section 107(k)(4)(B) of the Act are delegated to the Secretary of the Treasury. The Administrator will provide the Secretary with such technical information and assistance as the Administrator may have available.

(b)(1) The functions vested in the President by Section 108(a)(1) of the Act, are delegated to the Coast Guard.

(2) Subject to Section 4(a) of this Order, the functions vested in the President by Section 109 of the Act, relating to violations of Section 108(a)(1) of the Act, are delegated to the Coast Guard.

(c)(1) The functions vested in the President by Section 108(b) of the Act, are delegated to the Secretary of Transportation with respect to all transportation related facilities, including any pipeline, motor vehicle, rolling stock, or aircraft.

(2) Subject to Section 4(a) of this Order, the functions vested in the President by Section 109 of the Act, relating to violations of Section 108(a)(3) of the Act, are delegated to the Secretary of Transportation.

(3) Subject to Section 4(a) of this Order, the functions vested in the President by Section 109 of the Act, relating to violations of Section 108(b) of the Act, are delegated to the Secretary of Transportation with respect to all transportation related facilities, including pipeline, motor vehicle, rolling stock, or aircraft.

(d)(1) Subject to subsection (c)(1) of this Section, the functions vested in the President by Section 108(a)(4) and (b) of the Act are delegated to the Administrator.

(2) Subject to Section 4(a) of this Order and subsection (c)(3) of this Section, the functions vested in the President by Section 109 of the Act, relating to violations of Section 108(a)(4) and (b) of the Act, are delegated to the Administrator.

**Section 8.** *Employee Protection and Notice to Injured.*

(a) The functions vested in the President by Section 110(e) of the Act are delegated to the Administrator.

(b) The functions vested in the President by Section 111(g) of the Act are delegated to the Secretaries of Defense and Energy with respect to releases from facilities or vessels under the jurisdiction, custody, or control of their departments, respectively, including vessels bare-boat chartered and operated.

(c) Subject to subsection (b) of this Section, the functions vested in the President by Section 111(g) of the Act are delegated to the Administrator.

**Section 9.** *Management of Hazardous Substance Superfund and Claims.*

(a) The functions vested in the President by Section 111(a) of the Act are delegated to the Administrator, subject to the provisions of this Section and other applicable provisions of this Order.

(b) The Administrator shall transfer to other agencies, from the Hazardous Substance Superfund out of sums appropriated, such amounts as the Administrator may determine necessary to carry out the purposes of the Act. These amounts shall be consistent with the President's Budget, within the total approved by the Congress, unless a revised amount is approved by OMB. Funds appropriated specifically for the Agency for Toxic Substances and Disease Registry (ATSDR), shall be directly transferred to ATSDR, consistent with fiscally responsible investment of trust fund money.

(c) The Administrator shall chair a budget task force composed of representatives of Executive departments and agencies having responsibilities under this Order or the Act. The Administrator shall also, as part of the budget request for the Environmental Protection Agency, submit to OMB a budget for the Hazardous Substance Superfund which is based on recommended levels developed by the budget task force. The Administrator may prescribe reporting and other forms, procedures, and guidelines to be used by the agencies of the Task Force in preparing the budget request, consistent with budgetary reporting requirements issued by OMB. The Administrator shall prescribe forms to agency task force members for reporting the expenditure of funds on a site-specific basis.

(d) The Administrator and each department and agency head to whom funds are provided pursuant to this Section, with respect to funds provided to them, are authorized in accordance with Section 111(f) of the Act to designate Federal officials who may obligate such funds.

(e) The functions vested in the President by Section 112 of the Act are delegated to the Administrator for all claims presented pursuant to Section 111 of the Act.

(f) The functions vested in the President by Section 111(o) of the Act are delegated to the Administrator.

(g) The functions vested in the President by Section 117(e) of the Act are delegated to the Administrator, to be exercised in consultation with the Attorney General.

(h) The functions vested in the President by Section 123 of the Act are delegated to the Administrator.

(i) Funds from the Hazardous Substance Superfund may be used, at the discretion of the Administrator or the Coast Guard, to pay for removal actions for releases or threatened releases from facilities or vessels under the jurisdiction, custody, or control of Executive departments and agencies but must be reimbursed to the Hazardous Substance Superfund by such Executive department or agency.

**Section 10.** *Federal Facilities.*

(a) When necessary, prior to selection of a remedial action by the Administrator under Section 120(e)(4)(A) of the Act, Executive agencies shall have the opportunity to present their views to the Administrator after using the procedures under Section 1-6 of Executive Order No. 12088 of October 13, 1978, or any other mutually acceptable process. Notwithstanding subsection 1-602 of Executive Order No. 12088, the Director of the Office of Management and Budget shall facilitate resolution of any issues.

(b) Executive Order No. 12088 of October 13, 1978, is amended by renumbering the current Section 1-802 as Section 1-803 and inserting the following new Section 1-802:

"1-802. Nothing in this Order shall create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person. "

**Section 11. General Provisions.**

(a) The function vested in the President by Section 101(37) of the Act is delegated to the Administrator.

(b)(1) The function vested in the President by Section 105(f) of the Act, relating to reporting on minority participation in contracts, is delegated to the Administrator.

(2) Subject to paragraph 1 of this subsection, the functions vested in the President by Section 105(f) of the Act are delegated to the heads of Executive departments and agencies in order to carry out the functions delegated to them by this Order. Each Executive department and agency shall provide to the Administrator any requested information on minority contracting for inclusion in the Section 105(f) annual report.

(c) The functions vested in the President by Section 126(c) of the Act are delegated to the Administrator, to be exercised in consultation with the Secretary of the Interior.

(d) The functions vested in the President by Section 301(c) of the Act are delegated to the Secretary of the Interior.

(e) Each agency shall have authority to issue such regulations as may be necessary to carry out the functions delegated to them by this Order.

(f) The performance of any function under this Order shall be done in consultation with interested Federal departments and agencies represented on the NRT, as well as with any other interested Federal agency.

(g) The following functions vested in the President by the Act which have been delegated or assigned by this Order may be are delegated to the head of any Executive department or agency with his consent: functions set forth in Sections 2 (except subsection (b)), 3, 4(b), 4(c), 4(d), 5(b), 5(c), and 8(c) of this Order.

(h) Executive Order No. 12316 of August 14, 1981, is revoked.

Ronald Reagan

THE WHITE HOUSE

52 FR 2923, Jan. 29, 1987, 3 CFR, 1987 Comp. 193;

Amended by Executive Order 12777, Oct. 18, 1991;

56 FR 54757, Oct. 22, 1991

## • Executive Order 12780 - FEDERAL AGENCY RECYCLING AND THE COUNCIL ON FEDERAL RECYCLING AND PROCUREMENT POLICY

October 31, 1991

WHEREAS, this Administration is determined to secure for future generations of Americans their rightful share of our Nation's natural resources, as well as a clean and healthful environment in which to enjoy them; and

WHEREAS, two goals of this Administration's environmental policy, cost-effective pollution prevention and the conservation of natural resources, can be significantly advanced by reducing waste and recycling the resources used by this generation of Americans; and

WHEREAS, the Federal Government, as one of the Nation's largest generators of solid waste, is able through cost-effective waste reduction and recycling resources to conserve local government disposal capacity; and

WHEREAS, the Federal Government, as the Nation's largest single consumer, is able through affirmative procurement practices to encourage the development of economically efficient markets for products manufactured with recycled materials;

NOW, THEREFORE, I, GEORGE BUSH, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the Solid Waste Disposal Act, Public Law 89-272, 79 Stat. 997, as amended by the Resource Conservation and Recovery Act ("RCRA"), Public Law 94-580, 90 Stat. 2795 (1976), hereby order as follows:

### **PART 1--PREAMBLE**

**Section 101.** The purpose of this Executive order is to:

(a) Require that Federal agencies promote cost-effective waste reduction and recycling of reusable materials from wastes generated by Federal Government activities.

(b) Encourage economically efficient market demand for designated items produced using recovered materials by directing the immediate implementation of cost-effective Federal procurement preference programs favoring the purchase of such items.

(c) Provide a forum for the development and study of policy options and procurement practices that will promote environmentally sound and economically efficient waste reduction and recycling of our Nation's resources.

(d) Integrate cost-effective waste reduction and recycling programs into all Federal agency waste management programs in order to assist in addressing the Nation's solid waste disposal problems.

(e) Establish Federal Government leadership in addressing the need for efficient State and local solid waste management through implementation of environmentally sound and economically efficient recycling.

**Section 102.** Consistent with section 6002(c)(1) of RCRA (42 U.S.C. 6962(c)(1)), activities and operations of the executive branch shall be conducted in an environmentally responsible manner, and waste reduction and recycling opportunities shall be utilized to the maximum extent practicable, consistent with economic efficiency.

**Section 103.** Consistent with section 6002(c)(2) of RCRA (42 U.S.C. 6962(c)(2)), agencies that generate energy from fossil fuel in systems that have the technical capacity of using energy or fuels derived from solid waste as a primary or supplementary fuel shall use such capability to the maximum extent practicable.



## **PART 2--DEFINITIONS**

For purposes of this order:

**Section 201.** "Federal agency" means any department, agency, or other instrumentality of the executive branch.

**Section 202.** "Procurement" and "acquisition" are used interchangeably to refer to the processes through which Federal agencies purchase products.

**Section 203.** "Recovered materials" is used as defined in section 1004(19) and 6002(h) of the Resource Conservation and Recovery Act (42 U.S.C. 6903(19) and 6962(h)), as amended.

**Section 204.** "Recycling" means the diversion of materials from the solid waste stream and the beneficial use of such materials. Recycling is further defined as the result of a series of activities by which materials that would become or otherwise remain waste, are diverted from the solid waste stream by collection, separation and processing and are used as raw materials in the manufacture of goods sold or distributed in commerce or the reuse of such materials as substitutes for goods made of virgin materials.

**Section 205.** "Waste reduction" means any change in a process, operation, or activity that results in the economically efficient reduction in waste material per unit of production without reducing the value output of the process, operation, or activity, taking into account the health and environmental consequences of such change.

## **PART 3--SOLID WASTE RECYCLING PROGRAMS**

**Section 301. *Recycling Programs.*** Each Federal agency that has not already done so shall initiate a program to promote cost-effective waste reduction and recycling of reusable materials in all of its operations and facilities. These programs shall foster (a) practices that reduce waste generation, and (b) the recycling of recyclable materials such as paper, plastic, metals, glass, used oil, lead acid batteries, and tires and the composting of organic materials such as yard waste. The recycling programs implemented pursuant to this section must be compatible with applicable State and local recycling requirements.

**Section 302. *Contractor Operated Facilities.*** Every contract that provides for contractor operation of a Government-owned or leased facility, awarded more than 210 days after the effective date of this Executive order, shall include provisions that obligate the contractor to comply with the requirements of this Part as fully as though the contractor were a Federal agency.

## **PART 4--VOLUNTARY STANDARDS**

**Section 401. *Amendment of OMB Circular No. A-119.*** The Director of the Office of Management and Budget ("OMB") shall amend, as appropriate, OMB Circular No. A-119, "Federal Participation in the Development and Use of Voluntary Standards," to encourage Federal agencies to participate in the development of environmentally sound and economically efficient standards and to encourage Federal agency use of such standards.

## **PART 5--PROCUREMENT OF RECOVERED MATERIALS**

**Section 501. *Adoption of Affirmative Procurement Programs.*** Within 180 days after the effective date of this order, each Federal agency shall provide a report to the Administrator of the Environmental Protection Agency regarding the Agency's adoption of an affirmative procurement program; such programs are required by section 6002(i) of RCRA (42 U.S.C. 6962(i)). Within 1 year of the issuance of this order, the Administrator of the Environmental Protection Agency shall report to the President regarding the compliance of each Federal agency with this requirement.

**Section 502.** *Annual Review of Affirmative Procurement Programs.* In accordance with section 6002(i) of RCRA (42 U.S.C. 6962(i)), each Federal agency shall review annually the effectiveness of its affirmative procurement program and shall provide a report regarding its findings to the Environmental Protection Agency and to the Office of Federal Procurement Policy, beginning with a report covering fiscal year 1992. Such report shall be transmitted by December 15 each year. Reports required by this section shall be made available to the public.

## **PART 6--RECYCLING COORDINATORS AND THE COUNCIL ON FEDERAL RECYCLING AND PROCUREMENT POLICY**

**Section 601.** *Federal Recycling Coordinator.* Within 90 days after the effective date of this order, the Administrator of the Environmental Protection Agency shall designate a senior official of that Agency to serve as the Federal Recycling Coordinator. The Federal Recycling Coordinator shall review and report annually to OMB, at the time of agency budget submissions, the actions taken by the agencies to comply with the requirements of this order.

**Section 602.** *Designation of Recycling Coordinators.* Within 90 days after the effective date of this order, the head of each Federal agency shall designate an agency employee to serve as Agency Recycling Coordinator. The Agency Recycling Coordinator shall be responsible for:

(a) Coordinating the development of an effective agency waste reduction and recycling program that complies with the comprehensive implementation plan developed by the Council on Federal Recycling and Procurement Policy;

(b) Coordinating agency action to develop benefits, costs, and savings data measuring the effectiveness of the agency program; and

(c) Coordinating the development of agency reports required by this Executive order and providing copies of such reports to the Environmental Protection Agency.

### **Section 603.** *The Council on Federal Recycling and Procurement Policy*

(a) A Council on Federal Recycling and Procurement Policy is hereby established. It shall comprise the Federal Recycling Coordinator, the Chairman of the Council on Environmental Quality, the Administrator of the Office of Federal Procurement Policy, and the Agency Recycling Coordinator and the Procurement Executive of each of the following agencies: the Environmental Protection Agency, the Department of Defense, the General Services Administration, the National Aeronautics and Space Administration, the Department of Energy, the Department of Commerce, and the Department of the Interior. The Federal Recycling Coordinator shall serve as Chair of the Council.

(b) Duties. The Council on Federal Recycling and Procurement Policy shall: (1) identify and recommend, to OMB, initiatives that will promote the purposes of this order, including:

(A) The development of appropriate incentives to encourage the economically efficient acquisition by the Federal Government of products that reduce waste and of products produced with recycled materials;

(B) The development of appropriate incentives to encourage active participation in economically efficient Federal waste reduction and recycling programs; and

(C) The development of guidelines for cost-effective waste reduction and recycling activities by Federal agencies;

(2) Review Federal agency specifications and standards and recommend changes that will enhance Federal procurement of products made from recycled and recyclable materials, taking into account the costs and the performance requirements of each agency:

(3) Collect and disseminate Federal agencies' information concerning methods to reduce wastes, types of materials that can be recycled, the costs and savings associated with recycling, and the current market sources and prices of products that reduce waste and of products produced with recycled materials;

(4) Assist the development of cost-effective waste reduction and recycling programs pursuant to this order by developing guidelines for agency waste reduction and recycling programs and by identifying long-range goals for Federal waste reduction and recycling programs;

(5) Provide meaningful data to measure the effectiveness and progress of Federal waste reduction and recycling programs;

(6) Provide guidance and assistance to the Agency Recycling Coordinators in setting up and reporting on agency programs; and

(7) Review Federal agency compliance with section 103 of this order.

#### **PART 7--LIMITATION**

**Section 701.** This order is intended only to improve the internal management of the executive branch and shall not be interpreted to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its officers, or any other person.

**Section 702.** Section 502 and Part 6 of this order shall be effective for 5 years only, beginning on the effective date of this order.

**Section 703.** This order shall be effective immediately.

George Bush  
THE WHITE HOUSE

Revoked by EO 13148

## • Executive Order 12843 - PROCUREMENT REQUIREMENTS AND POLICIES FOR FEDERAL AGENCIES FOR OZONE-DEPLETING SUBSTANCES

April 21, 1993

WHEREAS, the essential function of the stratospheric ozone layer is shielding the Earth from dangerous ultraviolet radiation; and

WHEREAS, the production and consumption of substances that cause the depletion of stratospheric ozone are being rapidly phased out on a worldwide basis with the support and encouragement of the United States; and

WHEREAS, the Montreal Protocol on Substances that Deplete the Ozone Layer, to which the United States is a signatory, calls for a phase-out of the production and consumption of these substances; and

WHEREAS, the Federal Government, as one of the principal users of these substances, is able through affirmative procurement practices to reduce significantly the use of these substances and to provide leadership in their phase-out; and

WHEREAS, the use of alternative substances and new technologies to replace these ozone-depleting substances may contribute positively to the economic competitiveness on the world market of U.S. manufacturers of these innovative safe alternatives;

NOW, THEREFORE, I, WILLIAM JEFFERSON CLINTON, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the 1990 amendments to the Clean Air Act ("Clean Air Act Amendments"), Public Law 101-549, and in order to reduce the Federal Government's procurement and use of substances that cause stratospheric ozone depletion, do hereby order as follows:

### **Section 1.** *Federal Agencies.*

Federal agencies shall, to the extent practicable:

- (a) Conform their procurement regulations and practices to the policies and requirements of Title VI of the Clean Air Act Amendments, which deal with stratospheric ozone protection;
- (b) Maximize the use of safe alternatives to ozone-depleting substances;
- (c) Evaluate the present and future uses of ozone-depleting substances, including making assessments of existing and future needs for such materials and evaluate their use of and plans for recycling;
- (d) Revise their procurement practices and implement cost-effective programs both to modify specifications and contracts that require the use of ozone-depleting substances and to substitute non-ozone-depleting substances to the extent economically practicable; and
- (e) Exercise leadership, develop exemplary practices, and disseminate information on successful efforts in phasing out ozone-depleting substances.

### **Section 2.** *Definitions.*

(a) "Federal agency" means any executive department, military department, or independent agency within the meaning of 5 U.S.C. 101, 102, or 104(1), respectively.

(b) "Procurement" and "acquisition" are used interchangeably to refer to the processes through which Federal agencies purchase products and services.

(c) "Procurement regulations, policies and procedures" encompasses the complete acquisition process, including the generation of product descriptions by individuals responsible for determining which substances must be acquired by the agency to meet its mission.

(d) "Ozone-depleting substances" means the substances controlled internationally under the Montreal Protocol and nationally under Title VI of the Clean Air Act Amendments. This includes both Class I and Class II substances as follows:

(i) "Class I substance" means any substance designated as Class I in the Federal Register notice of July 30, 1992 (57 Fed. Reg. 33753), including chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform and any other substance so designated by the Environmental Protection Agency ("EPA") by regulation at a later date; and

(ii) "Class II substance" means any substance designated as Class II in the Federal Register notice of July 30, 1992 (57 Fed. Reg. 33753), including hydrochlorofluorocarbons and any other substances so designated by EPA by regulation at a later date.

(e) "Recycling" is used to encompass recovery and reclamation, as well as the reuse of controlled substances.

### **Section 3. Policy.**

It is the policy of the Federal Government that Federal agencies:

(i) Implement cost-effective programs to minimize the procurement of materials and substances that contribute to the depletion of stratospheric ozone; and

(ii) Give preference to the procurement of alternative chemicals, products, and manufacturing processes that reduce overall risks to human health and the environment by lessening the depletion of ozone in the upper atmosphere. In implementing this policy, prior to final promulgation of EPA regulations on Federal procurement, Federal agencies shall begin conforming their procurement policies to the general requirements of Title VI of the Clean Air Act Amendments by:

(a) Minimizing, where economically practicable, the procurement of products containing or manufactured with Class I substances in anticipation of the phase out schedule to be promulgated by EPA for Class I substances, and maximizing the use of safe alternatives. In developing their procurement policies, agencies should be aware of the phase out schedule for Class II substances;

(b) Amending existing contracts, to the extent permitted by law and where practicable, to be consistent with the phase out schedules for Class I substances. In awarding contracts, agencies should be aware of the phase out schedule for Class II substances in awarding contracts;

(c) Implementing policies and practices that recognize the increasingly limited availability of Class I substances as production levels capped by the Montreal Protocol decline until final phase out. Such practices shall include, but are not limited to:

(i) Reducing emissions and recycling ozone-depleting substances;

(ii) Ceasing the purchase of nonessential products containing or manufactured with ozone-depleting substances; and

(iii) Requiring that new contracts provide that any acquired products containing or manufactured with Class I or Class II substances be labeled in accordance with section 611 of the Clean Air Act Amendments.

### **Section 4. Responsibilities**

Not later than 6 months after the effective date of this Executive order, each Federal agency, where feasible, shall have in place practices that, where economically practicable, minimize the procurement of Class I substances. Agencies also shall be aware of the phase out schedule for Class II substances. Agency practices may include, but are not limited to:

(a) altering existing equipment and/or procedures to make use of safe alternatives;

(b) specifying the use of safe alternatives and of goods and services, where available, that do not require the use of Class I substances in new procurements and that limit the use of Class II substances consistent with section 612 of the Clean Air Act Amendments; and

(c) amending existing contracts, to the extent permitted by law and where practicable, to require the use of safe alternatives.

**Section 5.** *Reporting Requirements.*

Not later than 6 months after the effective date of this Executive order, each Federal agency shall submit to the Office of Management and Budget a report regarding the implementation of this order. The report shall include a certification by each agency that its regulations and procurement practices are being amended to comply with this order.

**Section 6.** *Exceptions.*

Exceptions to compliance with this Executive order may be made in accordance with section 604 of the Clean Air Act Amendments and with the provisions of the Montreal Protocol.

**Section 7.** *Effective Date.*

This Executive order is effective 30 days after the date of issuance. Although full implementation of this order must await revisions to the Federal Acquisition Regulations ("FAR"), it is expected that Federal agencies will take all appropriate actions in the interim to implement those aspects of the order that are not dependent upon regulatory revision.

**Section 8.** *Federal Acquisition Regulatory Councils.*

Pursuant to section 6(a) of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 405(a), the Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council shall ensure that the policies established herein are incorporated in the FAR within 180 days from the date this order is issued.

**Section 9.** *Judicial Review.*

This order does not create any right or benefit, substantive or procedural, enforceable by a non-Federal party against the United States, its officers or employees, or any other person.

William J. Clinton  
THE WHITE HOUSE  
April 21, 1993

## • Executive Order 12844 - FEDERAL USE OF ALTERNATIVE FUELED VEHICLES

April 21, 1993

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Energy Policy and Conservation Act, as amended (42 U.S.C. 6201 et seq.), the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1901 et seq.), the Energy Policy Act of 1992 (Public Law 102-486), and section 301 of title 3, United States Code, it is hereby ordered as follows:

### **Section 1.** *Federal Leadership and Goals.*

The use of alternative fueled motor vehicles can, in some applications, substantially reduce pollutants in the atmosphere, create significant domestic economic activity and stimulate jobs creation, utilize domestic fuel sources as defined by the Energy Policy Act of 1992, and reduce vehicle maintenance costs.

Moreover, Federal action can provide a significant market impetus for the development and manufacture of alternative fueled vehicles, and for the expansion of the fueling infrastructure necessary to support large numbers of privately owned alternative fueled vehicles.

The Federal Government can exercise leadership in the use of alternative fueled vehicles. To that end, each agency shall adopt aggressive plans to substantially exceed the alternative fueled vehicle purchase requirements established by the Energy Policy Act of 1992.

### **Section 2.** *Alternative Fueled Vehicle Requirements.*

The Federal Government shall acquire, subject to the availability of funds and considering life cycle costs, alternative fueled vehicles in numbers that exceed by 50 percent the requirements for 1993 through 1995 set forth in the Energy Policy Act of 1992. The Federal fleet vehicle acquisition program shall be structured with the objectives of:

- (a) continued reduction in the incremental cost associated with specific vehicle and fuel combinations;
- (b) long-term movement toward increasing availability of alternative fueled vehicles produced as standard manufacturers' models; and
- (c) minimizing life cycle costs in the acquisition of alternative fueled vehicles. In addition, there is established, for a period not to exceed 1 year, the Federal Fleet Conversion Task Force, a Federal interagency implementation committee to be constituted by the Secretary of Energy, in consultation with a Task Force Chairman to be named by the President. The Task Force will advise on the implementation of this Executive order. The Task Force will issue a public report within 90 days, setting forth a recommended plan and schedule of implementation and, no later than 1 year from the date of this order, in cooperation with the Secretary of Energy, file a report on the status of the conversion effort.

### **Section 3.** *Alternative Fueled Vehicle Acquisition Assistance.*

Within available appropriations, and as required by the Energy Policy Act of 1992, the Secretary of Energy shall provide assistance to other agencies that acquire alternative fueled vehicles. This assistance includes payment of incremental costs of alternative fueled vehicles, including any incremental costs associated with acquisition and disposal. All vehicles, whether conversions or purchases as original equipment manufacturer models, shall comply with all applicable Federal and State emissions and safety standards, consistent with those requirements placed on original equipment manufacturers, including years and mileage.

**Section 4.** *Alternative Fueled Vehicle Purchase and Use Incentives.*

The Administrator of the General Services Administration, to the extent allowed by law, may provide incentives to purchase alternative fueled vehicles, including priority processing of procurement requests, and, with the Secretary of Energy, provide any other technical or administrative assistance aimed at accelerating the purchase and use of Federal alternative fueled vehicles.

**Section 5.** *Cooperation with Industry and State and Local Authorities on Alternative Fueled Vehicle Refueling Capabilities.*

The Secretary of Energy shall coordinate Federal planning and siting efforts with private industry fuel suppliers, and with State and local governments, to ensure that adequate private sector refueling capabilities exist or will exist wherever Federal fleet alternative fueled vehicles are sited. Each agency's fleet managers are expected to work with appropriate organizations at their respective locations on initiatives to promote alternative fueled vehicle use.

**Section 6.** *Reporting.*

The head of each agency shall report annually to the Secretary of Energy on actions and progress under this order, consistent with guidance provided by the Secretary. The Secretary shall prepare a consolidated annual report to the President and to the Congress on the implementation of this order. As part of the report, the Secretary and the Director of the Office of Management and Budget shall complete a thorough, objective evaluation of alternative fueled vehicles. The evaluation shall consider operating and acquisition costs, fuel economy, maintenance, and other factors as appropriate.

**Section 7.** *Definitions.*

For the purpose of this order, the terms "agency" and "alternative fueled vehicle" have the same meanings given such terms in sections 151 and 301 of the Energy Policy Act of 1992, respectively.

**Section 8.** *Exceptions.*

The Secretary of Defense, the Secretary of the Treasury, and the Attorney General, consistent with the national security and protective and law enforcement activities of their respective agencies, shall determine the extent to which the requirements of this order apply to the national security and protective and law enforcement activities of their respective agencies.

**Section 9.** *Judicial Review.*

This order is not intended to create any right or benefit, substantive or procedural, enforceable by a non-Federal party against the United States, its officers or employees, or any other person.

William J. Clinton  
THE WHITE HOUSE,  
April 21, 1993



*Revoked by EO 13148*

## **• Executive Order 12856 - FEDERAL COMPLIANCE WITH RIGHT-TO-KNOW LAWS AND POLLUTION PREVENTION REQUIREMENTS**

August 3, 1993

WHEREAS, the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001-11050) (EPCRA) established programs to provide the public with important information on the hazardous and toxic chemicals in their communities, and established emergency planning and notification requirements to protect the public in the event of a release of extremely hazardous substances;

WHEREAS, the Federal Government should be a good neighbor to local communities by becoming a leader in providing information to the public concerning toxic and hazardous chemicals and extremely hazardous substances at Federal facilities, and in planning for and preventing harm to the public through the planned or unplanned releases of chemicals;

WHEREAS, the Pollution Prevention Act of 1990 (42 U.S.C. 13101-13109) (PPA) established that it is the national policy of the United States that, whenever feasible, pollution should be prevented or reduced at the source; that pollution that cannot be prevented should be recycled in an environmentally safe manner; that pollution that cannot be prevented or recycled should be treated in an environmentally safe manner; and that disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner;

WHEREAS, the PPA required the Administrator of the Environmental Protection Agency (EPA) to promote source reduction practices in other agencies;

WHEREAS, the Federal Government should become a leader in the field of pollution prevention through the management of its facilities, its acquisition practices, and in supporting the development of innovative pollution prevention programs and technologies;

WHEREAS, the environmental, energy, and economic benefits of energy and water use reductions are very significant; the scope of innovative pollution prevention programs must be broad to adequately address the highest-risk environmental problems and to take full advantage of technological opportunities in sectors other than industrial manufacturing; the Energy Policy Act of 1992 (Public Law 102-486 of October 24, 1992) requires the Secretary of Energy to work with other Federal agencies to significantly reduce the use of energy and reduce the related environmental impacts by promoting use of energy efficiency and renewable energy technologies; and

WHEREAS, as the largest single consumer in the Nation, the Federal Government has the opportunity to realize significant economic as well as environmental benefits of pollution prevention;

AND IN ORDER TO:

Ensure that all Federal agencies conduct their facility management and acquisition activities so that, to the maximum extent practicable, the quantity of toxic chemicals entering any waste stream, including any releases to the environment, is reduced as expeditiously as possible through source reduction; that waste that is generated is recycled to the maximum extent practicable; and that any wastes remaining are stored, treated or disposed of in a manner protective of public health and the environment;

Require Federal agencies to report in a public manner toxic chemicals entering any wastestream from their facilities, including any releases to the environment, and to improve local emergency planning, response, and accident notification; and help encourage markets for clean technologies and safe alternatives to

extremely hazardous substances or toxic chemicals through revisions to specifications and standards, the acquisition and procurement process, and the testing of innovative pollution prevention technologies at Federal facilities or in acquisitions;

NOW THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the EPCRA, the PPA, and section 301 of title 5, United States Code, it is hereby ordered as follows:

**Section 1. *Applicability.***

1-101. As delineated below, the head of each Federal agency is responsible for ensuring that all necessary actions are taken for the prevention of pollution with respect to that agency's activities and facilities, and for ensuring that agency's compliance with pollution prevention and emergency planning and community right-to-know provisions established pursuant to all implementing regulations issued pursuant to EPCRA and PPA.

1-102. Except as otherwise noted, this order is applicable to all Federal agencies that either own or operate a "facility" as that term is defined in section 329(4) of EPCRA, if such facility meets the threshold requirements set forth in EPCRA for compliance as modified by section 3-304(b) of this order ("covered facilities"). Except as provided in section 1-103 and section 1-104 below, each Federal agency must apply all of the provisions of this order to each of its covered facilities, including those facilities which are subject, independent of this order, to the provisions of EPCRA and PPA (e.g., certain Government-owned/contractor-operated facilities (GOCO's), for chemicals meeting EPCRA thresholds). This order does not apply to Federal agency facilities outside the customs territory of the United States, such as United States diplomatic and consular missions abroad.

1-103. Nothing in this order alters the obligations which GOCO's and Government corporation facilities have under EPCRA and PPA independent of this order or subjects such facilities to EPCRA or PPA if they are otherwise excluded. However, consistent with section 1-104 below, each Federal agency shall include the releases and transfers from all such facilities when meeting all of the Federal agency's responsibilities under this order.

1-104. To facilitate compliance with this order, each Federal agency shall provide, in all future contracts between the agency and its relevant contractors, for the contractor to supply to the Federal agency all information the Federal agency deems necessary for it to comply with this order. In addition, to the extent that compliance with this order is made more difficult due to lack of information from existing contractors, Federal agencies shall take practical steps to obtain the information needed to comply with this order from such contractors.

**Section 2-2. *Definitions.***

2-201. All definitions found in EPCRA and PPA and implementing regulations are incorporated in this order by reference, with the following exception: for the purposes of this order, the term "person", as defined in section 329(7) of EPCRA, also includes Federal agencies.

2-202. Federal agency means an Executive agency, as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

2-203. Pollution Prevention means "source reduction," as defined in the PPA, and other practices that reduce or eliminate the creation of pollutants through:

- (a) increased efficiency in the use of raw materials, energy, water, or other resources; or
- (b) protection of natural resources by conservation.

2-204. GOCO means a Government-owned/contractor-operated facility which is owned by the Federal Government but all or portions of which are operated by private contractors.

2-205. Administrator means the Administrator of the EPA.

2-206. Toxic Chemical means a substance on the list described in section 313(c) of EPCRA.

2-207. Toxic Pollutants. For the purposes of section 3-302(a) of this order, the term "toxic pollutants" shall include, but is not necessarily limited to, those chemicals at a Federal facility subject to the provisions of section 313 of EPCRA as-of December 1, 1993. Federal agencies also may choose to include releases and transfers of other chemicals, such as "extremely hazardous chemicals" as defined in section 329(3) of EPCRA, hazardous wastes as defined under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901-6986) (RCRA), or hazardous air pollutants under the Clean Air Act Amendments (42 U.S.C. 7403-7626); however, for the purposes of establishing the agency's baseline under 3-302(c), such "other chemicals" are in addition to (not instead of) the section 313 chemicals. The term "toxic pollutants" does not include hazardous waste subject to remedial action generated prior to the date of this order.

### **Section 3-3. Implementation.**

3-301. Federal Agency Strategy. Within 12 months of the date of this order, the head of each Federal agency must develop a written pollution prevention strategy to achieve the requirements specified in sections 3-302 through 3-305 of this order for that agency. A copy thereof shall be provided to the Administrator. Federal agencies are encouraged to involve the public in developing the required strategies under this order and in monitoring their subsequent progress in meeting the requirements of this order. The strategy shall include, but shall not be limited to, the following elements:

(a) A pollution prevention policy statement, developed by each Federal agency, designating principal responsibilities for development, implementation, and evaluation of the strategy. The statement shall reflect the Federal agency's commitment to incorporate pollution prevention through source reduction in facility management and acquisition, and it shall identify an individual responsible for coordinating the Federal agency's efforts in this area.

(b) A commitment to utilize pollution prevention through source reduction, where practicable, as the primary means of achieving and maintaining compliance with all applicable Federal, State, and local environmental requirements.

#### **3-302. Toxic Chemical Reduction Goals.**

(a) The head of each Federal agency subject to this order shall ensure that the agency develops voluntary goals to reduce the agency's total releases of toxic chemicals to the environment and off-site transfers of such toxic chemicals for treatment and disposal from facilities covered by this order by 50 percent by December 31, 1999. To the maximum extent practicable, such reductions shall be achieved by implementation of source reduction practices.

(b) The baseline for measuring reductions for purposes of achieving the 50 percent reduction goal for each Federal agency shall be the first year in which releases of toxic chemicals to the environment and off-site transfers of such chemicals for treatment and disposal are publicly reported. The baseline amount as to which the 50 percent reduction goal applies shall be the aggregate amount of toxic chemicals reported in the baseline year for all of that Federal agency's facilities meeting the threshold applicability requirements set forth in section 1-102 of this order. In no event shall the baseline be later than the 1994 reporting year.

(c) Alternatively, a Federal agency may choose to achieve a 50 percent reduction goal for toxic pollutants. In such event, the Federal agency shall delineate the scope of its reduction program in the written pollution prevention strategy that is required by section 3-301 of this order. The baseline for measuring reductions for purposes of achieving the 50 percent reduction requirement for each Federal agency shall be the first year in which releases of toxic pollutants to the environment and off-site transfers of such chemicals for treatment and disposal are publicly reported for each of that Federal agency's facilities encompassed by section 3-301. In no event shall the baseline year be later than the 1994 reporting year. The baseline amount as to which the 50 percent reduction goal applies shall be the aggregate amount of toxic pollutants reported by the agency in the baseline year. For any toxic pollutants included by the agency in determining its baseline under this section, in addition to toxic chemicals under EPCRA, the agency shall report on such toxic pollutants annually under the provisions of section 3-304 of this order, if practicable, or through an agency report that is made available to the public.

(d) The head of each Federal agency shall ensure that each of its covered facilities develops a written pollution prevention plan no later than the end of 1995, which sets forth the facility's contribution to the goal established in section 3-302(a) of this order. Federal agencies shall conduct assessments of their facilities as necessary to ensure development of such plans and of the facilities' pollution prevention programs.

#### 3-303. Acquisition and Procurement Goals.

(a) Each Federal agency shall establish a plan and goals for eliminating or reducing the unnecessary acquisition by that agency of products containing extremely hazardous substances or toxic chemicals. Similarly, each Federal agency shall establish a plan and goal for voluntarily reducing its own manufacturing, processing, and use of extremely hazardous substances and toxic chemicals. Priorities shall be developed by Federal agencies, in coordination with EPA, for implementing this section.

(b) Within 24 months of the date of this order, the Department of Defense (DOD) and the General Services Administration (GSA), and other agencies, as appropriate, shall review their agency's standardized documents, including specifications and standards, and identify opportunities to eliminate or reduce the use by their agency of extremely hazardous substances and toxic chemicals, consistent with the safety and reliability requirements of their agency mission. The EPA shall assist agencies in meeting the requirements of this section, including identifying substitutes and setting priorities for these reviews. By 1999, DOD, GSA and other affected agencies shall make all appropriate revisions to these specifications and standards-

(c) Any revisions to the Federal Acquisition Regulation (FAR) necessary to implement this order shall be made within 24 months of the date of this order.

(d) Federal agencies are encouraged to develop and test innovative pollution prevention technologies at their facilities in order to encourage the development of strong markets for such technologies. Partnerships should be encouraged between industry, Federal agencies, Government laboratories, academia, and others to assess and deploy innovative environmental technologies for domestic use and for markets abroad.

#### 3-304. Toxics Release Inventory/Pollution Prevention Act Reporting.

(a) The head of each Federal agency shall comply with the provisions set forth in section 313 of EPCRA, section 6607 of PPA, all implementing regulations, and future amendments to these authorities, in light of applicable guidance as provided by EPA.

(b) The head of each Federal agency shall comply with these provisions without regard to the Standard Industrial Classification (SIC) delineations that apply to the Federal agency's facilities, and such reports shall be for all releases, transfers, and wastes at such Federal agency's facility without regard to the SIC code of the activity leading to the release, transfer, or waste. All other existing statutory or regulatory limitations or exemptions on the application of EPCRA section 313 shall apply to the reporting requirements set forth in section 3-304(a) of this order.

(c) The first year of compliance shall be no later than for the 1994 calendar year, with reports due on or before July 1, 1995.

3-305. Emergency Planning and Community Right-to-Know Reporting Responsibilities. The head of each Federal agency shall comply with the provisions set forth in sections 301 through 312 of EPCRA, all implementing regulations, and future amendments to these authorities, in light of any applicable guidance as provided by EPA. Effective dates for compliance shall be:

(a) With respect to the provisions of section 302 of EPCRA, emergency planning notification shall be made no later than 7 months after the date of this order.

(b) With respect to the provisions of section 303 of EPCRA, all information necessary for the applicable Local Emergency Planning Committee (LEPC's) to prepare or revise local Emergency Response Plans shall be provided no later than 1 year after the date of this order.

(c) To the extent that a facility is required to maintain Material Safety Data Sheets under any provisions of law or Executive order, information required under section 311 of EPCRA shall be submitted no later than 1 year after the date of this order, and the first year of compliance with section 312 shall be no later than the 1994 calendar year, with reports due on or before March 1, 1995.

- (d) The provisions of section 304 of EPCRA shall be effective beginning January 1, 1994.
- (e) These compliance dates are not intended to delay implementation of earlier timetables already agreed to by Federal agencies and are inapplicable to the extent they interfere with those timetables.

**Section 4-4. Agency Coordination.**

4-401. By February 1, 1994, the Administrator shall convene an Interagency Task Force composed of the Administrator, the Secretaries of Commerce, Defense, and Energy, the Administrator of General Services, the Administrator of the Office of Procurement Policy in the Office of Management and Budget, and such other agency officials as deemed appropriate based upon lists of potential participants submitted to the Administrator pursuant to this section by the agency head. Each agency head may designate other senior agency officials to act in his/her stead, where appropriate. The Task Force will assist the agency heads in the implementation of the activities required under this order.

4-402. Federal agencies subject to the requirements of this order shall submit annual progress reports to the Administrator beginning on October 1, 1995. These reports shall include a description of the progress that the agency has made in complying with all aspects of this order, including the pollution reductions requirements. This reporting requirement shall expire after the report due on October 1, 2001.

4-403. Technical Advice. Upon request and to the extent practicable, the Administrator shall provide technical advice and assistance to Federal agencies in order to foster full compliance with this order. In addition, to the extent practicable, all Federal agencies subject to this order shall provide technical assistance, if requested, to LEPC's in their development of emergency response plans and in fulfillment of their community right-to-know and risk reduction responsibilities.

4-404. Federal agencies shall place high priority on obtaining funding and resources needed for implementing all aspects of this order, including the pollution prevention strategies, plans, and assessments required by this order, by identifying, requesting, and allocating funds through line-item or direct funding requests. Federal agencies shall make such requests as required in the Federal Agency Pollution Prevention and Abatement Planning Process and through agency budget requests as outlined in Office of Management and Budget (OMB) Circulars A-106 and A-11, respectively. Federal agencies should apply, to the maximum extent practicable, a life cycle analysis and total cost accounting principles to all projects needed to meet the requirements of this order.

4-405. Federal Government Environmental Challenge Program. The Administrator shall establish a "Federal Government Environmental Challenge Program" to recognize outstanding environmental management performance in Federal agencies and facilities. The program shall consist of two components that challenge Federal agencies; (a) to agree to a code of environmental principles to be developed by EPA, in cooperation with other agencies, that emphasizes pollution prevention, sustainable development and state-of-the-art environmental management programs, and (b) to submit applications to EPA for individual Federal agency facilities for recognition as "Model Installations." The program shall also include a means for recognizing individual Federal employees who demonstrate outstanding leadership in pollution prevention.

**Section 5-5. Compliance.**

5-501. By December 31, 1993, the head of each Federal agency shall provide the Administrator with a preliminary list of facilities that potentially meet the requirements for reporting under the threshold provisions of EPCRA, PPA, and this order.

5-502. The head of each Federal agency is responsible for ensuring that such agency take all necessary actions to prevent pollution in accordance with this order, and for that agency's compliance with the provisions of EPCRA and PPA. Compliance with EPCRA and PPA means compliance with the same substantive, procedural, and other statutory and regulatory requirements that would apply to a private person. Nothing in this order shall be construed as making the provisions of sections 325 and 326 of EPCRA applicable to any Federal agency or facility, except to the extent that such Federal agency or facility would independently be subject to such provisions. EPA shall consult with Federal agencies, if requested, to determine the applicability of this order to particular agency facilities.

5-503. Each Federal agency subject to this order shall conduct internal reviews and audits, and take such other steps, as may be necessary to monitor compliance with sections 3-304 and 3-305 of this order.

5-504. The Administrator, in consultation with the heads of Federal agencies, may conduct such reviews and inspections as may be necessary to monitor compliance with sections 3-304 and 3-305 of this order. Except as excluded under section 6-601 of this order, all Federal agencies are encouraged to cooperate fully with the efforts of the Administrator to ensure compliance with sections 3-304 and 3-305 of this order.

5-505. Federal agencies are further encouraged to comply with all state and local right-to-know and pollution prevention requirements to the extent that compliance with such laws and requirements is not otherwise already mandated.

5-506. Whenever the Administrator notifies a Federal agency that it is not in compliance with an applicable provision of this order, the Federal agency shall achieve compliance as promptly as is practicable.

5-507. The EPA shall report annually to the President on Federal agency compliance with the provisions of section 3-304 of this order.

5-508. To the extent permitted by law and unless such documentation is withheld pursuant to section 6-601 of this order, the public shall be afforded ready access to all strategies, plans, and reports required to be prepared by Federal agencies under this order by the agency preparing the strategy, plan, or report. When the reports are submitted to EPA, EPA shall compile the strategies, plans, and reports and make them publicly available as well. Federal agencies are encouraged to provide such strategies, plans, and reports to the State and local authorities where their facilities are located for an additional point of access to the public.

#### **Section 6-6. Exemption.**

6-601. In the interest of national security, the head of a Federal agency may request from the President an exemption from complying with the provisions of any or all aspects of this order for particular Federal agency facilities, provided that the procedures set forth in section 120(j)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9620(j)(1)), are followed. To the maximum extent practicable, and without compromising national security, all Federal agencies shall strive to comply with the purposes, goals, and implementation steps set forth in this order.

#### **Section 7-7 General Provisions.**

7-701. Nothing in this order shall create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

William J. Clinton  
THE WHITE HOUSE, August 3, 1993.  
Exec. Order No. 12856, 58 FR 41981, 1993 WL 292835 (Pres.)

*Revoked by EO 13101*

## • Executive Order 12873 - FEDERAL ACQUISITION, RECYCLING, AND WASTE PREVENTION

October 20, 1993

WHEREAS, the Nation's interest is served when the Federal Government can make more efficient use of natural resources by maximizing recycling and preventing waste wherever possible;

WHEREAS, this Administration is determined to strengthen the role of the Federal Government as an enlightened, environmentally conscious and concerned consumer;

WHEREAS, the Federal Government should--through cost-effective waste prevention and recycling activities--work to conserve disposal capacity, and serve as a model in this regard for private and other public institutions; and

WHEREAS, the use of recycled and environmentally preferable products and services by the Federal Government can spur private sector development of new technologies and use of such products, thereby creating business and employment opportunities and enhancing regional and local economies and the national economy;

NOW, THEREFORE, I, WILLIAM J. CLINTON, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the Solid Waste Disposal Act, Public Law 89-272, 79 Stat. 997, as amended by the Resource Conservation and Recovery Act ("RCRA"), Public Law 94-580, 90 Stat. 2795 as amended (42 USC 6901-6907), and section 301 of title 3, United States Code, hereby order as follows:

### **PART 1--PREAMBLE**

**Section 101.** Consistent with the demands of efficiency and cost effectiveness, the head of each Executive agency shall incorporate waste prevention and recycling in the agency's daily operations and work to increase and expand markets for recovered materials through greater Federal Government preference and demand for such products.

**Sec. 102.** Consistent with policies established by Office of Federal Procurement Policy ("OFPP") Policy Letter 92-4, agencies shall comply with executive branch policies for the acquisition and use of environmentally preferable products and services and implement cost-effective procurement preference programs favoring the purchase of these products and services.

**Sec. 103.** This order creates a Federal Environmental Executive and establishes high-level Environmental Executive positions within each agency to be responsible for expediting the implementation of this order and statutes that pertain to this order.

### **PART 2--DEFINITIONS**

For purposes of this order:

**Sec. 201.** "Environmentally preferable" means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

**Sec. 202.** "Executive agency" or "agency" means an Executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

**Sec. 203.** "Post consumer material" means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. "Post consumer material" is a part of the broader category of "recovered material".

**Sec. 204.** "Acquisition" means the acquiring by contract with appropriated funds for supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration and those technical and management functions directly related to the process of fulfilling agency needs by contract.

**Sec. 205.** "Recovered materials" means waste materials and by-products which have been recovered or diverted from solid waste, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (42 U.S.C. 6903(19)).

**Sec. 206.** "Recyclability" means the ability of a product or material to be recovered from, or otherwise diverted from, the solid waste stream for the purpose of recycling.

**Sec. 207.** "Recycling" means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of new products other than fuel for producing heat or power by combustion.

**Sec. 208.** "Waste prevention," also known as "source reduction," means any change in the design, manufacturing, purchase or use of materials or products (including packaging) to reduce their amount or toxicity before they become municipal solid waste. Waste prevention also refers to the reuse of products or materials.

**Sec. 209.** "Waste reduction" means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

**Sec. 210.** "Life Cycle Cost" means the amortized annual cost of a product, including capital costs, installation costs, operating costs, maintenance costs and disposal costs discounted over the lifetime of the product.

**Sec. 211.** "Life Cycle Analysis" means the comprehensive examination of a product's environmental and economic effects throughout its lifetime including new material extraction, transportation, manufacturing, use, and disposal.

### **PART 3--THE ROLE OF THE FEDERAL ENVIRONMENTAL EXECUTIVE AND AGENCY ENVIRONMENTAL EXECUTIVES**

**Sec. 301.** *Federal Environmental Executive.* (a) A Federal Environmental Executive shall be designated by the President and shall be located within the Environmental Protection Agency ("EPA"). The Federal Environmental Executive shall take all actions necessary to ensure that the agencies comply with the requirements of this order and shall generate an annual report to the Office of Management and Budget ("OMB"), at the time of agency budget submissions, on the actions taken by the



agencies to comply with the requirements of this order. In carrying out his or her functions, the Federal Environmental Executive shall consult with the Director of the White House Office on Environmental Policy.

(b) Staffing. A minimum of four (4) full time staff persons are to be provided by the agencies listed below to assist the Federal Environmental Executive, one of whom shall have experience in specification review and program requirements, one of whom shall have experience in procurement practices, and one of whom shall have experience in solid waste prevention and recycling. These four staff persons shall be appointed and replaced as follows:

(1) A representative from the Department of Defense shall be detailed for not less than one year and no more than two years;

(2) A representative from the General Services Administration ("GSA") shall be detailed for not less than one year and no more than two years;

(3) A representative from EPA shall be detailed for not less than one year and no more than two years; and

(4) A representative from one other agency determined by the Federal Environmental Executive shall be detailed on a rotational basis for not more than one year.

(c) Administration. Agencies are requested to make their services, personnel and facilities available to the Federal Environmental executive to the maximum extent practicable for the performance of functions under this order.

(d) Committees and Work Groups. The Federal Environmental Executive shall establish committees and work groups to identify, assess, and recommend actions to be taken to fulfill the goals, responsibilities, and initiatives of the Federal Environmental Executive. As these committees and work groups are created, agencies are requested to designate appropriate personnel in the areas of procurement and acquisition, standards and specifications, electronic commerce, facilities management, waste prevention, and recycling, and others as needed to staff and work on the initiatives of the Executive.

(e) Duties. The Federal Environmental Executive, in consultation with the Agency Environmental Executives, shall:

(1) Identify and recommend initiatives for government-wide implementation that will promote the purposes of this order, including:

(A) The development of a federal plan for agency implementation of this order and appropriate incentives to encourage the acquisition of recycled and environmentally preferable products by the Federal Government;

(B) The development of a federal implementation plan and guidance for instituting economically efficient federal waste prevention, energy and water efficiency programs, and recycling programs within each agency; and

(C) The development of a plan for making maximum use of available funding assistance programs;

(2) Collect and disseminate information electronically concerning methods to reduce waste, materials that can be recycled, costs and savings associated with waste prevention and recycling, and current market sources of products that are environmentally preferable or produced with recovered materials;

(3) Provide guidance and assistance to the agencies in setting up and reporting on agency programs and monitoring their effectiveness; and

(4) Coordinate appropriate government-wide education and training programs for agencies.

### **Sec. 302. Agency Environmental Executives.**

Within 90 days after the effective date of this order, the head of each Executive department and major procuring agency shall designate an Agency Environmental Executive from among his or her staff, who serves at a level no lower than at the Deputy Assistant Secretary level or equivalent. The Agency Environmental Executive will be responsible for:

(a) Coordinating all environmental programs in the areas of procurement and acquisition, standards and specification review, facilities management, waste prevention and recycling, and logistics;

(b) Participating in the interagency development of a Federal plan to:

(1) Create an awareness and outreach program for the private sector to facilitate markets for environmentally preferable and recycled products and services, promote new technologies, improve awareness about federal efforts in this area, and expedite agency efforts to procure new products identified under this order;

(2) Establish incentives, provide guidance and coordinate appropriate educational programs for agency employees; and

(3) coordinate the development of standard agency reports required by this order;

(c) reviewing agency programs and acquisitions to ensure compliance with this order.

## **PART 4--ACQUISITION PLANNING AND AFFIRMATIVE PROCUREMENT PROGRAMS**

### **Sec. 401. *Acquisition Planning.***

In developing plans, drawings, work statements, specifications, or other product descriptions, agencies shall consider the following factors: elimination of virgin material requirements; use of recovered materials; reuse of product; life cycle cost; recyclability; use of environmentally preferable products; waste prevention (including toxicity reduction or elimination); and ultimate disposal, as appropriate. These factors should be considered in acquisition planning for all procurements and in the evaluation and award of contracts, as appropriate. Program and acquisition managers should take an active role in these activities.

### **Sec. 402. *Affirmative Procurement Programs.***

The head of each Executive agency shall develop and implement affirmative procurement programs in accordance with RCRA section 6002 (42 USC 6962) and this order. Agencies shall ensure that responsibilities for preparation, implementation and monitoring of affirmative procurement programs are shared between the program personnel and procurement personnel. For the purposes of all purchases made pursuant to this order, EPA, in consultation with such other Federal agencies as appropriate, shall endeavor to maximize environmental benefits, consistent with price, performance and availability considerations, and shall adjust bid solicitation guidelines as necessary in order to accomplish this goal.

(a) Agencies shall establish affirmative procurement programs for all designated EPA guideline items purchased by their agency. For newly designated items, agencies shall revise their internal programs within one year from the date EPA designated the new items.

(b) For the currently designated EPA guideline items, which are: (i) concrete and cement containing fly ash; (ii) recycled paper products; (iii) re-refined lubricating oil; (iv) retread tires; and (v) insulation containing recovered materials; and for all future guideline items, agencies shall ensure that their affirmative procurement programs require that 100 percent of their purchases of products meet or exceed the EPA guideline standards unless written justification is provided that a product is not available competitively within a reasonable time frame, does not meet appropriate performance standards, or is only available at an unreasonable price.

(c) The Agency Environmental Executives will track agencies' purchases of designated EPA guideline items and report agencies' purchases of such guideline items to the Federal Environmental Executive. Agency Environmental Executives will be required to justify to the Federal Environmental Executive as to why the item(s) have not been purchased or submit a plan for how the agencies intend to increase their purchases of the designated item(s).

(d) Agency affirmative procurement programs, to the maximum extent practicable, shall encourage that:

(1) documents be transferred electronically;

(2) all government documents printed internally be printed double-sided, and

(3) contracts, grants, and cooperative agreements issued after the effective date of this order include provisions that require documents to be printed double-sided on recycled paper meeting or exceeding the standards established in this order or in future EPA guidelines.

**Sec. 403. *Procurement of Existing Guideline Items.***

Within 90 days after the effective date of this order, the head of each Executive agency that has not implemented an affirmative procurement program shall ensure that the affirmative procurement program has been established and is being implemented to the maximum extent practicable.

**Sec. 404. *Electronic Acquisition System.***

To reduce waste by eliminating unnecessary paper transactions in the acquisition process and to foster accurate data collection and reporting of agencies' purchases of recycled content and environmentally preferred products, the executive branch will implement an electronic commerce system consistent with the recommendations adopted as a result of the National Performance Review.

**PART 5--STANDARDS, SPECIFICATIONS AND DESIGNATION OF ITEMS**

**Sec. 501. *Specifications, Product Descriptions and Standards.*** Where applicable, Executive agencies shall review and revise federal and military specifications, product descriptions and standards to enhance Federal procurement of products made from recovered materials or that are environmentally preferable. When converting to a Commercial Item Description (CID), agencies shall ensure that environmental factors have been considered and that the CID meets or exceeds the environmentally preferable criteria of the government specification or product description. Agencies shall report annually on their compliance with this section to the Federal Environmental Executive for incorporation into the annual report to OMB referred to in section 301 of this order.

(a) If an inconsistency with RCRA Section 6002 or this order is identified in a specification, standard, or product description, the Federal Environmental Executive shall request that the Environmental Executive of the pertinent agency advise the Federal Environmental executive as to why the specification cannot be revised or submit a plan for revising it within 60 days.

(b) If an agency is able to revise an inconsistent specification but cannot do so within 60 days, it is the responsibility of that agency's Environmental Executive to monitor and implement the plan for revising it.

**Sec. 502. *Designation of Items that Contain Recovered Materials.***

In order to expedite the process of designating items that are or can be made with recovered materials, EPA shall institute a new process for designating these items in accordance with RCRA section 6002(e) as follows. (a) EPA shall issue a Comprehensive Procurement Guideline containing designated items that are or can be made with recovered materials.

(1) The proposed guideline shall be published for public comment in the Federal Register within 180 days after the effective date of this order and shall be updated annually after publication for comment to include additional items.

(2) Once items containing recovered materials have been designated by EPA through the new process established pursuant to this section and in compliance with RCRA section 6002, agencies shall modify their affirmative procurement programs to require that, to the maximum extent practicable, their purchases of products meet or exceed the EPA guideline standards unless written justification is provided that a product is not available competitively, not available within a reasonable time frame, does not meet appropriate performance standards, or is only available at an unreasonable price.

(b) Concurrent with the issuance of the Comprehensive Procurement Guideline required by section 502(a) of this order, EPA shall publish for public comment in the Federal Register Recovered Material Advisory Notice(s) that present the range of recovered material content levels within which the designated recycled items are currently available. These levels shall be updated periodically after publication for comment to reflect changes in market conditions.

**Sec. 503. *Guidance for Environmentally Preferable Products.***

In accordance with this order, EPA shall issue guidance that recommends principles that Executive agencies should use in making determinations for the preference and purchase of environmentally preferable products.

(a) Proposed guidance shall be published for public comment in the Federal Register within 180 days after the effective date of this order, and may be updated after public comment, as necessary, thereafter. To the extent necessary, EPA may issue additional guidance for public comment on how the principles can be applied to specific product categories.

(b) Once final guidance for environmentally preferable products has been issued by EPA, Executive agencies shall use these principles, to the maximum extent practicable, in identifying and purchasing environmentally preferable products and shall modify their procurement programs by reviewing and revising specifications, solicitation procedures, and policies as appropriate.

**Sec. 504. *Minimum Content Standard for Printing and Writing Paper.***

Executive agency heads shall ensure that agencies shall meet or exceed the following minimum materials content standards when purchasing or causing the purchase of printing and writing paper:

(a) For high speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, and white woven envelopes, the minimum content standard shall be no less than 20 percent Post consumer materials beginning December 31, 1994. This minimum content standard shall be increased to 30 percent beginning on December 31, 1998.

(b) For other uncoated printing and writing paper, such as writing and office paper, book paper, cotton fiber paper, and cover stock, the minimum content standard shall be 50 percent recovered materials, including 20 percent Post consumer materials beginning on December 31, 1994. This standard shall be increased to 30 percent beginning on December 31, 1998.

(c) As an alternative to meeting the standards in sections 504(a) and (b), for all printing and writing papers, the minimum content standard shall be no less than 50 percent recovered materials that are a waste material byproduct of a finished product other than a paper or textile product which would otherwise be disposed of in a landfill, as determined by the State in which the facility is located.

(1) The decision not to procure recycled content printing and writing paper meeting the standards specified in this section shall be based solely on a determination by the contracting officer that a satisfactory level of competition does not exist, that the items are not available within a reasonable time period, or that the available items fail to meet reasonable performance standards established by the agency or are only available at an unreasonable price.

(2) Each agency should implement waste prevention techniques, as specified in section 402(d) of this order, so that total annual expenditures for recycled content printing and writing paper do not exceed current annual budgets for paper products as measured by average annual expenditures, adjusted for inflation based on the Consumer Price Index or other suitable indices. In determining a target budget for printing and writing paper, agencies may take into account such factors as employee increases or decreases, new agency or statutory initiatives, and episodic or unique requirements (e.g., census).

(3) Effective immediately, all agencies making solicitations for the purchase of printing and writing paper shall seek bids for paper with Post consumer material or recovered waste material as described in section 504(c).

**Sec. 505. *Revision of Brightness Specifications and Standards.***

The General Services Administration and other Federal agencies are directed to identify, evaluate and revise or eliminate any standards or specifications unrelated to performance that present barriers to the purchase of paper or paper products made by production processes that minimize emissions of harmful byproducts. This evaluation shall include a review of unnecessary brightness and stock clause provisions, such as lignin content and chemical pulp requirements. The GSA shall complete the review and revision of such specifications within six months after the effective date of this order, and shall consult closely with the Joint Committee on Printing during such process. The GSA shall also compile any information or market studies that may be necessary to accomplish the objectives of this provision.

**Sec. 506. *Procurement of Re-refined Lubricating Oil and Retread Tires.***

Within 180 days after the effective date of this order, agencies shall implement the EPA procurement guidelines for re-refined lubricating oil and retread tires.

(a) Commodity managers shall finalize revisions to specifications for re-refined oil and retread tires, and develop and issue specifications for tire retreading services, as commodity managers shall take affirmative steps to procure these items in accordance with RCRA section 6002.

(b) Once these items become available, fleet managers shall take affirmative steps to procure these items in accordance with RCRA section 6002.

**Sec. 507. *Product Testing.***

The Secretary of Commerce, through the National Institute of Standards and Technology ("NIST"), shall establish a program for testing the performance of products containing recovered materials or deemed to be environmentally preferable. NIST shall work with EPA, GSA and other public and private sector organizations that conduct appropriate life cycle analyses to gather information that will assist agencies in making selections of products and services that are environmentally preferable.

(a) NIST shall publish appropriate reports describing testing programs, their results, and recommendations for testing methods and related specifications for use by Executive agencies and other interested parties.

(b) NIST shall coordinate with other Executive and State agencies to avoid duplication with existing testing programs.

## **PART 6--AGENCY GOALS AND REPORTING REQUIREMENTS**

**Sec. 601. *Goals for Waste Reduction.***

Each agency shall establish a goal for solid waste prevention and a goal for recycling to be achieved by the year 1995. These goals shall be submitted to the Federal Environmental Executive within 180 days after the effective date of this order. Progress on attaining these goals shall be reported by the agencies to the Federal Environmental Executive for the annual report specified in section 301 of this order.

**Sec. 602. *Goal for Increasing the Procurement of Recycled and Other Environmentally Preferable Products.*** Agencies shall strive to increase the procurement of products that are environmentally preferable or that are made with recovered materials and set annual goals to maximize the number of recycled products purchased, relative to non-recycled alternatives.

**Sec. 603. *Review of Implementation-***

The President's Council on Integrity and Efficiency ("PCIE") will request that the Inspectors General periodically review agencies' affirmative procurement programs and reporting procedures to ensure their compliance with this order.

## **PART 7--APPLICABILITY AND OTHER REQUIREMENTS**

**Sec. 701. *Contractor Operated Facilities.***

Contracts that provide for contractor operation of a government-owned or leased facility, awarded after the effective date of this order, shall include provisions that obligate the contractor to comply with the requirements of this order within the scope of its operations. In addition, to the extent permitted by law and where economically feasible, existing contracts should be modified.

**Sec. 702. *Real Property Acquisition and Management.*** Within 90 days after the effective date of this order, and to the extent permitted by law and where economically feasible, Executive agencies shall ensure compliance with the provisions of this order in the acquisition and management of federally owned and

leased space. GSA and other Executive agencies shall also include environmental and recycling provisions in the acquisition of all leased space and in the construction of new federal buildings.

**Sec. 703. *Retention of Funds***

Within 90 days after the effective date of this order, the Administrator of GSA shall develop a legislative proposal providing authority for Executive agencies to retain a share of the proceeds from the sale of materials recovered through recycling or waste prevention programs and specifying the eligibility requirements for the materials being recycled.

**Sec. 704. *Model Facility Programs***

Each Executive department and major procuring agency shall establish model facility demonstration programs that include comprehensive waste prevention and recycling programs and emphasize the procurement of recycled and environmentally preferable products and services using an electronic data interchange (EDI) system.

**Sec. 705. *Recycling Programs***

Each Executive agency that has not already done so shall initiate a program to promote cost effective waste prevention and recycling of reusable materials in all of its facilities. The recycling programs implemented pursuant to this section must be compatible with applicable State and local recycling requirements. Federal agencies shall also consider cooperative ventures with State and local governments to promote recycling and waste reduction in the community.

**PART 8--AWARENESS**

**Sec. 801. *Agency Awards Program***. A government-wide award will be presented annually by the White House to the best, most innovative program implementing the objectives of this order to give greater visibility to these efforts so that they can be incorporated government-wide.

**Sec. 802. *Internal Agency Awards Programs***. Each agency shall develop an internal agency-wide awards program, as appropriate, to reward its most innovative environmental programs. Winners of agency-wide awards will be eligible for the White House award program.

**PART 9--REVOCATION, LIMITATION AND IMPLEMENTATION**

**Sec. 901.** Executive Order No. 12780, dated October 31, 1991, is hereby revoked.

**Sec. 902.** This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person.

**Sec. 903.** The policies expressed in this order, including the requirements and elements for effective agency affirmative procurement programs, shall be implemented and incorporated in the Federal Acquisition Regulation (FAR) within 180 days after the effective date of this order. The implementation language shall consist of providing specific direction and guidance on agency programs for preference, promotion, estimation, certification, reviewing, and monitoring.

**Sec. 904.** This order shall be effective immediately.

William J. Clinton  
THE WHITE HOUSE  
October 20, 1993. 58 FR 54911

## • Executive Order 12898 - FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW-INCOME POPULATIONS

February 11, 1994

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

### **Section 1-1. Implementation.**

1-101. Agency Responsibilities. To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.

1-102. Creation of an Interagency Working Group on Environmental Justice.

(a) Within 3 months of the date of this order, the Administrator of the Environmental Protection Agency ("Administrator") or the Administrator's designee shall convene an interagency Federal Working Group on Environmental Justice ("Working Group"). The Working Group shall comprise the heads of the following executive agencies and offices, or their designees: (a) Department of Defense; (b) Department of Health and Human Services; (c) Department of Housing and Urban Development; (d) Department of Labor; (e) Department of Agriculture; (f) Department of Transportation; (g) Department of Justice; (h) Department of the Interior; (i) Department of Commerce; (j) Department of Energy; (k) Environmental Protection Agency; (l) Office of Management and Budget; (m) Office of Science and Technology Policy; (n) Office of the Deputy Assistant to the President for Environmental Policy; (o) Office of the Assistant to the President for Domestic Policy; (p) National Economic Council; (q) Council of Economic Advisers; and (r) such other Government officials as the President may designate. The Working Group shall report to the President through the Deputy Assistant to the President for Environmental Policy and the Assistant to the President for Domestic Policy.

(b) The Working Group shall: (1) provide guidance to Federal agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations; (2) coordinate with, provide guidance to, and serve as a clearinghouse for, each Federal agency as it develops an environmental justice strategy as required by section 1-103 of this order, in order to ensure that the administration, interpretation and enforcement of programs, activities and policies are undertaken in a consistent manner; (3) assist in coordinating research by, and stimulating cooperation among, the Environmental Protection Agency, the Department of Health and Human Services, the Department of Housing and Urban Development, and other agencies conducting research or other activities in accordance with section 3-3 of this order; (4) assist in coordinating data collection, required by this order; (5) examine existing data and studies on environmental justice; (6) hold public meetings as required in section 5-502(d) of this order; and (7) develop interagency model projects on environmental justice that evidence cooperation among Federal agencies.

1-103. Development of Agency Strategies.

(a) Except as provided in section 6- 605 of this order, each Federal agency shall develop an agency-wide environmental justice strategy, as set forth in subsections (b)-(e) of this section that identifies and addresses disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. The environmental justice strategy shall list programs, policies, planning and public participation processes, enforcement, and/or rulemakings related to human health or the environment that should be revised to, at a minimum: (1) promote enforcement of all health and environmental statutes in areas with minority

populations and low-income populations; (2) ensure greater public participation; (3) improve research and data collection relating to the health of and environment of minority populations and low-income populations; and (4) identify differential patterns of consumption of natural resources among minority populations and low-income populations. In addition, the environmental justice strategy shall include, where appropriate, a timetable for undertaking identified revisions and consideration of economic and social implications of the revisions.

(b) Within 4 months of the date of this order, each Federal agency shall identify an internal administrative process for developing its environmental justice strategy, and shall inform the Working Group of the process.

(c) Within 6 months of the date of this order, each Federal agency shall provide the Working Group with an outline of its proposed environmental justice strategy.

(d) Within 10 months of the date of this order, each Federal agency shall provide the Working Group with its proposed environmental justice strategy.

(e) Within 12 months of the date of this order, each Federal agency shall finalize its environmental justice strategy and provide a copy and written description of its strategy to the Working Group. During the 12 month period from the date of this order, each Federal agency, as part of its environmental justice strategy, shall identify several specific projects that can be promptly undertaken to address particular concerns identified during the development of the proposed environmental justice strategy, and a schedule for implementing those projects.

(f) Within 24 months of the date of this order, each Federal agency shall report to the Working Group on its progress in implementing its agency-wide environmental justice strategy.

(g) Federal agencies shall provide additional periodic reports to the Working Group as requested by the Working Group.

1-104. Reports to the President.

Within 14 months of the date of this order, the Working Group shall submit to the President, through the Office of the Deputy Assistant to the President for Environmental Policy and the Office of the Assistant to the President for Domestic Policy, a report that describes the implementation of this order, and includes the final environmental justice strategies described in section 1-103(e) of this order.

### **Section 2-2. *Federal Agency Responsibilities for Federal Programs.***

Each Federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.

### **Section 3-3. *Research, Data Collection, and Analysis.***

3-301. Human Health and Environmental Research and Analysis.

(a) Environmental human health research, whenever practicable and appropriate, shall include diverse segments of the population in epidemiological and clinical studies, including segments at high risk from environmental hazards, such as minority populations, low-income populations and workers who may be exposed to substantial environmental hazards.

(b) Environmental human health analyses, whenever practicable and appropriate, shall identify multiple and cumulative exposures.

(c) Federal agencies shall provide minority populations and low-income populations the opportunity to comment on the development and design of research strategies undertaken pursuant to this order.

3-302. Human Health and Environmental Data Collection and Analysis.

To the extent permitted by existing law, including the Privacy Act, as amended (5 U.S.C. section 552a):

(a) Each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information assessing and comparing environmental and human health risks borne by populations identified by race, national origin, or income. To the extent practical and appropriate, Federal agencies shall



use this information to determine whether their programs, policies, and activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(b) In connection with the development and implementation of agency strategies in section 1-103 of this order, each Federal agency, whenever practicable and appropriate, shall collect, maintain and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding facilities or sites expected to have a substantial environmental, human health, or economic effect on the surrounding populations, when such facilities or sites become the subject of a substantial Federal environmental administrative or judicial action. Such information shall be made available to the public, unless prohibited by law; and

(c) Each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding Federal facilities that are: (1) subject to the reporting requirements under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. section 11001-11050 as mandated in Executive Order No. 12856; and (2) expected to have a substantial environmental, human health, or economic effect on surrounding populations. Such information shall be made available to the public, unless prohibited by law.

(d) In carrying out the responsibilities in this section, each Federal agency, whenever practicable and appropriate, shall share information and eliminate unnecessary duplication of efforts through the use of existing data systems and cooperative agreements among Federal agencies and with State, local, and tribal governments.

#### **Section 4-4. *Subsistence Consumption of Fish and Wildlife.***

4-401. Consumption Patterns. In order to assist in identifying the need for ensuring protection of populations with differential patterns of subsistence consumption of fish and wildlife, Federal agencies, whenever practicable and appropriate, shall collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence. Federal agencies shall communicate to the public the risks of those consumption patterns.

4-402. Guidance. Federal agencies, whenever practicable and appropriate, shall work in a coordinated manner to publish guidance reflecting the latest scientific information available concerning methods for evaluating the human health risks associated with the consumption of pollutant-bearing fish or wildlife. Agencies shall consider such guidance in developing their policies and rules.

#### **Section 5-5. *Public Participation and Access to Information.***

(a) The public may submit recommendations to Federal agencies relating to the incorporation of environmental justice principles into Federal agency programs or policies. Each Federal agency shall convey such recommendations to the Working Group.

(b) Each Federal agency may, whenever practicable and appropriate, translate crucial public documents, notices, and hearings relating to human health or the environment for limited English speaking populations.

(c) Each Federal agency shall work to ensure that public documents, notices, and hearings relating to human health or the environment are concise, understandable, and readily accessible to the public.

(d) The Working Group shall hold public meetings, as appropriate, for the purpose of fact-finding, receiving public comments, and conducting inquiries concerning environmental justice. The Working Group shall prepare for public review a summary of the comments and recommendations discussed at the public meetings.

#### **Section 6-6. *General Provisions.***

6-601. Responsibility for Agency Implementation. The head of each Federal agency shall be responsible for ensuring compliance with this order. Each Federal agency shall conduct internal reviews and take such other steps as may be necessary to monitor compliance with this order.

6-602. Executive Order No. 12250. This Executive order is intended to supplement but not supersede Executive Order No. 12250, which requires consistent and effective implementation of various laws prohibiting discriminatory practices in programs receiving Federal financial assistance. Nothing herein shall limit the effect or mandate of Executive Order No. 12250.

6-603. Executive Order No. 12875. This Executive order is not intended to limit the effect or mandate of Executive Order No. 12875.

6-604. Scope. For purposes of this order, Federal agency means any agency on the Working Group, and such other agencies as may be designated by the President, that conducts any Federal program or activity that substantially affects human health or the environment. Independent agencies are requested to comply with the provisions of this order.

6-605. Petitions for Exemptions. The head of a Federal agency may petition the President for an exemption from the requirements of this order on the grounds that all or some of the petitioning agency's programs or activities should not be subject to the requirements of this order.

6-606. Native American Programs. Each Federal agency responsibility set forth under this order shall apply equally to Native American programs. In addition, the Department of the Interior, in coordination with the Working Group, and, after consultation with tribal leaders, shall coordinate steps to be taken pursuant to this order that address Federally-recognized Indian Tribes.

6-607. Costs. Unless otherwise provided by law, Federal agencies shall assume the financial costs of complying with this order.

6-608. General. Federal agencies shall implement this order consistent with, and to the extent permitted by, existing law.

6-609. Judicial Review. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance of the United States, its agencies, its officers, or any other person with this order.

William J. Clinton  
THE WHITE HOUSE,  
February 11, 1994.  
Exec. Order No. 12898, 59 FR 7629, 1994 WL 43891 (Pres.)

• **Executive Order 12948 - AMENDMENT TO EXECUTIVE ORDER NO. 12898**

January 30, 1995

By the authority vested in me as President by the Constitution and the laws of the United States of America and in order to amend Executive Order No. 12898, it is hereby ordered that section 1-103(e) of that order is amended by deleting the phrase "Within 12 months of the date of this order," and inserting the phrase "By March 24, 1995," in lieu thereof and by deleting, in the second sentence of section 1-103(e), the phrase "During the 12 month period from the date of this order," and inserting the phrase "From the date of this order through March 24, 1995," in lieu thereof.

William J. Clinton  
THE WHITE HOUSE,  
January 30, 1995.  
Exec. Order No. 12948, 60 FR 6381, 1995 WL 35929 (Pres.)

## • Executive Order 12962 - RECREATIONAL FISHERIES

June 7, 1995

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in furtherance of the purposes of the Fish and Wildlife Act of 1956 (16 U.S.C. 742a-d, and e- j), the Fish and Wildlife Coordination Act (16 U.S.C. 661-666c), the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801-1882), and other pertinent statutes, and in order to conserve, restore, and enhance aquatic systems to provide for increased recreational fishing opportunities nationwide, it is ordered as follows:

### **Section 1.** *Federal Agency Duties.*

Federal agencies shall, to the extent permitted by law and where practicable, and in cooperation with States and Tribes, improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for increased recreational fishing opportunities by:

- (a) developing and encouraging partnerships between governments and the private sector to advance aquatic resource conservation and enhance recreational fishing opportunities;
- (b) identifying recreational fishing opportunities that are limited by water quality and habitat degradation and promoting restoration to support viable, healthy, and, where feasible, self-sustaining recreational fisheries;
- (c) fostering sound aquatic conservation and restoration endeavors to benefit recreational fisheries;
- (d) providing access to and promoting awareness of opportunities for public participation and enjoyment of U.S. recreational fishery resources;
- (e) supporting outreach programs designed to stimulate angler participation in the conservation and restoration of aquatic systems;
- (f) implementing laws under their purview in a manner that will conserve, restore, and enhance aquatic systems that support recreational fisheries;
- (g) establishing cost-share programs, under existing authorities, that match or exceed Federal funds with nonfederal contributions;
- (h) evaluating the effects of Federally funded, permitted, or authorized actions on aquatic systems and recreational fisheries and document those effects relative to the purpose of this order; and
- (i) assisting private landowners to conserve and enhance aquatic resources on their lands.

### **Section 2.** *National Recreational Fisheries Coordination Council.*

A National Recreational Fisheries Coordination Council ("Coordination Council") is hereby established. The Coordination Council shall consist of seven members, one member designated by each of the following Secretaries--Interior, Commerce, Agriculture, Energy, Transportation, and Defense--and one by the Administrator of the Environmental Protection Agency.

The Coordination Council shall:

- (a) ensure that the social and economic values of healthy aquatic systems that support recreational fisheries are considered by Federal agencies in the course of their actions;
- (b) reduce duplicative and cost-inefficient programs among Federal agencies involved in conserving or managing recreational fisheries;
- (c) share the latest resource information and management technologies to assist in the conservation and management of recreational fisheries;
- (d) assess the implementation of the Conservation Plan required under section 3 of this order; and
- (e) develop a biennial report of accomplishments of the Conservation Plan.

The representatives designated by the Secretaries of Commerce and the Interior shall co-chair the Coordination Council.

**Section 3. *Recreational Fishery Resources Conservation Plan.***

(a) Within 12 months of the date of this order, the Coordination Council, in cooperation with Federal agencies, States, and Tribes, and after consulting with the Federally chartered Sport Fishing and Boating Partnership Council, shall develop a comprehensive Recreational Fishery Resources Conservation Plan ("Conservation Plan").

(b) The Conservation Plan will set forth a 5-year agenda for Federal agencies identified by the Coordination Council. In so doing, the Conservation Plan will establish, to the extent permitted by law and where practicable; (1) measurable objectives to conserve and restore aquatic systems that support viable and healthy recreational fishery resources, (2) actions to be taken by the identified Federal agencies, (3) a method of ensuring the accountability of such Federal agencies, and (4) a comprehensive mechanism to evaluate achievements. The Conservation Plan will, to the extent practicable, be integrated with existing plans and programs, reduce duplication, and will include recommended actions for cooperation with States, Tribes, conservation groups, and the recreational fisheries community.

**Section 4. *Joint Policy for Administering the Endangered Species Act of 1973.***

All Federal agencies will aggressively work to identify and minimize conflicts between recreational fisheries and their respective responsibilities under the Endangered Species Act of 1973 ("ESA") (16 U.S.C. 1531 et seq.). Within 6 months of the date of this order, the Fish and Wildlife Service and the National Marine Fisheries Service will promote compatibility and reduce conflicts between the administration of the ESA and recreational fisheries by developing a joint agency policy that will; (1) ensure consistency in the administration of the ESA between and within the two agencies, (2) promote collaboration with other Federal, State, and Tribal fisheries managers, and (3) improve and increase efforts to inform nonfederal entities of the requirements of the ESA.

**Section 5. *Sport Fishing and Boating Partnership Council.***

To assist in the implementation of this order, the Secretary of the Interior shall expand the role of the Sport Fishing and Boating Partnership Council to:

(a) monitor specific Federal activities affecting aquatic systems and the recreational fisheries they support;

(b) review and evaluate the relation of Federal policies and activities to the status and conditions of recreational fishery resources; and

(c) prepare an annual report of its activities, findings, and recommendations for submission to the Coordination Council.

**Section 6. *Judicial Review.***

This order is intended only to improve the internal management of the executive branch and it is not intended to create any right, benefit or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any other person.

William J. Clinton  
THE WHITE HOUSE,  
June 7, 1995.

Exec. Order No. 12962, 60 FR 30769, 1995 WL 341522 (Pres.)

## • Executive Order 13007 - INDIAN SACRED SITES

May 24, 1996

By the authority vested in me as President by the Constitution and the laws of the United States, in furtherance of Federal treaties, and in order to protect and preserve Indian religious practices, it is hereby ordered:

### **Section 1.** *Accommodation of Sacred Sites.*

(a) In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

(b) For purposes of this order:

(i) "Federal lands" means any land or interests in land owned by the United States, including leasehold interests held by the United States, except Indian trust lands;

(ii) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law No. 103-454, 108 Stat. 4791, and "Indian" refers to a member of such an Indian tribe; and

(iii) "Sacred site" means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

### **Section 2.** *Procedures.*

(a) Each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, as appropriate, promptly implement procedures for the purposes of carrying out the provisions of section 1 of this order, including, where practicable and appropriate, procedures to ensure reasonable notice is provided of proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites. In all actions pursuant to this section, agencies shall comply with the Executive memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments."

(b) Within 1 year of the effective date of this order, the head of each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall report to the President, through the Assistant to the President for Domestic Policy, on the implementation of this order. Such reports shall address, among other things, (i) any changes necessary to accommodate access to and ceremonial use of Indian sacred sites; (ii) any changes necessary to avoid adversely affecting the physical integrity of Indian sacred sites; and (iii) procedures implemented or proposed to facilitate consultation with appropriate Indian tribes and religious leaders and the expeditious resolution of disputes relating to agency action on Federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites.

**Section 3.** Nothing in this order shall be construed to require a taking of vested property interests. Nor shall this order be construed to impair enforceable rights to use of Federal lands that have been granted to third parties through final agency action. For purposes of this order, "agency action" has the same meaning as in the Administrative Procedure Act (5 U.S.C. 551(13)).

**Section 4.** This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, officers, or any person.

WILLIAM J. CLINTON

THE WHITE HOUSE,

May 24, 1996

Exec. Order No. 13007, 61 FR 26771, 1996 WL 285380 (Pres.)

## • Executive Order 13016 - AMENDMENT TO EXECUTIVE ORDER NO. 12580

August 28, 1996

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 115 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601 *et seq.*) (the “Act”), and section 301 of title 3, United States Code, I hereby order that Executive Order No. 12580 of January 23, 1987, be amended by adding to section 4 the following new subsections:

**Section 1.** A new subsection (c)(3) is added to read as follows: “(3) Subject to subsections (a) and (b)(1) of this section, the functions vested in the President by sections 106(a) and 122 (except subsection (b)(1)) of the Act are delegated to the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, and the Secretary of Energy, to be exercised only with the concurrence of the Coast Guard, with respect to any release or threatened release in the coastal zone, Great Lakes waters, ports, and harbors, affecting (1) natural resources under their trusteeship, or (2) a vessel or facility subject to their custody, jurisdiction, or control. Such authority shall not be exercised at any vessel or facility at which the Coast Guard is the lead Federal agency for the conduct or oversight of a response action. Such authority shall not be construed to authorize or permit use of the Hazardous Substance Superfund to implement section 106 or to fund performance of any response action in lieu of the payment by a person who receives but does not comply with an order pursuant to section 106(a), where such order has been issued by the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, or the Secretary of Energy. This subsection shall not be construed to limit any authority delegated by any other section of this order. Authority granted under this subsection shall be exercised in a manner to ensure interagency coordination that enhances efficiency and effectiveness.”

**Sec. 2.** A new subsection (d)(3) is added to section 4 to read as follows: “(3) Subject to subsections (a), (b)(1), and (c)(1) of this section, the functions vested in the President by sections 106(a) and 122 (except subsection (b)(1)) of the Act are delegated to the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, and the Department of Energy, to be exercised only with the concurrence of the Administrator, with respect to any release or threatened release affecting (1) natural resources under their trusteeship, or (2) a vessel or facility subject to their custody, jurisdiction, or control. Such authority shall not be exercised at any vessel or facility at which the Administrator is the lead Federal official for the conduct or oversight of a response action. Such authority shall not be construed to authorize or permit use of the Hazardous Substance Superfund to implement section 106 or to fund performance of any response action in lieu of the payment by a person who receives but does not comply with an order pursuant to section 106(a), where such order has been issued by the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, or the Secretary of Energy. This subsection shall not be construed to limit any authority delegated by any other section of this order. Authority granted under this subsection shall be exercised in a manner to ensure interagency coordination that enhances efficiency and effectiveness.”

WILLIAM J. CLINTON  
THE WHITE HOUSE,

August 28, 1996. [FR Doc. 96-22462 **Federal Register** Vol. 61, No. 170, Friday, August 30, 1996]



## • Executive Order 13057 - FEDERAL ACTIONS IN THE LAKE TAHOE REGION

July 26, 1997

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to ensure that Federal agency actions protect the extraordinary natural, recreational, and ecological resources in the Lake Tahoe Region (“Region”) (as defined by Public Law 91-148), an area of national concern, it is hereby ordered as follows:

### **Section 1.** *Tahoe Federal Interagency Partnership.*

1-101. The Federal agencies and departments having principal management or jurisdictional authorities in the Lake Tahoe Region are directed to establish a Federal Interagency Partnership on the Lake Tahoe Ecosystem (“Partner-ship”).

1-102. Members of the Partnership shall include the Secretary of Agriculture, the Secretary of the Interior, the Secretary of Transportation, the Administrator of the Environmental Protection Agency, the Secretary of the Army, and the heads of any other Federal agencies operating in the Region that choose to participate. Representation on the Partnership may be delegated. The Partnership shall be chaired by the Secretary of Agriculture for the first year after its establishment. The Chair of the Partnership shall thereafter be rotated among the members on an annual basis.

1-103. The Partnership will:

(a) facilitate coordination of Federal programs, projects, and activities within the Lake Tahoe Region and promotion of consistent policies and strategies to address the Region’s environmental and economic concerns;

(b) encourage Federal agencies within the Region to coordinate and share resources and data, avoid unnecessary duplication of Federal efforts, and eliminate inefficiencies in Federal action to the greatest extent feasible;

(c) ensure that Federal agencies closely coordinate with the States of California and Nevada and appropriate tribal or local government entities to facilitate the achievement of desired terrestrial and aquatic ecosystem conditions and the enhancement of recreation, tourism, and other economic opportunities within the Region;

(d) support appropriate regional programs and studies needed to attain environmental threshold standards for water quality, transportation, air quality, vegetation, soils (stream environment zone restoration), wildlife habitat, fish habitat, scenic resources, recreation, and noise;

(e) encourage the development of appropriate public, private, and tribal partnerships for the restoration and management of the Lake Tahoe ecosystem and the health of the local economy;

(f) support appropriate actions to improve the water quality of Lake Tahoe through all appropriate means, including restoration of shorelines, streams, riparian zones, wetlands, and other parts of the watershed; management of uses of the lake; and control of airborne and other sources of contaminants;

(g) encourage the development of appropriate vegetative management actions necessary to attain a healthy Lake Tahoe ecosystem, including a program of revegetation, road maintenance, obliteration, and promotion of forest health;

(h) support appropriate regional transportation and air quality goals, programs, and studies for the Region;

(i) support appropriate fisheries and wildlife habitat restoration programs for the Region, including programs for endangered species and uncommon species;

(j) facilitate coordination of research and monitoring activities for purposes of developing a common natural resources data base and geographic information system capability, in cooperation with appropriate regional and local colleges and universities;

- (k) support development of and communication about appropriate recreation plans and programs, appropriate scenic quality improvement programs, and recognition for traditional Washoe tribal uses;
- (l) support regional partnership efforts to inform the public of the values of managing the Lake Tahoe Region to achieve environmental and economic goals;
- (m) explore opportunities for public involvement in achieving its activities; and
- (n) explore opportunities for assisting regional governments in their efforts.

1-104. The Partnership will report back to the President in 90 days on the implementation of the terms of this order.

**Sec. 2. Memorandum of Agreement.**

2-201. The Partnership shall negotiate a Memorandum of Agreement with the States of California and Nevada, the Washoe Tribal Government, the Tahoe Regional Planning Agency, and interested local governments.

2-202. The Memorandum of Agreement shall be designed to facilitate coordination among the parties to the Agreement, and shall document areas of mutual interest and concern and opportunities for cooperation, support, or assistance.

**Sec. 3. General Provisions.**

3-301. The Chair of the Partnership shall advise the President on the implementation of this order. The Chair may recommend other administrative actions that may be taken to improve the coordination of agency actions and decisions whenever such coordination would protect and enhance the Region's natural, ecological, and economic values.

3-302. Nothing in this order shall be construed to limit, delay, or prohibit any agency action that is essential for the protection of public health or safety, for national security, or for the maintenance or rehabilitation of environmental quality within the Region.

3-303. Nothing in this order is intended to create, and this order does not create, any right to administrative or judicial review, or any other right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON  
THE WHITE HOUSE,  
*July 26, 1997.*  
[FR Doc. 97-20497  
Filed 7-31-97; 8:45 am]  
Billing code 3195-01-P  
**Federal Register**  
Vol. 62, No. 148  
Friday, August 1, 1997

## • Executive Order 13061 - FEDERAL SUPPORT OF COMMUNITY EFFORTS ALONG AMERICAN HERITAGE RIVERS

September 11, 1997

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Environmental Policy Act of 1969 (Public Law 91–190), and in order to protect and restore rivers and their adjacent communities, it is hereby ordered as follows:

### **Section 1. Policies.**

(a) The American Heritage Rivers initiative has three objectives: natural resource and environmental protection, economic revitalization, and historic and cultural preservation.

(b) Executive agencies (“agencies”), to the extent permitted by law and consistent with their missions and resources, shall coordinate Federal plans, functions, programs, and resources to preserve, protect, and restore rivers and their associated resources important to our history, culture, and natural heritage.

(c) Agencies shall develop plans to bring increased efficiencies to existing and authorized programs with goals that are supportive of protection and restoration of communities along rivers.

(d) In accordance with Executive Order 12630, agencies shall act with due regard for the protection of private property provided for by the Fifth Amendment to the United States Constitution. No new regulatory authority is created as a result of the American Heritage Rivers initiative. This initiative will not interfere with matters of State, local, and tribal government jurisdiction.

(e) In furtherance of these policies, the President will designate rivers that meet certain criteria as “American Heritage Rivers.”

(f) It is the policy of the Federal Government that communities shall nominate rivers as American Heritage Rivers and the Federal role will be solely to support community-based efforts to preserve, protect, and restore these rivers and their communities.

(g) Agencies should, to the extent practicable, help identify resources in the private and nonprofit sectors to aid revitalization efforts.

(h) Agencies are encouraged, to the extent permitted by law, to develop partnerships with State, local, and tribal governments and community and nongovernmental organizations. Agencies will be responsive to the diverse needs of different kinds of communities from the core of our cities to remote rural areas and shall seek to ensure that the role played by the Federal Government is complementary to the plans and work being carried out by State, local, and tribal governments. To the extent possible, Federal resources will be strategically directed to complement resources being spent by these governments.

(i) Agencies shall establish a method for field offices to assess the success of the American Heritage River initiative and provide a means to recommend changes that will improve the delivery and accessibility of Federal services and programs. Agencies are directed, where appropriate, to reduce and make more flexible procedural requirements and paperwork related to providing assistance to communities along designated rivers.

(j) Agencies shall commit to a policy under which they will seek to ensure that their actions have a positive effect on the natural, historic, economic, and cultural resources of American Heritage River communities. The policy will require agencies to consult with American Heritage River communities early in the planning stages of Federal actions, take into account the communities’ goals and objectives and ensure that actions are compatible with the overall character of these communities. Agencies shall seek to ensure that their help for one community does not adversely affect neighboring communities. Additionally, agencies are encouraged to develop formal and informal partnerships to assist communities. Local Federal facilities, to the extent permitted by law and consistent with the agencies’ missions and resources, should

provide public access, physical space, technical assistance, and other support for American Heritage River communities.

(k) In addition to providing support to designated rivers, agencies will work together to provide information and services to all communities seeking support.

## **Sec. 2. *Process for Nominating an American Heritage River.***

(a) *Nomination.* Communities, in coordination with their State, local, or tribal governments, can nominate their river, river stretch, or river confluence for designation as an American Heritage River. When several communities are involved in the nomination of the same river, nominations will detail the coordination among the interested communities and the role each will play in the process. Individuals living outside the community may not nominate a river.

(b) *Selection Criteria.* Nominations will be judged based on the following:

(1) the characteristics of the natural, economic, agricultural, scenic, historic, cultural, or recreational resources of the river that render it distinctive or unique;

(2) the effectiveness with which the community has defined its plan of action and the extent to which the plan addresses, either through planned actions or past accomplishments, all three American Heritage Rivers objectives, which are set forth in section 1(a) of this order;

(3) the strength and diversity of community support for the nomination as evidenced by letters from elected officials; landowners; private citizens; businesses; and especially State, local, and tribal governments. Broad community support is essential to receiving the American Heritage River designation; and

(4) willingness and capability of the community to forge partnerships and agreements to implement their plan to meet their goals and objectives.

(c) *Recommendation Process.*

The Chair of the Council on Environmental Quality (“CEQ”) shall develop a fair and objective procedure to obtain the views of a diverse group of experts for the purpose of making recommendations to the President as to which rivers shall be designated. These experts shall reflect a variety of viewpoints, such as those representing natural, cultural, and historic resources; scenic, environmental, and recreation interests; tourism, transportation, and economic development interests; and industries such as agriculture, hydropower, manufacturing, mining, and forest management. The Chair of the CEQ will ensure that the rivers recommended represent a variety of stream sizes, diverse geographical locations, and a wide range of settings from urban to rural and ensure that relatively pristine, successful revitalization efforts are considered as well as degraded rivers in need of restoration.

(d) *Designation.*

(1) The President will designate certain rivers as American Heritage Rivers. Based on the receipt of a sufficient number of qualified nominations, ten rivers will be designated in the first phase of the initiative.

(2) The Interagency Committee provided for in section 3 of this order shall develop a process by which any community that nominates and has its river designated may have this designation terminated at its request.

(3) Upon a determination by the Chair of the CEQ that a community has failed to implement its plan, the Chair may recommend to the President that a designation be revoked. The Chair shall notify the community at least 30 days prior to making such a recommendation to the President. Based on that recommendation, the President may revoke the designation.

**Sec. 3. *Establishment of an Interagency Committee.*** There is hereby established the American Heritage Rivers Interagency Committee (“Committee”). The Committee shall have two co-chairs. The Chair of the CEQ shall be a permanent co-chair. The other co-chair will rotate among the heads of the agencies listed below.

(a) The Committee shall be composed of the following members or their designees at the Assistant Secretary level or equivalent:

- (1) The Secretary of Defense;
- (2) The Attorney General;
- (3) The Secretary of the Interior;
- (4) The Secretary of Agriculture;
- (5) The Secretary of Commerce;
- (6) The Secretary of Housing and Urban Development;
- (7) The Secretary of Transportation;
- (8) The Secretary of Energy;
- (9) The Administrator of the Environmental Protection Agency;
- (10) The Chair of the Advisory Council on Historic Preservation;
- (11) The Chairperson of the National Endowment for the Arts; and
- (12) The Chairperson of the National Endowment for the Humanities.

The Chair of the CEQ may invite to participate in meetings of the Committee, representatives of other agencies, as appropriate.

(b) The Committee shall:

- (1) establish formal guidelines for designation as an American Heritage River;
- (2) periodically review the actions of agencies in support of the American Heritage Rivers;
- (3) report to the President on the progress, accomplishments, and effectiveness of the American Heritage Rivers initiative; and
- (4) perform other duties as directed by the Chair of the CEQ.

#### **Sec. 4. Responsibilities of the Federal Agencies.**

Consistent with Title I of the National Environmental Policy Act of 1969, agencies shall:

- (a) identify their existing programs and plans that give them the authority to offer assistance to communities involved in river conservation and community health and revitalization;
- (b) to the extent practicable and permitted by law and regulation, refocus programs, grants, and technical assistance to provide support for communities adjacent to American Heritage Rivers;
- (c) identify all technical tools, including those developed for purposes other than river conservation, that can be applied to river protection, restoration, and community revitalization;
- (d) provide access to existing scientific data and information to the extent permitted by law and consistent with the agencies mission and resources;
- (e) cooperate with State, local, and tribal governments and communities with respect to their activities that take place in, or affect the area around, an American Heritage River;
- (f) commit to a policy, as set forth in section 1(j) of this order, in making decisions affecting the quality of an American Heritage River;
- (g) select from among all the agencies a single individual called the “River Navigator,” for each river that is designated an American Heritage River, with whom the communities can communicate goals and needs and who will facilitate community-agency interchange;
- (h) allow public access to the river, for agencies with facilities along American Heritage Rivers, to the extent practicable and consistent with their mission; and
- (i) cooperate, as appropriate, with communities on projects that protect or preserve stretches of the river that are on Federal property or adjacent to a Federal facility.

#### **Sec. 5. Responsibilities of the Committee and the Council on Environmental Quality.**

The CEQ shall serve as Executive agent for the Committee, and the CEQ and the Committee shall ensure the implementation of the policies and purposes of this initiative.

**Sec. 6. *Definition.*** For the purposes of this order, Executive agency means any agency on the Committee and such other agency as may be designated by the President.

**Sec. 7. *Judicial Review.*** This order does not create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON  
THE WHITE HOUSE,  
*September 11, 1997.*

[FR Doc. 97-24591  
Filed 9-12-97; 8:45 am]  
Billing code 3195-01-P

## • Executive Order 13080 - AMERICAN HERITAGE RIVERS INITIATIVE ADVISORY COMMITTEE

April 7, 1998

By the authority vested in me as President by the Constitution and the laws of the United States, including the Federal Advisory Committee Act, 5 U.S.C. App., as amended, it is hereby ordered as follows:

**Section 1. Establishment.** There is hereby established the American Heritage Rivers Initiative Advisory Committee (“Committee”). The Committee shall consist of up to 20 members appointed by the President from the public and private sectors. Each member of the Committee shall be a person who, as a result of his or her training, experience, and attainments, is well qualified to appraise the quality of nominations for selection of rivers as American Heritage Rivers submitted by communities across the country. The expertise of members of the Committee shall be in areas such as natural, cultural, and historic resources; water quality; public health; scenic and recreation interests; tourism and economic development interests; industry; and agriculture. The President shall designate a Chair from among the members of the Committee.

**Sec. 2.** (a) The Committee shall review nominations from communities and recommend to the President up to 20 rivers for consideration for designation as American Heritage Rivers. From the rivers recommended for consideration, the President shall designate ten as American Heritage Rivers.

(b) In its review of nominations submitted by communities, the Committee shall provide its assessment of:

(1) The scope of each nomination’s application and the adequacy of its design to achieve the community’s goals;

(2) Whether the natural, economic (including agricultural), scenic, historic, cultural, and/or recreational resources featured in the application are distinctive or unique;

(3) The extent to which the community’s plan of action is clearly defined and the extent to which the plan addresses all three American Heritage Rivers objectives—natural resource and environmental protection, economic revitalization, and historic and cultural preservation—either through planned actions or past accomplishments, as well as any other characteristics of the proposals that distinguish a nomination, such as:

(A) Community vision and partnership;

(B) Sustainability of products and projects, including project maintenance;

(C) Resources, both committed and anticipated, including means of generating additional support from both private and public sources;

(D) Anticipated Federal role as defined by the applicants;

(E) Schedule or timeline;

(F) Citizen involvement;

(G) Public education relating to the designation of the river;

(H) Logistical support, operating procedures, and policies;

(I) Prior accomplishments, if relevant, and relationship to existing plans and projects in the area; and

(J) Measures of performance.

(4) The strength and diversity of support for the nomination and plan of action as evidenced by letters from local and State governments, Indian tribes, elected officials, any and all parties who participate in the life and health of the area to be nominated, or who have an interest in the economic life and cultural and environmental vigor of the involved community.

(c) The Committee also should seek to recommend the selection of rivers that as a group:

(1) Represent the natural, historic, cultural, social, economic, and agricultural diversity of American rivers;

(2) Showcase a variety of stream sizes and an assortment of urban, rural, and mixed settings from around the country, including both relatively pristine and degraded rivers;

(3) Highlight a variety of innovative programs in such areas as historic preservation, sustainable development through tourism, wildlife management, fisheries restoration, recreation, community revitalization, agricultural practices, and flood plain and watershed management;

(4) Include community efforts in early stages of development as well as those that are more well established; and

(5) Stand to benefit from targeted Federal assistance.

(d) The Committee shall report its recommendations for selection of rivers as American Heritage Rivers to the President through the Chair of the Council on Environmental Quality.

**Sec. 3. Administration.** (a) The heads of executive departments and agencies shall provide the Committee, to the extent practicable and permitted by law, such information with respect to river revitalization as the Committee requires to fulfill its functions.

(b) The Committee shall be supported both administratively and financially by the Secretary of Defense, acting through the Assistant Secretary of the Army for Civil Works.

**Sec. 4. General.** The Committee shall terminate no later than 2 years from the date of this order. The Chair of the Committee, with the approval of the designated Federal officer, shall call meetings of the American Heritage Rivers Initiative Advisory Committee.

WILLIAM J. CLINTON  
THE WHITE HOUSE,  
*April 7, 1998.*

[FR Doc. 98-9709  
Filed 4-9-98; 8:45 am]  
Billing code 3195-01-P



## • Executive Order 13084 - CONSULTATION AND COORDINATION WITH INDIAN TRIBAL GOVERNMENTS

May 14, 1998

The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. In treaties, our Nation has guaranteed the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, trust resources, and Indian tribal treaty and other rights. Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with Indian tribal governments in the development of regulatory practices on Federal matters that significantly or uniquely affect their communities; to reduce the imposition of unfunded mandates upon Indian tribal governments; and to streamline the application process for and increase the availability of waivers to Indian tribal governments; it is hereby ordered as follows:

### **Section 1. Definitions.** For purposes of this order:

(a) “State” or “States” refer to the States of the United States of America, individually or collectively, and, where relevant, to State governments, including units of local government and other political subdivisions established by the States.

(b) “Indian tribe” means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(c) “Agency” means any authority of the United States that is an “agency” under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

**Sec. 2. Policymaking Criteria.** In formulating policies significantly or uniquely affecting Indian tribal governments, agencies shall be guided, to the extent permitted by law, by principles of respect for Indian tribal self-government and sovereignty, for tribal treaty and other rights, and for responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

**Sec. 3. Consultation.** (a) Each agency shall have an effective process to permit elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that is not required by statute, that significantly or uniquely affects the communities of the Indian tribal governments, and that imposes substantial direct compliance costs on such communities, unless:

(1) funds necessary to pay the direct costs incurred by the Indian tribal government in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of the Office of Management and Budget a description of the extent of the agency’s prior consultation with representatives of affected Indian tribal governments, a summary of the nature of their concerns, and the agency’s position supporting the need to issue the regulation; and

(B) makes available to the Director of the Office of Management and Budget any written communications submitted to the agency by such Indian tribal governments.

**Sec. 4. *Increasing Flexibility for Indian Tribal Waivers.*** (a) Agencies shall review the processes under which Indian tribal governments apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribal government for a waiver of statutory or regulatory requirements in connection with any program administered by that agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency. The agency shall provide the applicant with timely written notice of the decision and, if the application for a waiver is not granted, the reasons for such denial.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

**Sec. 5. *Cooperation in developing regulations.*** On issues relating to tribal self-government, trust resources, or treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

**Sec. 6. *Independent agencies.*** Independent regulatory agencies are encouraged to comply with the provisions of this order.

**Sec. 7. *General provisions.*** (a) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

(b) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (“Regulatory Planning and Review”), Executive Order 12988 (“Civil Justice Reform”), OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.

(c) This order shall complement the consultation and waiver provisions in sections 4 and 5 of the Executive order, entitled “Federalism,” being issued on this day.

(d) This order shall be effective 90 days after the date of this order.

WILLIAM J. CLINTON  
THE WHITE HOUSE,  
*May 14, 1998.*

[FR Doc. 98-13553  
Filed 5-18-98; 11:24 am]  
Billing code 3195-01-P

## • Executive Order 13089 - CORAL REEF PROTECTION

June 11, 1998

By the authority vested in me as President by the Constitution and the laws of the United States of America and in furtherance of the purposes of the Clean Water Act of 1977, as amended (33 U.S.C. 1251, *et seq.*), Coastal Zone Management Act (16 U.S.C. 1451, *et seq.*), Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*), National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321, *et seq.*), National Marine Sanctuaries Act, (16 U.S.C. 1431, *et seq.*), National Park Service Organic Act (16 U.S.C. 1, *et seq.*), National Wildlife Refuge System Administration Act (16 U.S.C. 668dd-ee), and other pertinent statutes, to preserve and protect the biodiversity, health, heritage, and social and economic value of U.S. coral reef ecosystems and the marine environment, it is hereby ordered as follows:

**Section 1. Definitions.** (a) “U.S. coral reef ecosystems” means those species, habitats, and other natural resources associated with coral reefs in all maritime areas and zones subject to the jurisdiction or control of the United States (e.g., Federal, State, territorial, or commonwealth waters), including reef systems in the south Atlantic, Caribbean, Gulf of Mexico, and Pacific Ocean.

(b) “U.S. Coral Reef Initiative” is an existing partnership between Federal agencies and State, territorial, commonwealth, and local governments, nongovernmental organizations, and commercial interests to design and implement additional management, education, monitoring, research, and restoration efforts to conserve coral reef ecosystems for the use and enjoyment of future generations. The existing U.S. Islands Coral Reef Initiative strategy covers approximately 95 percent of U.S. coral reef ecosystems and is a key element of the overall U.S. Coral Reef Initiative.

(c) “International Coral Reef Initiative” is an existing partnership, founded by the United States in 1994, of governments, intergovernmental organizations, multilateral development banks, nongovernmental organizations, scientists, and the private sector whose purpose is to mobilize governments and other interested parties whose coordinated, vigorous, and effective actions are required to address the threats to the world’s coral reefs.

**Sec. 2. Policy.** (a) All Federal agencies whose actions may affect U.S. coral reef ecosystems shall: (a) identify their actions that may affect U.S. coral reef ecosystems; (b) utilize their programs and authorities to protect and enhance the conditions of such ecosystems; and (c) to the extent permitted by law, ensure that any actions they authorize, fund, or carry out will not degrade the conditions of such ecosystems.

(b) Exceptions to this section may be allowed under terms prescribed by the heads of Federal agencies:

- (1) during time of war or national emergency;
- (2) when necessary for reasons of national security, as determined by the President;
- (3) during emergencies posing an unacceptable threat to human health or safety or to the marine environment and admitting of no other feasible solution; or
- (4) in any case that constitutes a danger to human life or a real threat to vessels, aircraft, platforms, or other man-made structures at sea, such as cases of *force majeure* caused by stress of weather or other act of God.

**Sec. 3. Federal Agency Responsibilities.** In furtherance of section 2 of this order, Federal agencies whose actions affect U.S. coral reef ecosystems, shall, subject to the availability of appropriations, provide for implementation of measures needed to research, monitor, manage, and restore affected ecosystems, including, but not limited to, measures reducing impacts from pollution, sedimentation, and fishing. To the extent not inconsistent with statutory responsibilities and procedures, these measures shall be developed in cooperation with the U.S. Coral Reef Task Force and fishery management councils and in consultation with

affected States, territorial, commonwealth, tribal, and local government agencies, nongovernmental organizations, the scientific community, and commercial interests.

**Sec. 4. U.S. Coral Reef Task Force.** The Secretary of the Interior and the Secretary of Commerce, through the Administrator of the National Oceanic and Atmospheric Administration, shall co-chair a U.S. Coral Reef Task Force (“Task Force”), whose members shall include, but not be limited to, the Administrator of the Environmental Protection Agency, the Attorney General, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Defense, the Secretary of State, the Secretary of Transportation, the Director of the National Science Foundation, the Administrator of the Agency for International Development, and the Administrator of the National Aeronautics and Space Administration. The Task Force shall oversee implementation of the policy and Federal agency responsibilities set forth in this order, and shall guide and support activities under the U.S. Coral Reef Initiative (“CRI”). All Federal agencies whose actions may affect U.S. coral reef ecosystems shall review their participation in the CRI and the strategies developed under it, including strategies and plans of State, territorial, commonwealth, and local governments, and, to the extent feasible, shall enhance Federal participation and support of such strategies and plans. The Task Force shall work in cooperation with State, territorial, commonwealth, and local government agencies, nongovernmental organizations, the scientific community, and commercial interests.

**Sec. 5. Duties of the U.S. Coral Reef Task Force.** (a) *Coral Reef Mapping and Monitoring.* The Task Force, in cooperation with State, territory, commonwealth, and local government partners, shall coordinate a comprehensive program to map and monitor U.S. coral reefs. Such programs shall include, but not be limited to, territories and commonwealths, special marine protected areas such as National Marine Sanctuaries, National Estuarine Research Reserves, National Parks, National Wildlife Refuges, and other entities having significant coral reef resources. To the extent feasible, remote sensing capabilities shall be developed and applied to this program and local communities should be engaged in the design and conduct of programs.

(b) *Research.* The Task Force shall develop and implement, with the scientific community, research aimed at identifying the major causes and consequences of degradation of coral reef ecosystems. This research shall include fundamental scientific research to provide a sound framework for the restoration and conservation of coral reef ecosystems worldwide. To the extent feasible, existing and planned environmental monitoring and mapping programs should be linked with scientific research activities. This Executive order shall not interfere with the normal conduct of scientific studies on coral reef ecosystems.

(c) *Conservation, Mitigation, and Restoration.* The Task Force, in cooperation with State, territorial, commonwealth, and local government agencies, nongovernmental organizations, the scientific community and commercial interests, shall develop, recommend, and seek or secure implementation of measures necessary to reduce and mitigate coral reef ecosystem degradation and to restore damaged coral reefs. These measures shall include solutions to problems such as land-based sources of water pollution, sedimentation, detrimental alteration of salinity or temperature, over-fishing, over-use, collection of coral reef species, and direct destruction caused by activities such as recreational and commercial vessel traffic and treasure salvage. In developing these measures, the Task Force shall review existing legislation to determine whether additional legislation is necessary to complement the policy objectives of this order and shall recommend such legislation if appropriate. The Task Force shall further evaluate existing navigational aids, including charts, maps, day markers, and beacons to determine if the designation of the location of specific coral reefs should be enhanced through the use, revision, or improvement of such aids.

(d) *International Cooperation.* The Secretary of State and the Administrator of the Agency for International Development, in cooperation with other members of the Coral Reef Task Force and drawing upon their expertise, shall assess the U.S. role in international trade and protection of coral reef species and implement appropriate strategies and actions to promote conservation and sustainable use of coral reef resources worldwide. Such actions shall include expanded collaboration with other International Coral Reef

Initiative (“ICRI”) partners, especially governments, to implement the ICRI through its Framework for Action and the Global Coral Reef Monitoring Network at regional, national, and local levels.

**Sec. 6.** This order does not create any right or benefit, substantive or procedural, enforceable in law or equity by a party against the United States, its agencies, its officers, or any person.

WILLIAM J. CLINTON  
THE WHITE HOUSE,  
*June 11, 1998.*

[FR Doc. 98-16161  
Filed 6-15-98; 8:45 am]  
Billing code 3195-01-P

**• Executive Order 13093 - AMERICAN HERITAGE RIVERS, AMENDING EXECUTIVE ORDER 13061 AND 13080**

July 27, 1998

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to increase the number of rivers that the President may designate as American Heritage Rivers, it is hereby ordered that the second sentence of both section 2(d)(1) of Executive Order 13061 and of section 2(a) of Executive Order 13080 are amended by deleting “ten” and inserting “up to 20” in lieu thereof.

WILLIAM J. CLINTON  
THE WHITE HOUSE,  
*July 27, 1998.*

[FR Doc. 98-20450  
Filed 7-28-98; 8:45 am]  
Billing code 3195-01-P

## • Executive Order 13101 - GREENING THE GOVERNMENT THROUGH WASTE PREVENTION, RECYCLING, AND FEDERAL ACQUISITION

September 14, 1998

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Solid Waste Disposal Act, Public Law 89–272, 79 Stat. 997, as amended by the Resource Conservation and Recovery Act (RCRA), Public Law 94–580, 90 Stat. 2795, as amended (42 U.S.C. 6901–6907), section 301 of title 3, United States Code, and in order to improve the Federal Government’s use of recycled products and environmentally preferable products and services, it is hereby ordered as follows:

### PART 1—PREAMBLE

**Section 101.** Consistent with the demands of efficiency and cost effectiveness, the head of each executive agency shall incorporate waste prevention and recycling in the agency’s daily operations and work to increase and expand markets for recovered materials through greater Federal Government preference and demand for such products. It is the national policy to prefer pollution prevention, whenever feasible. Pollution that cannot be prevented should be recycled; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner. Disposal should be employed only as a last resort.

**Sec. 102.** Consistent with policies established by the Office of Federal Procurement Policy (OFPP) Policy Letter 92–4, agencies shall comply with executive branch policies for the acquisition and use of environmentally preferable products and services and implement cost-effective procurement preference programs favoring the purchase of these products and services.

**Sec. 103.** This order creates a Steering Committee, a Federal Environmental Executive (FEE), and a Task Force, and establishes Agency Environmental Executive (AEE) positions within each agency, to be responsible for ensuring the implementation of this order. The FEE, AEEs, and members of the Steering Committee and Task Force shall be full-time Federal Government employees.

### PART 2—DEFINITIONS

For purposes of this order:

**Sec. 201.** “Environmentally preferable” means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

**Sec. 202.** “Executive agency” or “agency” means an executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

**Sec. 203.** “Postconsumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. “Postconsumer material” is a part of the broader category of “recovered material.”

**Sec. 204.** “Acquisition” means the acquiring by contract with appropriated funds for supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract

financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

**Sec. 205.** “Recovered materials” means waste materials and by-products that have been recovered or diverted from solid waste, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (42 U.S.C. 6903 (19)).

**Sec. 206.** “Recyclability” means the ability of a product or material to be recovered from, or otherwise diverted from, the solid waste stream for the purpose of recycling.

**Sec. 207.** “Recycling” means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of new products other than fuel for producing heat or power by combustion.

**Sec. 208.** “Waste prevention” means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

**Sec. 209.** “Waste reduction” means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

**Sec. 210.** “Life cycle cost” means the amortized annual cost of a product, including capital costs, installation costs, operating costs, maintenance costs, and disposal costs discounted over the lifetime of the product.

**Sec. 211.** “Life cycle assessment” means the comprehensive examination of a product’s environmental and economic aspects and potential impacts throughout its lifetime, including raw material extraction, transportation, manufacturing, use, and disposal.

**Sec. 212.** “Pollution prevention” means “source reduction” as defined in the Pollution Prevention Act of 1990 (42 U.S.C. 13102), and other practices that reduce or eliminate the creation of pollutants through: (a) increased efficiency in the use of raw materials, energy, water, or other resources; or (b) protection of natural resources by conservation.

**Sec. 213.** “Biobased product” means a commercial or industrial product (other than food or feed) that utilizes biological products or renewable domestic agricultural (plant, animal, and marine) or forestry materials.

**Sec. 214.** “Major procuring agencies” shall include any executive agency that procures over \$50 million per year of goods and services.

### **PART 3—THE ROLES AND DUTIES OF THE STEERING COMMITTEE, FEDERAL ENVIRONMENTAL EXECUTIVE, TASK FORCE, AND AGENCY ENVIRONMENTAL EXECUTIVES**

**Sec. 301.** Committees, Executives, and Task Force. (a) Steering Committee There is hereby established a Steering Committee on Greening the Government through Waste Prevention and Recycling (“Steering Committee”). The Steering Committee shall be composed of the Chair of the Council on Environmental Quality (CEQ), the Federal Environmental Executive (FEE), and the Administrator for Federal Procurement Policy (OFPP). The Steering Committee, which shall be chaired by the Chair of the CEQ, is directed to



charter a Task Force to facilitate implementation of this order, and shall provide the Task Force with policy direction in such implementation.

(b) Federal Environmental Executive. A Federal Environmental Executive, Environmental Protection Agency, shall be designated by the President. The FEE shall chair the Task Force described in subsection (c), take all actions necessary to ensure that the agencies comply with the requirements of this order, and generate a biennial report to the President.

(c) Task Force. The Steering Committee shall charter a Task Force on Greening the Government through Waste Prevention and Recycling (“Task Force”), which shall be chaired by the FEE and composed of staff from the major procuring agencies. The Steering Committee, in consultation with the agencies, shall determine the necessary staffing and resources for the Task Force. The major procuring agencies shall provide, to the extent practicable and permitted by law, resources and support to the Task Force and the FEE, upon request from the Steering Committee. The Task Force shall have the duty of assisting the FEE and the agencies in implementing this order, subject to policy direction provided by the Steering Committee. The Task Force shall report through the FEE to the Chair of the Steering Committee.

(d) Agency Environmental Executives (AEEs). Within 90 days after the date of this order, the head of each major procuring agency shall designate an AEE from among his or her staff, who serves at a level no lower than the Assistant Secretary level or equivalent, and shall notify the Chair of CEQ and the FEE of such designation.

**Sec. 302. Duties.** (a) The Federal Environmental Executive. The FEE, working through the Task Force, and in consultation with the AEEs, shall:

(1) Develop a Government-wide Waste Prevention and Recycling Strategic Plan (“Strategic Plan”) to further implement this order. The Strategic Plan should be initially developed within 180 days of the date of this order and revised as necessary thereafter. The Strategic Plan should include, but is not limited to, the following elements:

(A) direction and initiatives for acquisition of recycled and recyclable products and environmentally preferable products and services;

(B) development of affirmative procurement programs;

(C) review and revision of standards and product specifications;

(D) assessment and evaluation of compliance;

(E) reporting requirements;

(F) outreach programs to promote adoption of practices endorsed in this order; and

(G) development and implementation of new technologies that are of environmental significance.

(2) Prepare a biennial report to the President on the actions taken by the agencies to comply with this order. The report also may incorporate information from existing agency reports regarding Government-wide progress in implementing the following Executive Orders: 12843, Procurement Requirements and Policies for Federal Agencies for Ozone Depleting Substances; 13031, Federal Alternative Fueled Vehicle Leadership; 12845, Requiring Agencies to Purchase Energy Efficient Computer Equipment; 12856, Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements; 12902, Energy Efficiency and Water Conservation at Federal Facilities; and 12969, Federal Acquisition and Community Right-to-Know.

(3) In coordination with the Office of Federal Procurement Policy, the Environmental Protection Agency (EPA), the General Services Administration (GSA), and the Department of Agriculture (USDA), convene a group of acquisition/procurement managers and environmental State, and local government managers to work with State and local governments to improve the Federal, State, and local governments’ use of recycled products and environmentally preferable products and services.

(4) Coordinate appropriate Government-wide education and training programs for agencies.

(5) Establish committees and work groups, as needed, to identify, assess, and recommend actions to be taken to fulfill the goals, responsibilities, and initiatives of the FEE. As these committees and work groups are created, agencies are requested to designate appropriate personnel in the areas of procurement and acquisition, standards and specifications, electronic commerce, facilities management, pollution

prevention, waste prevention, recycling, and others as needed to staff and work on these initiatives. An initial group shall be established to develop recommendations for tracking and reporting requirements, taking into account the costs and benefits of such tracking and reporting. The Steering Committee shall consult with the AEEs before approving these recommendations.

(b) Agency Environmental Executives. The AEEs shall:

- (1) translate the Government-wide Strategic Plan into specific agency and service plans;
- (2) implement the specific agency and service plans;
- (3) report to the FEE on the progress of plan implementation;
- (4) work with the FEE and the Task Force in furthering implementation of this order; and
- (5) track agencies' purchases of EPA-designated guideline items and report agencies' purchases of such guideline items to the FEE per the recommendations developed in subsection 302(a)(5) of this order. Agency acquisition and procurement personnel shall justify in writing to the file and to the AEE the rationale for not purchasing such items, above the micropurchase threshold (as set out in the Office of Federal Procurement Policy Act at 41 U.S.C. 428), and submit a plan and timetable for increasing agency purchases of the designated item(s).

- (6) one year after a product is placed on the USDA Biobased Products List, estimate agencies' purchases of products on the list and report agencies' estimated purchases of such products to the Secretary of Agriculture.

#### **PART 4—ACQUISITION PLANNING, AFFIRMATIVE PROCUREMENT PROGRAMS, AND FEDERAL FACILITY COMPLIANCE**

**Sec. 401.** Acquisition Planning. In developing plans, drawings, work statements, specifications, or other product descriptions, agencies shall consider, as appropriate, a broad range of factors including: elimination of virgin material requirements; use of biobased products; use of recovered materials; reuse of product; life cycle cost; recyclability; use of environmentally preferable products; waste prevention (including toxicity reduction or elimination); and ultimate disposal. These factors should be considered in acquisition planning for all procurement and in the evaluation and award of contracts, as appropriate. Program and acquisition managers should take an active role in these activities.

**Sec. 402.** Affirmative Procurement Programs. (a) The head of each executive agency shall develop and implement affirmative procurement programs in accordance with section 6002 of RCRA (42 U.S.C. 6962) and this order and consider use of the procurement tools and methods described in 7 U.S.C. 5909. Agencies shall ensure that responsibilities for preparation, implementation, and monitoring of affirmative procurement programs are shared between the program personnel and acquisition and procurement personnel. For the purposes of all purchases made pursuant to this order, EPA, in consultation with such other executive agencies as appropriate, shall endeavor to maximize environmental benefits, consistent with price, performance, and availability considerations, and constraints imposed by law, and shall adjust solicitation guidelines as necessary in order to accomplish this goal.

(b) Agencies shall establish affirmative procurement programs for all EPA-designated guideline items purchased by their agency. For newly designated items, agencies shall revise their internal programs within 1 year from the date the EPA designated the new items.

(c) Exclusive of the biobased products described in section 504, for the EPA-designated guideline items, which are contained in 40 CFR part 247, and for all future designated guideline items, agencies shall ensure that their affirmative procurement programs require 100 percent of their purchases of products to meet or exceed the EPA guideline unless written justification is provided that a product is not available competitively within a reasonable time frame, does not meet appropriate performance standards, or is only available at an unreasonable price. Written justification is not required for purchases below the micropurchase threshold. For micropurchases, agencies shall provide guidance regarding purchase of EPA-designated guideline items. This guidance should encourage consideration of aggregating purchases when this method would promote economy and efficiency.

(d) Within 90 days after the date of this order, the head of each executive agency that has not implemented an affirmative procurement program shall ensure that the affirmative procurement program has been established and is being implemented to the maximum extent practicable.

**Sec. 403. Federal Facility Compliance.** (a) Within 6 months of the date of this order, the Administrator of the EPA shall, in consultation with the Federal Environmental Executive, prepare guidance for use in determining Federal facility compliance with section 6002 of RCRA and the related requirements of this order.

(b) EPA inspections of Federal facilities conducted pursuant to RCRA and the Federal Facility Compliance Act and EPA “multi-media” inspections carried out at Federal facilities will include, where appropriate, evaluation of facility compliance with section 6002 of RCRA and any implementing guidance.

(c) Where inspections of Federal facilities are carried out by authorized States pursuant to RCRA and the Federal Facility Compliance Act, the Administrator of the EPA will encourage those States to include evaluation of facility compliance with section 6002 of RCRA in light of EPA guidance prepared pursuant to subsection (a), where appropriate, similar to inspections performed by the EPA. The EPA may provide information and technical assistance to the States to enable them to include such considerations in their inspection.

(d) The EPA shall report annually to the Federal Environmental Executive on the results of inspections performed by the EPA to determine Federal facility compliance with section 6002 of RCRA not later than February 1st for those inspections conducted during the previous fiscal year.

## **PART 5—STANDARDS, SPECIFICATIONS, AND DESIGNATION OF ITEMS**

**Sec. 501. Specifications, Product Descriptions, and Standards.** When developing, reviewing, or revising Federal and military specifications, product descriptions (including commercial item descriptions), and standards, executive agencies shall consider recovered materials and any environmentally preferable purchasing criteria developed by the EPA, and ensure the criteria are complied with in developing or revising standards. Agencies shall report annually to the FEE on their compliance with this section for incorporation into the biennial report to the President referred to in section 302(a)(2) of this order.

(a) If an inconsistency with section 6002 of RCRA or this order is identified in a specification, standard, or product description, the FEE shall request that the Environmental Executive of the pertinent agency advise the FEE as to why the specification cannot be revised or submit a plan for revising it within 60 days.

(b) If an agency is able to revise an inconsistent specification but cannot do so within 60 days, it is the responsibility of that AEE to monitor and implement the plan for revising it.

**Sec. 502. Designation of Items that Contain Recovered Materials.** In order to expedite the process of designating items that are or can be made with recovered materials, the EPA shall use the following process for designating these items in accordance with section 6002(e) of RCRA.

(a) The EPA shall designate items that are or can be made with recovered material, by promulgating amendments to the Comprehensive Procurement Guideline (CPG). The CPG shall be updated every 2 years or as appropriate after an opportunity for public comment.

(b) Concurrent with the issuance of the CPG, the EPA shall publish for comment in the **Federal Register** Recovered Materials Advisory Notices that present the range of recovered materials content levels within which the designated items are currently available. These levels shall be updated periodically, after opportunity for public comment, to reflect changes in market conditions.

(c) Once items containing recovered materials have been designated by the EPA in the CPG, agencies shall modify their affirmative procurement programs to require that, to the maximum extent practicable, their purchases of products meet or exceed the EPA guidelines unless written justification is provided that a product is not available competitively, not available within a reasonable time frame, does not meet appropriate performance standards, or is only available at an unreasonable price.

**Sec. 503.** Guidance on Acquisition of Environmentally Preferable Products and Services. (a) The EPA shall develop guidance within 90 days from the date of this order to address environmentally preferable purchasing. The guidance may be based on the EPA's September 1995 Proposed Guidance on the Acquisition of Environmentally Preferable Products and Services and comments received thereon. The guidance should be designed for Government-wide use and targeted towards products and services that have the most effect. The guidance may also address the issues of use of the technical expertise of nongovernmental entities and tools such as life cycle assessment in decisions on environmentally preferable purchasing. The EPA shall update this guidance every 2 years, or as appropriate.

(b) Agencies are encouraged to immediately test and evaluate the principles and concepts contained in the EPA's Guidance on the Acquisition of Environmentally Preferable Products and Services through pilot projects to provide practical information to the EPA for further updating of the guidance. Specifically:

(1) These pilot projects shall be focused around those product and service categories, including printing, that have wide use within the Federal Government. Priorities regarding which product and service categories to pilot shall be developed by the individual agencies and the EPA, in consultation with the OFPP, the FEE, and the appropriate agency procurement executives. Any policy disagreements shall be resolved by the Steering Committee.

(2) Agencies are encouraged to use all of the options available to them to determine the environmentally preferable attributes of products and services in their pilot and demonstration projects, including the use of technical expertise of nongovernmental entities such as labeling, certification, or standards-developing organizations, as well as using the expertise of the National Institute of Standards and Technology.

(3) Upon request and to the extent practicable, the EPA shall assist executive agencies in designing, implementing, and documenting the results of these pilot and demonstration projects.

(4) The EPA, in coordination with other executive agencies, shall develop a database of information about these projects, including, but not limited to, the number and status of pilot projects, examples of agencies' policy directives, revisions to specifications, solicitation procedures, and grant/contract policies that facilitate adoption of environmentally preferable purchasing practices, to be integrated on a commonly available electronic medium (e.g., Internet Web site). These data are to be reported to the FEE.

(c) Executive agencies shall use the principles and concepts in the EPA Guidance on Acquisition of Environmentally Preferable Products and Services, in addition to the lessons from the pilot and demonstration projects, to the maximum extent practicable, in identifying and purchasing environmentally preferable products and services and shall modify their procurement programs as appropriate.

**Sec. 504.** Designation of Biobased Items by the USDA. The USDA Biobased Products Coordination Council shall, in consultation with the FEE, issue a Biobased Products List.

(a) The Biobased Products List shall be published in the **Federal Register** by the USDA within 180 days after the date of this order and shall be updated biannually after publication to include additional items.

(b) Once the Biobased Products List has been published, agencies are encouraged to modify their affirmative procurement program to give consideration to those products.

**Sec. 505.** Minimum Content Standard for Printing and Writing Paper. Executive agency heads shall ensure that their agencies meet or exceed the following minimum materials content standards when purchasing or causing the purchase of printing and writing paper:

(a) For high speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock, the minimum content standard shall be no less than 30 percent postconsumer materials beginning December 31, 1998. If paper containing 30 percent postconsumer material is not reasonably available, does not meet reasonable performance requirements, or is only available at an unreasonable price, then the agency shall purchase paper containing no less than 20 percent postconsumer material. The Steering Committee, in consultation with the AEEs, may revise these levels if necessary.

(b) As an alternative to meeting the standards in sections 505(a), for all printing and writing papers, the minimum content standard shall be no less than 50 percent recovered materials that are a waste material byproduct of a finished product other than a paper or textile product that would otherwise be disposed of in a landfill, as determined by the State in which the facility is located.

(c) Effective January 1, 1999, no executive branch agency shall purchase, sell, or arrange for the purchase of, printing and writing paper that fails to meet the minimum requirements of this section.

**Sec. 506.** Revision of Brightness Specifications and Standards. The GSA and other executive agencies are directed to identify, evaluate, and revise or eliminate any standards or specifications unrelated to performance that present barriers to the purchase of paper or paper products made by production processes that minimize emissions of harmful byproducts. This evaluation shall include a review of unnecessary brightness and stock clause provisions, such as lignin content and chemical pulp requirements. The GSA shall complete the review and revision of such specifications within 6 months after the date of this order, and shall consult closely with the Joint Committee on Printing during such process. The GSA shall also compile any information or market studies that may be necessary to accomplish the objectives of this provision.

**Sec. 507.** Procurement of Re-refined Lubricating Oil and Retread Tires. (a) Agencies shall implement the EPA procurement guidelines for re-refined lubricating oil and retread tires. Fleet and commodity managers shall take immediate steps, as appropriate, to procure these items in accordance with section 6002 of RCRA. This provision does not preclude the acquisition of biobased (e.g., vegetable) oils.

(b) The FEE shall work to educate executive agencies about the new Department of Defense Cooperative Tire Qualification Program, including the Cooperative Approval Tire List and Cooperative Plant Qualification Program, as they apply to retread tires.

## **PART 6—AGENCY GOALS AND REPORTING REQUIREMENTS**

**Sec. 601.** Agency Goals. (a)(1) Each agency shall establish either a goal for solid waste prevention and a goal for recycling or a goal for solid waste diversion to be achieved by January 1, 2000. Each agency shall further ensure that the established goals include long-range goals to be achieved by the years 2005 and 2010. These goals shall be submitted to the FEE within 180 days after the date of this order. (2) In addition to white paper, mixed paper/cardboard, aluminum, plastic, and glass, agencies should incorporate into their recycling programs efforts to recycle, reuse, or refurbish pallets and collect toner cartridges for remanufacturing. Agencies should also include programs to reduce or recycle, as appropriate, batteries, scrap metal, and fluorescent lamps and ballasts.

(b) Agencies shall set goals to increase the procurement of products that are made with recovered materials, in order to maximize the number of recycled products purchased, relative to non-recycled alternatives.

(c) Each agency shall set a goal for increasing the use of environmentally preferable products and services for those products and services for which the agency has completed a pilot program.

(d) Agencies are encouraged to incorporate into their Government Performance Results Act annual performance plans the goals listed in subsections (a), (b), and (c) above, starting with the submittal to the Office of Management and Budget of the plan accompanying the FY 2001 budget.

(e) Progress on attaining these goals should be reported by the agencies to the FEE for the biennial report specified in section 302(a)(2) of this order.

## **PART 7—APPLICABILITY AND OTHER REQUIREMENTS**

**Sec. 701.** Contractor Applicability. Contracts that provide for contractor operation of a Government-owned or -leased facility and/or contracts that provide for contractor or other support services at Government-owned or -operated facilities awarded by executive agencies after the date of this order, shall include provisions that obligate the contractor to comply with the requirements of this order within the scope of its operations.

**Sec. 702.** Real Property Acquisition and Management. Within 90 days after the date of this order, and to the extent permitted by law and where economically feasible, executive agencies shall ensure compliance with the provisions of this order in the acquisition and management of Federally owned and leased space. The GSA and other executive agencies shall also include environmental and recycling provisions in the acquisition and management of all leased space and in the construction of new Federal buildings.

**Sec. 703.** Retention of Funds. (a) The Administrator of General Services shall continue with the program that retains for the agencies the proceeds from the sale of materials recovered through recycling or waste prevention programs and specifying the eligibility requirements for the materials being recycled.

(b) Agencies in non-GSA managed facilities, to the extent permitted by law, should develop a plan to retain the proceeds from the sale of materials recovered through recycling or waste prevention programs.

**Sec. 704.** Model Facility Programs. Each executive agency shall establish a model demonstration program incorporating some or all of the following elements as appropriate. Agencies are encouraged to demonstrate and test new and innovative approaches such as incorporating environmentally preferable and bio-based products; increasing the quantity and types of products containing recovered materials; expanding collection programs; implementing source reduction programs; composting organic materials when feasible; and exploring public/private partnerships to develop markets for recovered materials.

**Sec. 705.** Recycling Programs. (a)(1) Each executive agency that has not already done so shall initiate a program to promote cost-effective waste prevention and recycling of reusable materials in all of its facilities. The recycling programs implemented pursuant to this section must be compatible with applicable State and local recycling requirements.

(2) Agencies shall designate a recycling coordinator for each facility or installation. The recycling coordinator shall implement or maintain waste prevention and recycling programs in the agencies' action plans.

(b) Executive agencies shall also consider cooperative ventures with State and local governments to promote recycling and waste reduction in the community.

**Sec. 706.** Review of Implementation. The President's Council on Integrity and Efficiency shall request that the Inspectors General periodically review agencies' implementation of this order.

## **PART 8—AWARENESS**

**Sec. 801.** Training. (a) Within 180 days of the date of this order, the FEE and OFPP should evaluate the training courses provided by the Federal Acquisition Institute and the Defense Acquisition University and recommend any appropriate curriculum changes to ensure that procurement officials are aware of the requirements of this order.

(b) Executive agencies shall provide training to program management and requesting activities as needed to ensure awareness of the requirements of this order.

**Sec. 802.** Internal Agency Awards Programs. Each agency shall develop an internal agency-wide awards program, as appropriate, to reward its most innovative environmental programs. Among others, winners of agency-wide awards will be eligible for the White House Awards Program.

**Sec. 803.** White House Awards Program. A Government-wide award will be presented annually by the White House to the best, most innovative programs implementing the objectives of this order to give greater visibility to these efforts so that they can be incorporated Government-wide. The White House Awards Program will be administered jointly by the FEE and the CEQ.

**PART 9—REVOCATION, LIMITATION, AND IMPLEMENTATION**

**Sec. 901.** Executive Order 12873 of October 20, 1993, is hereby revoked.

**Sec. 902.** This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person.

**Sec. 903.** The policies and direction expressed in the EPA guidance to be developed pursuant to section 503 of this order shall be implemented and incorporated in the Federal Acquisition Regulation within 180 days after issuance of the guidance.

WILLIAM J. CLINTON  
THE WHITE HOUSE,  
*September 14, 1998.*

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## • Executive Order 13112 - Invasive Species

February 3, 1999

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended (16 U.S.C. 4701 *et seq.*), Lacey Act, as amended (18 U.S.C. 42), Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*), Federal Noxious Weed Act of 1974, as amended (7 U.S.C. 2801 *et seq.*), Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and other pertinent statutes, to prevent the introduction of invasive species and provide for their control and to minimize the economic, ecological, and human health impacts that invasive species cause, it is ordered as follows:

### Section 1. Definitions.

(a) “Alien species” means, with respect to a particular ecosystem, any species, including its seeds, eggs, spores, or other biological material capable of propagating that species, that is not native to that ecosystem.

(b) “Control” means, as appropriate, eradicating, suppressing, reducing, or managing invasive species populations, preventing spread of invasive species from areas where they are present, and taking steps such as restoration of native species and habitats to reduce the effects of invasive species and to prevent further invasions. (c) “Ecosystem” means the complex of a community of organisms and its environment.

(d) “Federal agency” means an executive department or agency, but does not include independent establishments as defined by 5 U.S.C. 104.

(e) “Introduction” means the intentional or unintentional escape, release, dissemination, or placement of a species into an ecosystem as a result of human activity.

(f) “Invasive species” means an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health.

(g) “Native species” means, with respect to a particular ecosystem, a species that, other than as a result of an introduction, historically occurred or currently occurs in that ecosystem.

(h) “Species” means a group of organisms all of which have a high degree of physical and genetic similarity, generally interbreed only among themselves, and show persistent differences from members of allied groups of organisms.

(i) “Stakeholders” means, but is not limited to, State, tribal, and local government agencies, academic institutions, the scientific community, nongovernmental entities including environmental, agricultural, and conservation organizations, trade groups, commercial interests, and private landowners.

(j) “United States” means the 50 States, the District of Columbia, Puerto Rico, Guam, and all possessions, territories, and the territorial sea of the United States.

**Sec. 2. Federal Agency Duties.** (a) Each Federal agency whose actions may affect the status of invasive species shall, to the extent practicable and permitted by law, (1) identify such actions; (2) subject to the availability of appropriations, and within Administration budgetary limits, use relevant programs and authorities to: (i) prevent the introduction of invasive species; (ii) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; (iii) monitor invasive species populations accurately and reliably; (iv) provide for restoration of native species and habitat conditions in ecosystems that have been invaded; (v) conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and (vi) promote public education on invasive species and the means to address them; and (3) not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or



spread of invasive species in the United States or elsewhere unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions.

(b) Federal agencies shall pursue the duties set forth in this section in consultation with the Invasive Species Council, consistent with the Invasive Species Management Plan and in cooperation with stakeholders, as appropriate, and, as approved by the Department of State, when Federal agencies are working with international organizations and foreign nations.

**Sec. 3. *Invasive Species Council.*** (a) An Invasive Species Council (Council) is hereby established whose members shall include the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Transportation, and the Administrator of the Environmental Protection Agency. The Council shall be Co-Chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The Council may invite additional Federal agency representatives to be members, including representatives from subcabinet bureaus or offices with significant responsibilities concerning invasive species, and may prescribe special procedures for their participation. The Secretary of the Interior shall, with concurrence of the Co-Chairs, appoint an Executive Director of the Council and shall provide the staff and administrative support for the Council. (b) The Secretary of the Interior shall establish an advisory committee under the Federal Advisory Committee Act, 5 U.S.C. App., to provide information and advice for consideration by the Council, and shall, after consultation with other members of the Council, appoint members of the advisory committee representing stakeholders. Among other things, the advisory committee shall recommend plans and actions at local, tribal, State, regional, and ecosystem-based levels to achieve the goals and objectives of the Management Plan in section 5 of this order. The advisory committee shall act in cooperation with stakeholders and existing organizations addressing invasive species. The Department of the Interior shall provide the administrative and financial support for the advisory committee.

**Sec. 4. *Duties of the Invasive Species Council.*** The Invasive Species Council shall provide national leadership regarding invasive species, and shall: (a) oversee the implementation of this order and see that the Federal agency activities concerning invasive species are coordinated, complementary, cost-efficient, and effective, relying to the extent feasible and appropriate on existing organizations addressing invasive species, such as the Aquatic Nuisance Species Task Force, the Federal Interagency Committee for the Management of Noxious and Exotic Weeds, and the Committee on Environment and Natural Resources; (b) encourage planning and action at local, tribal, State, regional, and ecosystem-based levels to achieve the goals and objectives of the Management Plan in section 5 of this order, in cooperation with stakeholders and existing organizations addressing invasive species; (c) develop recommendations for international cooperation in addressing invasive species; (d) develop, in consultation with the Council on Environmental Quality, guidance to Federal agencies pursuant to the National Environmental Policy Act on prevention and control of invasive species, including the procurement, use, and maintenance of native species as they affect invasive species; (e) facilitate development of a coordinated network among Federal agencies to document, evaluate, and monitor impacts from invasive species on the economy, the environment, and human health; (f) facilitate establishment of a coordinated, up-to-date information-sharing system that utilizes, to the greatest extent practicable, the Internet; this system shall facilitate access to and exchange of information concerning invasive species, including, but not limited to, information on distribution and abundance of invasive species; life histories of such species and invasive characteristics; economic, environmental, and human health impacts; management techniques, and laws and programs for management, research, and public education; and (g) prepare and issue a national Invasive Species Management Plan as set forth in section 5 of this order.

**Sec. 5. *Invasive Species Management Plan.*** (a) Within 18 months after issuance of this order, the Council shall prepare and issue the first edition of a National Invasive Species Management Plan (Management Plan), which shall detail and recommend performance-oriented goals and objectives and specific measures of success for Federal agency efforts concerning invasive species. The Management Plan shall recommend specific objectives and measures for carrying out each of the Federal agency duties established in section 2(a) of this order and shall set forth steps to be taken by the Council to carry out the duties assigned to it under section 4 of this order. The Management Plan shall be developed through a public process and in consultation with Federal agencies and stakeholders. (b) The first edition of the Management Plan shall include a review of existing and prospective approaches and authorities for preventing the introduction and spread of invasive species, including those for identifying pathways by which invasive species are introduced and for minimizing the risk of introductions via those pathways, and shall identify research needs and recommend measures to minimize the risk that introductions will occur. Such recommended measures shall provide for a science-based process to evaluate risks associated with introduction and spread of invasive species and a coordinated and systematic risk-based process to identify, monitor, and interdict pathways that may be involved in the introduction of invasive species. If recommended measures are not authorized by current law, the Council shall develop and recommend to the President through its Co-Chairs legislative proposals for necessary changes in authority. (c) The Council shall update the Management Plan biennially and shall concurrently evaluate and report on success in achieving the goals and objectives set forth in the Management Plan. The Management Plan shall identify the personnel, other resources, and additional levels of coordination needed to achieve the Management Plan's identified goals and objectives, and the Council shall provide each edition of the Management Plan and each report on it to the Office of Management and Budget. Within 18 months after measures have been recommended by the Council in any edition of the Management Plan, each Federal agency whose action is required to implement such measures shall either take the action recommended or shall provide the Council with an explanation of why the action is not feasible. The Council shall assess the effectiveness of this order no less than once each 5 years after the order is issued and shall report to the Office of Management and Budget on whether the order should be revised.

**Sec. 6. *Judicial Review and Administration.*** (a) This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any other person. (b) Executive Order 11987 of May 24, 1977, is hereby revoked. (c) The requirements of this order do not affect the obligations of Federal agencies under 16 U.S.C. 4713 with respect to ballast water programs. (d) The requirements of section 2(a)(3) of this order shall not apply to any action of the Department of State or Department of Defense if the Secretary of State or the Secretary of Defense finds that exemption from such requirements is necessary for foreign policy or national security reasons.

WILLIAM J. CLINTON  
THE WHITE HOUSE,  
*February 3, 1999.*

## • Executive Order 13123 - GREENING THE GOVERNMENT THROUGH EFFICIENT ENERGY MANAGEMENT

June 3, 1999

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Energy Conservation Policy Act (Public Law 95–619, 92 Stat. 3206, 42 U.S.C. 8252 *et seq.*), as amended by the Energy Policy Act of 1992 (EPACT) (Public Law 102–486, 106 Stat. 2776), and section 301 of title 3, United States Code, it is hereby ordered as follows:

### **PART 1—PREAMBLE**

**Section 101. *Federal Leadership.*** The Federal Government, as the Nation’s largest energy consumer, shall significantly improve its energy management in order to save taxpayer dollars and reduce emissions that contribute to air pollution and global climate change. With more than 500,000 buildings, the Federal Government can lead the Nation in energy efficient building design, construction, and operation. As a major consumer that spends \$200 billion annually on products and services, the Federal Government can promote energy efficiency, water conservation, and the use of renewable energy products, and help foster markets for emerging technologies. In encouraging effective energy management in the Federal Government, this order builds on work begun under EPACT and previous Executive orders.

### **PART 2—GOALS**

**Sec. 201. *Greenhouse Gases Reduction Goal.*** Through life-cycle cost-effective energy measures, each agency shall reduce its greenhouse gas emissions attributed to facility energy use by 30 percent by 2010 compared to such emissions levels in 1990. In order to encourage optimal investment in energy improvements, agencies can count greenhouse gas reductions from improvements in nonfacility energy use toward this goal to the extent that these reductions are approved by the Office of Management and Budget (OMB).

**Sec. 202. *Energy Efficiency Improvement Goals.*** Through life-cycle cost-effective measures, each agency shall reduce energy consumption per gross square foot of its facilities, excluding facilities covered in section 203 of this order, by 30 percent by 2005 and 35 percent by 2010 relative to 1985. No facilities will be exempt from these goals unless they meet new criteria for exemptions, to be issued by the Department of Energy (DOE).

**Sec. 203. *Industrial and Laboratory Facilities.*** Through life-cycle cost-effective measures, each agency shall reduce energy consumption per square foot, per unit of production, or per other unit as applicable by 20 percent by 2005 and 25 percent by 2010 relative to 1990. No facilities will be exempt from these goals unless they meet new criteria for exemptions, as issued by DOE.

**Sec. 204. *Renewable Energy.*** Each agency shall strive to expand the use of renewable energy within its facilities and in its activities by implementing renewable energy projects and by purchasing electricity from renewable energy sources. In support of the Million Solar Roofs initiative, the Federal Government shall strive to install 2,000 solar energy systems at Federal facilities by the end of 2000, and 20,000 solar energy systems at Federal facilities by 2010.

**Sec. 205. *Petroleum.*** Through life-cycle cost-effective measures, each agency shall reduce the use of petroleum within its facilities. Agencies may accomplish this reduction by switching to a less greenhouse gas-intensive, nonpetroleum energy source, such as natural gas or renewable energy sources; by eliminating

unnecessary fuel use; or by other appropriate methods. Where alternative fuels are not practical or life-cycle cost-effective, agencies shall strive to improve the efficiency of their facilities.

**Sec. 206. *Source Energy.*** The Federal Government shall strive to reduce total energy use and associated greenhouse gas and other air emissions, as measured at the source. To that end, agencies shall undertake life-cycle cost-effective projects in which source energy decreases, even if site energy use increases. In such cases, agencies will receive credit toward energy reduction goals through guidelines developed by DOE.

**Sec. 207. *Water Conservation.*** Through life-cycle cost-effective measures, agencies shall reduce water consumption and associated energy use in their facilities to reach the goals set under section 503(f) of this order. Where possible, water cost savings and associated energy cost savings shall be included in Energy-Savings Performance Contracts and other financing mechanisms.

### **PART 3—ORGANIZATION AND ACCOUNTABILITY**

**Sec. 301. *Annual Budget Submission.*** Each agency's budget submission to OMB shall specifically request funding necessary to achieve the goals of this order. Budget submissions shall include the costs associated with: encouraging the use of, administering, and fulfilling agency responsibilities under Energy-Savings Performance Contracts, utility energy-efficiency service contracts, and other contractual platforms for achieving conservation goals; implementing life-cycle cost-effective measures; procuring life-cycle cost-effective products; and constructing sustainably designed new buildings, among other energy costs. OMB shall issue guidelines to assist agencies in developing appropriate requests that support sound investments in energy improvements and energy-using products. OMB shall explore the feasibility of establishing a fund that agencies could draw on to finance exemplary energy management activities and investments with higher initial costs but lower life-cycle costs. Budget requests to OMB in support of this order must be within each agency's planning guidance level.

**Sec. 302. *Annual Implementation Plan.*** Each agency shall develop an annual implementation plan for fulfilling the requirements of this order. Such plans shall be included in the annual reports to the President under section 303 of this order.

**Sec. 303. *Annual Reports to the President.*** (a) Each agency shall measure and report its progress in meeting the goals and requirements of this order on an annual basis. Agencies shall follow reporting guidelines as developed under section 306(b) of this order. In order to minimize additional reporting requirements, the guidelines will clarify how the annual report to the President should build on each agency's annual Federal energy reports submitted to DOE and the Congress. Annual reports to the President are due on January 1 of each year beginning in the year 2000.

(b) Each agency's annual report to the President shall describe how the agency is using each of the strategies described in Part 4 of this order to help meet energy and greenhouse gas reduction goals. The annual report to the President shall explain why certain strategies, if any, have not been used. It shall also include a listing and explanation of exempt facilities.

**Sec. 304. *Designation of Senior Agency Official.*** Each agency shall designate a senior official, at the Assistant Secretary level or above, to be responsible for meeting the goals and requirements of this order, including preparing the annual report to the President. Such designation shall be reported by each Cabinet Secretary or agency head to the Deputy Director for Management of OMB within 30 days of the date of this order. Designated officials shall participate in the Interagency Energy Policy Committee, described in section 306(d) of this order. The Committee shall communicate its activities to all designated officials to assure proper coordination and achievement of the goals and requirements of this order.

**Sec. 305. *Designation of Agency Energy Teams.*** Within 90 days of the date of this order, each agency shall form a technical support team consisting of appropriate procurement, legal, budget, management, and

technical representatives to expedite and encourage the agency's use of appropriations, Energy-Savings Performance Contracts, and other alternative financing mechanisms necessary to meet the goals and requirements of this order. Agency energy team activities shall be undertaken in collaboration with each agency's representative to the Interagency Energy Management Task Force, as described in section 306(e) of this order.

**Sec. 306. *Interagency Coordination.*** (a) *Office of Management and Budget.* The Deputy Director for Management of OMB, in consultation with DOE, shall be responsible for evaluating each agency's progress in improving energy management and for submitting agency energy scorecards to the President to report progress.

(1) OMB, in consultation with DOE and other agencies, shall develop the agency energy scorecards and scoring system to evaluate each agency's progress in meeting the goals of this order. The scoring criteria shall include the extent to which agencies are taking advantage of key tools to save energy and reduce greenhouse gas emissions, such as Energy-Savings Performance Contracts, utility energy-efficiency service contracts, ENERGY STAR and other energy efficient products, renewable energy technologies, electricity from renewable energy sources, and other strategies and requirements listed in Part 4 of this order, as well as overall efficiency and greenhouse gas metrics and use of other innovative energy efficiency practices. The scorecards shall be based on the annual energy reports submitted to the President under section 303 of this order.

(2) The Deputy Director for Management of OMB shall also select outstanding agency energy management team(s), from among candidates nominated by DOE, for a new annual Presidential award for energy efficiency.

(b) *Federal Energy Management Program.* The DOE's Federal Energy Management Program (FEMP) shall be responsible for working with the agencies to ensure that they meet the goals of this order and report their progress. FEMP, in consultation with OMB, shall develop and issue guidelines for agencies' preparation of their annual reports to the President on energy management, as required in section 303 of this order. FEMP shall also have primary responsibility for collecting and analyzing the data, and shall assist OMB in ensuring that agency reports are received in a timely manner.

(c) *President's Management Council.* The President's Management Council (PMC), chaired by the Deputy Director for Management of OMB and consisting of the Chief Operating Officers (usually the Deputy Secretary) of the largest Federal departments and agencies, will periodically discuss agencies' progress in improving Federal energy management.

(d) *Interagency Energy Policy Committee.* This Committee was established by the Department of Energy Organization Act. It consists of senior agency officials designated in accordance with section 304 of this order. The Committee is responsible for encouraging implementation of energy efficiency policies and practices. The major energy-consuming agencies designated by DOE are required to participate in the Committee. The Committee shall communicate its activities to all designated senior agency officials to promote coordination and achievement of the goals of this order.

(e) *Interagency Energy Management Task Force.* The Task Force was established by the National Energy Conservation Policy Act. It consists of each agency's chief energy manager. The Committee shall continue to work toward improving agencies' use of energy management tools and sharing information on Federal energy management across agencies.

**Sec. 307. *Public/Private Advisory Committee.*** The Secretary of Energy will appoint an advisory committee consisting of representatives from Federal agencies, State governments, energy service companies, utility companies, equipment manufacturers, construction and architectural companies, environmental, energy and consumer groups, and other energy-related organizations. The committee will provide input on Federal energy management, including how to improve use of Energy-Savings Performance Contracts and utility energy-efficiency service contracts, improve procurement of ENERGY STAR and other energy efficient products, improve building design, reduce process energy use, and enhance applications of efficient and renewable energy technologies at Federal facilities.

**Sec. 308. *Applicability.*** This order applies to all Federal departments and agencies. General Services Administration (GSA) is responsible for working with agencies to meet the requirements of this order for those facilities for which GSA has delegated operations and maintenance authority. The Department of Defense (DOD) is subject to this order to the extent that it does not impair or adversely affect military operations and training (including tactical aircraft, ships, weapons systems, combat training, and border security).

#### **PART 4—PROMOTING FEDERAL LEADERSHIP IN ENERGY MANAGEMENT**

**Sec. 401. *Life-Cycle Cost Analysis.*** Agencies shall use life-cycle cost analysis in making decisions about their investments in products, services, construction, and other projects to lower the Federal Government's costs and to reduce energy and water consumption. Where appropriate, agencies shall consider the life-cycle costs of combinations of projects, particularly to encourage bundling of energy efficiency projects with renewable energy projects. Agencies shall also retire inefficient equipment on an accelerated basis where replacement results in lower life-cycle costs. Agencies that minimize life-cycle costs with efficiency measures will be recognized in their scorecard evaluations.

**Sec. 402. *Facility Energy Audits.*** Agencies shall continue to conduct energy and water audits for approximately 10 percent of their facilities each year, either independently or through Energy-Savings Performance Contracts or utility energy-efficiency service contracts.

**Sec. 403. *Energy Management Strategies and Tools.*** Agencies shall use a variety of energy management strategies and tools, where life-cycle cost-effective, to meet the goals of this order. An agency's use of these strategies and tools shall be taken into account in assessing the agency's progress and formulating its scorecard.

(a) *Financing Mechanisms.* Agencies shall maximize their use of available alternative financing contracting mechanisms, including Energy-Savings Performance Contracts and utility energy-efficiency service contracts, when life-cycle cost-effective, to reduce energy use and cost in their facilities and operations. Energy-Savings Performance Contracts, which are authorized under the National Energy Conservation Policy Act, as modified by the Energy Policy Act of 1992, and utility energy-efficiency service contracts provide significant opportunities for making Federal facilities more energy efficient at no net cost to taxpayers.

(b) *ENERGY STAR and Other Energy Efficient Products.*

(1) Agencies shall select, where life-cycle cost-effective, ENERGY STAR and other energy efficient products when acquiring energy-using products. For product groups where ENERGY STAR labels are not yet available, agencies shall select products that are in the upper 25 percent of energy efficiency as designated by FEMP. The Environmental Protection Agency (EPA) and DOE shall expedite the process of designating products as ENERGY STAR and will merge their current efficiency rating procedures.

(2) GSA and the Defense Logistics Agency (DLA), with assistance from EPA and DOE, shall create clear catalogue listings that designate these products in both print and electronic formats. In addition, GSA and DLA shall undertake pilot projects from selected energy-using products to show a "second price tag", which means an accounting of the operating and purchase costs of the item, in both printed and electronic catalogues and assess the impact of providing this information on Federal purchasing decisions.

(3) Agencies shall incorporate energy efficient criteria consistent with ENERGY STAR and other FEMP designated energy efficiency levels into all guide specifications and project specifications developed for new construction and renovation, as well as into product specification language developed for Basic Ordering Agreements, Blanket Purchasing Agreements, Government Wide Acquisition Contracts, and all other purchasing procedures.

(4) DOE and OMB shall also explore the creation of financing agreements with private sector suppliers to provide private funding to offset higher up-front costs of efficient products. Within 9 months

of the date of this order, DOE shall report back to the President's Management Council on the viability of such alternative financing options.

(c) *ENERGY STAR Buildings.* Agencies shall strive to meet the ENERGY STAR Building criteria for energy performance and indoor environmental quality in their eligible facilities to the maximum extent practicable by the end of 2002. Agencies may use Energy-Savings Performance Contracts, utility energy-efficiency service contracts, or other means to conduct evaluations and make improvements to buildings in order to meet the criteria. Buildings that rank in the top 25 percent in energy efficiency relative to comparable commercial and Federal buildings will receive the ENERGY STAR building label. Agencies shall integrate this building rating tool into their general facility audits.

(d) *Sustainable Building Design.* DOD and GSA, in consultation with DOE and EPA, shall develop sustainable design principles. Agencies shall apply such principles to the siting, design, and construction of new facilities. Agencies shall optimize life-cycle costs, pollution, and other environmental and energy costs associated with the construction, life-cycle operation, and decommissioning of the facility. Agencies shall consider using Energy-Savings Performance Contracts or utility energy-efficiency service contracts to aid them in constructing sustainably designed buildings.

(e) *Model Lease Provisions.* Agencies entering into leases, including the renegotiation or extension of existing leases, shall incorporate lease provisions that encourage energy and water efficiency wherever life-cycle cost-effective. Build-to-suit lease solicitations shall contain criteria encouraging sustainable design and development, energy efficiency, and verification of building performance. Agencies shall include a preference for buildings having the ENERGY STAR building label in their selection criteria for acquiring leased buildings. In addition, all agencies shall encourage lessors to apply for the ENERGY STAR building label and to explore and implement projects that would reduce costs to the Federal Government, including projects carried out through the lessors' Energy-Savings Performance Contracts or utility energy-efficiency service contracts.

(f) *Industrial Facility Efficiency Improvements.* Agencies shall explore efficiency opportunities in industrial facilities for steam systems, boiler operation, air compressor systems, industrial processes, and fuel switching, including cogeneration and other efficiency and renewable energy technologies.

(g) *Highly Efficient Systems.* Agencies shall implement district energy systems, and other highly efficient systems, in new construction or retrofit projects when life-cycle cost-effective. Agencies shall consider combined cooling, heat, and power when upgrading and assessing facility power needs and shall use combined cooling, heat, and power systems when life-cycle cost-effective. Agencies shall survey local natural resources to optimize use of available biomass, bioenergy, geothermal, or other naturally occurring energy sources.

(h) *Off-Grid Generation.* Agencies shall use off-grid generation systems, including solar hot water, solar electric, solar outdoor lighting, small wind turbines, fuel cells, and other off-grid alternatives, where such systems are life-cycle cost-effective and offer benefits including energy efficiency, pollution prevention, source energy reductions, avoided infrastructure costs, or expedited service.

**Sec. 404. Electricity Use.** To advance the greenhouse gas and renewable energy goals of this order, and reduce source energy use, each agency shall strive to use electricity from clean, efficient, and renewable energy sources. An agency's efforts in purchasing electricity from efficient and renewable energy sources shall be taken into account in assessing the agency's progress and formulating its score card.

(a) *Competitive Power.* Agencies shall take advantage of competitive opportunities in the electricity and natural gas markets to reduce costs and enhance services. Agencies are encouraged to aggregate demand across facilities or agencies to maximize their economic advantage.

(b) *Reduced Greenhouse Gas Intensity of Electric Power.* When selecting electricity providers, agencies shall purchase electricity from sources that use high efficiency electric generating technologies when life-cycle cost-effective. Agencies shall consider the greenhouse gas intensity of the source of the electricity and strive to minimize the greenhouse gas intensity of purchased electricity.

(c) *Purchasing Electricity from Renewable Energy Sources.*

(1) Each agency shall evaluate its current use of electricity from renewable energy sources and report this level in its annual report to the President. Based on this review, each agency should adopt policies and pursue projects that increase the use of such electricity. Agencies should include provisions for the purchase of electricity from renewable energy sources as a component of their requests for bids whenever procuring electricity. Agencies may use savings from energy efficiency projects to pay additional incremental costs of electricity from renewable energy sources.

(2) In evaluating opportunities to comply with this section, agencies should consider: my Administration's goal of tripling nonhydroelectric renewable energy capacity in the United States by 2010; the renewable portfolio standard specified in the restructuring guidelines for the State in which the facility is located; GSA's efforts to make electricity from renewable energy sources available to Federal electricity purchasers; and EPA's guidelines on crediting renewable energy power in implementation of Clean Air Act standards.

**Sec. 405. *Mobile Equipment.*** Each agency shall seek to improve the design, construction, and operation of its mobile equipment, and shall implement all life-cycle cost-effective energy efficiency measures that result in cost savings while improving mission performance. To the extent that such measures are life-cycle cost-effective, agencies shall consider enhanced use of alternative or renewable-based fuels.

**Sec. 406. *Management and Government Performance.*** Agencies shall use the following management strategies in meeting the goals of this order.

(a) *Awards.* Agencies shall use employee incentive programs to reward exceptional performance in implementing this order.

(b) *Performance Evaluations.* Agencies shall include successful implementation of provisions of this order in areas such as Energy-Savings Performance Contracts, sustainable design, energy efficient procurement, energy efficiency, water conservation, and renewable energy projects in the position descriptions and performance evaluations of agency heads, members of the agency energy team, principal program managers, heads of field offices, facility managers, energy managers, and other appropriate employees.

(c) *Retention of Savings and Rebates.* Agencies granted statutory authority to retain a portion of savings generated from efficient energy and water management are encouraged to permit the retention of the savings at the facility or site where the savings occur to provide greater incentive for that facility and its site managers to undertake more energy management initiatives, invest in renewable energy systems, and purchase electricity from renewable energy sources.

(d) *Training and Education.* Agencies shall ensure that all appropriate personnel receive training for implementing this order.

(1) DOE, DOD, and GSA shall provide relevant training or training materials for those programs that they make available to all Federal agencies relating to the energy management strategies contained in this order.

(2) The Federal Acquisition Institute and the Defense Acquisition University shall incorporate into existing procurement courses information on Federal energy management tools, including Energy-Savings Performance Contracts, utility energy-efficiency service contracts, ENERGY STAR and other energy efficient products, and life-cycle cost analysis.

(3) All agencies are encouraged to develop outreach programs that include education, training, and promotion of ENERGY STAR and other energy-efficient products for Federal purchase card users. These programs may include promotions with billing statements, user training, catalogue awareness, and exploration of vendor data collection of purchases.

(e) *Showcase Facilities.* Agencies shall designate exemplary new and existing facilities with significant public access and exposure as showcase facilities to highlight energy or water efficiency and renewable energy improvements.



## **PART 5—TECHNICAL ASSISTANCE**

**Sec. 501.** Within 120 days of this order, the Director of OMB shall:

(a) develop and issue guidance to agency budget officers on preparation of annual funding requests associated with the implementation of the order for the FY 2001 budget;

(b) in collaboration with the Secretary of Energy, explain to agencies how to retain savings and reinvest in other energy and water management projects; and

(c) in collaboration with the Secretary of Energy through the Office of Federal Procurement Policy, periodically brief agency procurement executives on the use of Federal energy management tools, including Energy-Savings Performance Contracts, utility energy-efficiency service contracts, and procurement of energy efficient products and electricity from renewable energy sources.

**Sec. 502.** Within 180 days of this order, the Secretary of Energy, in collaboration with other agency heads, shall:

(a) issue guidelines to assist agencies in measuring energy per square foot, per unit of production, or other applicable unit in industrial, laboratory, research, and other energy-intensive facilities;

(b) establish criteria for determining which facilities are exempt from the order. In addition, DOE must provide guidance for agencies to report proposed exemptions;

(c) develop guidance to assist agencies in calculating appropriate energy baselines for previously exempt facilities and facilities occupied after 1990 in order to measure progress toward goals;

(d) issue guidance to clarify how agencies determine the life-cycle cost for investments required by the order, including how to compare different energy and fuel options and assess the current tools;

(e) issue guidance for providing credit toward energy efficiency goals for cost-effective projects where source energy use declines but site energy use increases; and

(f) provide guidance to assist each agency to determine a baseline of water consumption.

**Sec. 503.** Within 1 year of this order, the Secretary of Energy, in collaboration with other agency heads, shall:

(a) provide guidance for counting renewable and highly efficient energy projects and purchases of electricity from renewable and highly efficient energy sources toward agencies' progress in reaching greenhouse gas and energy reduction goals;

(b) develop goals for the amount of energy generated at Federal facilities from renewable energy technologies;

(c) support efforts to develop standards for the certification of low environmental impact hydropower facilities in order to facilitate the Federal purchase of such power;

(d) work with GSA and DLA to develop a plan for purchasing advanced energy products in bulk quantities for use in by multiple agencies;

(e) issue guidelines for agency use estimating the greenhouse gas emissions attributable to facility energy use. These guidelines shall include emissions associated with the production, transportation, and use of energy consumed in Federal facilities; and

(f) establish water conservation goals for Federal agencies.

**Sec. 504.** Within 120 days of this order, the Secretary of Defense and the Administrator of GSA, in consultation with other agency heads, shall develop and issue sustainable design and development principles for the siting, design, and construction of new facilities.

**Sec. 505.** Within 180 days of this order, the Administrator of GSA, in collaboration with the Secretary of Defense, the Secretary of Energy, and other agency heads, shall:

(a) develop and issue guidance to assist agencies in ensuring that all project cost estimates, bids, and agency budget requests for design, construction, and renovation of facilities are based on life-cycle costs. Incentives for contractors involved in facility design and construction must be structured to encourage the contractors to design and build at the lowest life-cycle cost;

(b) make information available on opportunities to purchase electricity from renewable energy sources as defined by this order. This information should accommodate relevant State regulations and be updated periodically based on technological advances and market changes, at least every 2 years;

(c) develop Internet-based tools for both GSA and DLA customers to assist individual and agency purchasers in identifying and purchasing ENERGY STAR and other energy efficient products for acquisition; and

(d) develop model lease provisions that incorporate energy efficiency and sustainable design.

## **PART 6—GENERAL PROVISIONS**

**Sec. 601.** *Compliance by Independent Agencies.* Independent agencies are encouraged to comply with the provisions of this order.

**Sec. 602.** *Waivers.* If an agency determines that a provision in this order is inconsistent with its mission, the agency may ask DOE for a waiver of the provision. DOE will include a list of any waivers it grants in its Federal Energy Management Programs annual report to the Congress.

**Sec. 603.** *Scope.* (a) This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable by law by a party against the United States, its agencies, its officers, or any other person.

(b) This order applies to agency facilities in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction. Agencies with facilities outside of these areas, however, are encouraged to make best efforts to comply with the goals of this order for those facilities. In addition, agencies can report energy improvements made outside the United States in their annual report to the President; these improvements may be considered in agency scorecard evaluations.

**Sec. 604.** *Revocations.* Executive Order 12902 of March 9, 1994, Executive Order 12759 of April 17, 1991, and Executive Order 12845 of April 21, 1993, are revoked.

**Sec. 605.** *Amendments to Federal Regulations.* The Federal Acquisition Regulation and other Federal regulations shall be amended to reflect changes made by this order, including an amendment to facilitate agency purchases of electricity from renewable energy sources.

## **PART 7—DEFINITIONS**

For the purposes of this order:

**Sec. 701.** “Acquisition” means acquiring by contract supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

**Sec. 702.** “Agency” means an executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of DOD.

**Sec. 703.** “Energy-Savings Performance Contract” means a contract that provides for the performance of services for the design, acquisition, financing, installation, testing, operation, and where appropriate, maintenance and re-pair, of an identified energy or water conservation measure or series of measures at one or more locations. Such contracts shall provide that the contractor must incur costs of implementing energy

savings measures, including at least the cost (if any) incurred in making energy audits, acquiring and installing equipment, and training personnel in exchange for a predetermined share of the value of the energy savings directly resulting from implementation of such measures during the term of the contract. Payment to the contractor is contingent upon realizing a guaranteed stream of future energy and cost savings. All additional savings will accrue to the Federal Government.

**Sec. 704.** “Exempt facility” or “Exempt mobile equipment” means a facility or a piece of mobile equipment for which an agency uses DOE-established criteria to determine that compliance with the Energy Policy Act of 1992 or this order is not practical.

**Sec. 705.** “Facility” means any individual building or collection of buildings, grounds, or structure, as well as any fixture or part thereof, including the associated energy or water-consuming support systems, which is constructed, renovated, or purchased in whole or in part for use by the Federal Government. It includes leased facilities where the Federal Government has a purchase option or facilities planned for purchase. In any provision of this order, the term “facility” also includes any building 100 percent leased for use by the Federal Government where the Federal Government pays directly or indirectly for the utility costs associated with its leased space. The term also includes Government-owned contractor-operated facilities.

**Sec. 706.** “Industrial facility” means any fixed equipment, building, or complex for production, manufacturing, or other processes that uses large amounts of capital equipment in connection with, or as part of, any process or system, and within which the majority of energy use is not devoted to the heating, cooling, lighting, ventilation, or to service the water heating energy load requirements of the facility.

**Sec. 707.** “Life-cycle costs” means the sum of the present values of investment costs, capital costs, installation costs, energy costs, operating costs, maintenance costs, and disposal costs, over the lifetime of the project, product, or measure. Additional guidance on measuring life-cycle costs is specified in 10 C.F.R. 436.19.

**Sec. 708.** “Life-cycle cost-effective” means the life-cycle costs of a product, project, or measure are estimated to be equal to or less than the base case (i.e., current or standard practice or product). Additional guidance on measuring cost-effectiveness is specified in 10 C.F.R. 436.18 (a), (b), and (c), 436.20, and 436.21.

**Sec. 709.** “Mobile equipment” means all Federally owned ships, aircraft, and non-road vehicles.

**Sec. 710.** “Renewable energy” means energy produced by solar, wind, geo-thermal, and biomass power.

**Sec. 711.** “Renewable energy technology” means technologies that use renewable energy to provide light, heat, cooling, or mechanical or electrical energy for use in facilities or other activities. The term also means the use of integrated whole-building designs that rely upon renewable energy resources, including passive solar design.

**Sec. 712.** “Source energy” means the energy that is used at a site and consumed in producing and in delivering energy to a site, including, but not limited to, power generation, transmission, and distribution losses, and that is used to perform a specific function, such as space conditioning, lighting, or water heating.

**Sec. 713.** “Utility” means public agencies and privately owned companies that market, generate, and/or distribute energy or water, including electricity, natural gas, manufactured gas, steam, hot water, and chilled water as commodities for public use and that provide the service under Federal, State, or local regulated authority to all authorized customers. Utilities include: Federally owned nonprofit producers; municipal organizations; and investor or privately owned producers regulated by a State and/or the Federal

Government; cooperatives owned by members and providing services mostly to their members; and other nonprofit State and local government agencies serving in this capacity.

**Sec. 714.** “Utility energy-efficiency service” means demand side management services provided by a utility to improve the efficiency of use of the commodity (electricity, gas, etc.) being distributed. Services can include, but are not limited to, energy efficiency and renewable energy project auditing, financing, design, installation, operation, maintenance, and monitoring.

WILLIAM J. CLINTON  
THE WHITE HOUSE,  
*June 3, 1999.*

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## • Executive Order 13134 - DEVELOPING AND PROMOTING BIOBASED PRODUCTS AND BIOENERGY

August 12, 1999

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and in order to stimulate the creation and early adoption of technologies needed to make biobased products and bio-energy cost competitive in large national and international markets, it is hereby ordered as follows:

**Section 1. Policy.** Current biobased product and bioenergy technology has the potential to make renewable farm and forestry resources major sources of affordable electricity, fuel, chemicals, pharmaceuticals, and other materials. Technical advances in these areas can create an expanding array of exciting new business and employment opportunities for farmers, foresters, ranchers, and other businesses in rural America. These technologies can create new markets for farm and forest waste products, new economic opportunities for underused land, and new value-added business opportunities. They also have the potential to reduce our Nation's dependence on foreign oil, improve air quality, water quality, and flood control, decrease erosion, and help minimize net production of greenhouse gases. It is the policy of this Administration, therefore, to develop a comprehensive national strategy, including research, development, and private sector incentives, to stimulate the creation and early adoption of technologies needed to make biobased products and bioenergy cost-competitive in large national and international markets.

**Sec. 2. Establishment of the Interagency Council on Biobased Products and Bioenergy.** (a) There is established the Interagency Council on Biobased Products and Bioenergy (the "Council"). The Council shall be composed of the Secretaries of Agriculture, Commerce, Energy, and the Interior, the Administrator of the Environmental Protection Agency, the Director of the Office of Management and Budget, the Assistant to the President for Science and Technology, the Director of the National Science Foundation, the Federal Environmental Executive, and the heads of other relevant agencies as may be determined by the Co-Chairs of the Council. Members may serve on the Council through designees. Designees shall be senior officials who report directly to the agency head (Assistant Secretary or equivalent).

(b) The Secretary of Agriculture and the Secretary of Energy shall serve as Co-Chairs of the Council.

(c) The Council shall prepare annually a strategic plan for the President outlining overall national goals in the development and use of biobased products and bioenergy in an environmentally sound manner and how these goals can best be achieved through Federal programs and integrated planning. The goals shall include promoting national economic growth with specific attention to rural economic interests, energy security, and environmental sustainability and protection. These strategic plans shall be compatible with the national goal of producing safe and affordable supplies of food, feed, and fiber in a way that is sustainable and protects the environment, and shall include measurable objectives. Specifically, these strategic plans shall cover the following areas:

(1) biobased products, including commercial and industrial chemicals, pharmaceuticals, products with large carbon sequestering capacity, and other materials; and

(2) biomass used in the production of energy (electricity; liquid, solid, and gaseous fuels; and heat).

(d) To ensure that the United States takes full advantage of the potential economic and environmental benefits of bioenergy, these strategic plans shall be based on analyses of: (1) the economic impacts of expanded biomass production and use; and (2) the impacts on national environmental objectives, including reducing greenhouse gas emissions. Specifically, these plans shall include:

(1) a description of priorities for research, development, demonstration, and other investments in biobased products and bioenergy;

(2) a coordinated Federal program of research, building on the research budgets of each participating agency; and

(3) proposals for using existing agency authorities to encourage the adoption and use of biobased products and bioenergy and recommended legislation for modifying these authorities or creating new authorities if needed.

(e) The first annual strategic plan shall be submitted to the President within 8 months from the date of this order.

(f) The Council shall coordinate its activities with actions called for in all relevant Executive orders and shall not be in conflict with proposals advocated by other Executive orders.

**Sec. 3. *Establishment of Advisory Committee on Biobased Products and Bioenergy.*** (a) The Secretary of Energy shall establish an “Advisory Committee on Biobased Products and Bioenergy” (“Committee”), under the Federal Advisory Committee Act, as amended (5 U.S.C. App.), to provide information and advice for consideration by the Council. The Secretary of Energy shall, in consultation with other members of the Council, appoint up to 20 members of the advisory committee representing stakeholders including representatives from the farm, forestry, chemical manufacturing and other businesses, energy companies, electric utilities, environmental organizations, conservation organizations, the university research community, and other critical sectors. The Secretary of Energy shall designate Co-Chairs from among the members of the Committee.

(b) Among other things, the Committee shall provide the Council with an independent assessment of:

(1) the goals established by the Federal agencies for developing and promoting biobased products and bioenergy;

(2) the balance of proposed research and development activities;

(3) the effectiveness of programs designed to encourage adoption and use of biobased products and bioenergy; and

(4) the environmental and economic consequences of biobased products and bioenergy use.

**Sec. 4. *Administration of the Advisory Committee.*** (a) To the extent permitted by law and subject to the availability of appropriations, the Department of Energy shall serve as the secretariat for, and provide the financial and administrative support to, the Committee.

(b) The heads of agencies shall, to the extent permitted by law, provide to the Committee such information as it may reasonably require for the purpose of carrying out its functions.

(c) The Committee Co-Chairs may, from time to time, invite experts to submit information to the Committee and may form subcommittees or working groups within the Committee to review specific issues.

**Sec. 5. *Duties of the Departments of Agriculture and Energy.*** The Secretaries of the Departments of Agriculture and Energy, to the extent permitted by law and subject to the availability of appropriations, shall each establish a working group on biobased products and biobased activities in their respective Departments. Consistent with the Federal biobased products and energy strategic plans described in sections 2(c) and (d) of this order, the working groups shall:

(1) provide strategic planning and policy advice on the Department’s research, development, and commercialization of biobased products and bioenergy; and

(2) identify research activities and demonstration projects to address new opportunities in the areas of biomass production, biobased product and bioenergy production, and related fundamental research. The chair of each Department’s working group shall be a senior official who reports directly to the agency head. If the Secretary of Agriculture or Energy serves on the Interagency Council on Biobased Products and Bioenergy through a designee, the designee should be the chair of the Department’s working group.

**Sec. 6. *Establishment of a National Biobased Products and Bioenergy Coordination Office.*** Within 120 days of this order, the Secretaries of Agriculture and Energy shall establish a joint National Biobased

Products and Bioenergy Coordination Office (“Office”) to ensure effective day-to-day coordination of actions designed to implement the strategic plans and guidance provided by the Council and respond to recommendations made by the Committee. All agencies represented on the Council, or that have capabilities and missions related to the work of the Council, shall be invited to participate in the operation of the Office. The Office shall:

(a) serve as an executive secretariat and support the work of the Council, as determined by the Council, including the coordination of multi-agency, integrated research, development, and demonstration (“RD&D”) activities;

(b) use advanced communication and computational tools to facilitate research coordination and collaborative research by participating Federal and nonfederal research facilities and to perform activities in support of RD&D on biobased product and bioenergy development, including strategic planning, program analysis and evaluation, communications networking, information and data dissemination and technology transfer, and collaborative team building for RD&D projects; and

(c) facilitate use of new information technologies for rapid dissemination of information on biobased products and bioenergy to and among farm operators; agribusiness, chemical, forest products, energy, and other business sectors; the university community; and public interest groups that could benefit from timely and reliable information.

**Sec. 7. Definitions.** For the purposes of this order: (a) The term “biomass” means any organic matter that is available on a renewable or recurring basis (excluding old-growth timber), including dedicated energy crops and trees, agricultural food and feed crop residues, aquatic plants, wood and wood residues, animal wastes, and other waste materials.

(b) The term “biobased product,” as defined in Executive Order 13101, means a commercial or industrial product (other than food or feed) that utilizes biological products or renewable domestic agricultural (plant, animal, and marine) or forestry materials.

(c) The term “bioenergy” means biomass used in the production of energy (electricity; liquid, solid, and gaseous fuels; and heat).

(d) The term “old growth timber” means timber of a forest from the late successional stage of forest development. The forest contains live and dead trees of various sizes, species, composition, and age class structure. The age and structure of old growth varies significantly by forest type and from one biogeoclimatic zone to another.

**Sec. 8. Judicial Review.** This order does not create any enforceable rights against the United States, its agencies, its officers, or any person.

WILLIAM J. CLINTON

THE WHITE HOUSE,

*August 12, 1999.*

[FR Doc. 99-21392

Filed 8-13-99; 11:04 am]

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## • Executive Order 13141 - ENVIRONMENTAL REVIEW OF TRADE AGREEMENTS

November 16, 1999

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to further the environmental and trade policy goals of the United States, it is hereby ordered as follows:

**Section 1. Policy.** The United States is committed to a policy of careful assessment and consideration of the environmental impacts of trade agreements. The United States will factor environmental considerations into the development of its trade negotiating objectives. Responsible agencies will accomplish these goals through a process of ongoing assessment and evaluation, and, in certain instances, written environmental reviews.

**Sec. 2. Purpose and Need.** Trade agreements should contribute to the broader goal of sustainable development. Environmental reviews are an important tool to help identify potential environmental effects of trade agreements, both positive and negative, and to help facilitate consideration of appropriate responses to those effects whether in the course of negotiations, through other means, or both.

**Sec. 3. (a) Implementation.** The United States Trade Representative (Trade Representative) and the Chair of the Council on Environmental Quality shall oversee the implementation of this order, including the development of procedures pursuant to this order, in consultation with appropriate foreign policy, environmental, and economic agencies.

**(b) Conduct of Environmental Reviews.** The Trade Representative, through the interagency Trade Policy Staff Committee (TPSC), shall conduct the environmental reviews of the agreements under section 4 of this order.

**Sec. 4. Trade Agreements.**

(a) Certain agreements that the United States may negotiate shall require an environmental review.

These include:

- (i) comprehensive multilateral trade rounds;
- (ii) bilateral or plurilateral free trade agreements; and
- (iii) major new trade liberalization agreements in natural resource sectors.

(b) Agreements reached in connection with enforcement and dispute resolution actions are not covered by this order.

(c) For trade agreements not covered under subsections 4(a) and (b), environmental reviews will generally not be required. Most sectoral liberalization agreements will not require an environmental review. The Trade Representative, through the TPSC, shall determine whether an environmental review of an agreement or category of agreements is warranted based on such factors as the significance of reasonably foreseeable environmental impacts.

**Sec. 5. Environmental Reviews.**

(a) Environmental reviews shall be:

- (i) written;
- (ii) initiated through a **Federal Register** notice, outlining the proposed agreement and soliciting public comment and information on the scope of the environmental review of the agreement;
- (iii) undertaken sufficiently early in the process to inform the development of negotiating positions, but shall not be a condition for the timely tabling of particular negotiating proposals;
- (iv) made available in draft form for public comment, where practicable; and



(v) made available to the public in final form.

(b) As a general matter, the focus of environmental reviews will be impacts in the United States. As appropriate and prudent, reviews may also examine global and transboundary impacts.

**Sec. 6. Resources.** Upon request by the Trade Representative, with the concurrence of the Deputy Director for Management of the Office of Management and Budget, Federal agencies shall, to the extent permitted by law and subject to the availability of appropriations, provide analytical and financial resources and support, including the detail of appropriate personnel, to the Office of the United States Trade Representative to carry out the provisions of this order.

**Sec. 7. General Provisions.** This order is intended only to improve the internal management of the executive branch and does not create any right, benefit, trust, or responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.

WILLIAM J. CLINTON  
THE WHITE HOUSE,  
*November 16, 1999.*

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Filed 11-17-99; 10:43 am]  
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## • Executive Order 13148 - GREENING THE GOVERNMENT THROUGH LEADERSHIP IN ENVIRONMENTAL MANAGEMENT

April 21, 2000

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001–11050) (EPCRA), the Pollution Prevention Act of 1990 (42 U.S.C. 13101–13109) (PPA), the Clean Air Act (42 U.S.C. 7401–7671q) (CAA), and section 301 of title 3, United States Code, it is hereby ordered as follows:

### **PART 1—PREAMBLE**

**Section 101. *Federal Environmental Leadership.*** The head of each Federal agency is responsible for ensuring that all necessary actions are taken to integrate environmental accountability into agency day-to-day decision-making and long-term planning processes, across all agency missions, activities, and functions. Consequently, environmental management considerations must be a fundamental and integral component of Federal Government policies, operations, planning, and management. The head of each Federal agency is responsible for meeting the goals and requirements of this order.

### **PART 2—GOALS**

**Sec. 201. *Environmental Management.*** Through development and implementation of environmental management systems, each agency shall ensure that strategies are established to support environmental leadership programs, policies, and procedures and that agency senior level managers explicitly and actively endorse these strategies.

**Sec. 202. *Environmental Compliance.*** Each agency shall comply with environmental regulations by establishing and implementing environmental compliance audit programs and policies that emphasize pollution prevention as a means to both achieve and maintain environmental compliance.

**Sec. 203. *Right-to-Know and Pollution Prevention.*** Through timely planning and reporting under the EPCRA, Federal facilities shall be leaders and responsible members of their communities by informing the public and their workers of possible sources of pollution resulting from facility operations. Each agency shall strive to reduce or eliminate harm to human health and the environment from releases of pollutants to the environment. Each agency shall advance the national policy that, whenever feasible and cost-effective, pollution should be prevented or reduced at the source. Funding for regulatory compliance programs shall emphasize pollution prevention as a means to address environmental compliance.

**Sec. 204. *Release Reduction: Toxic Chemicals.*** Through innovative pollution prevention, effective facility management, and sound acquisition and procurement practices, each agency shall reduce its reported Toxic Release Inventory (TRI) releases and off-site transfers of toxic chemicals for treatment and disposal by 10 percent annually, or by 40 percent overall by December 31, 2006.

**Sec. 205. *Use Reduction: Toxic Chemicals and Hazardous Substances and Other Pollutants.*** Through identification of proven substitutes and established facility management practices, including pollution prevention, each agency shall reduce its use of selected toxic chemicals, hazardous substances, and pollutants, or its generation of hazardous and radioactive waste types at its facilities by 50 percent by December 31, 2006. If an agency is unable to reduce the use of selected chemicals, that agency will reduce the use of selected hazardous substances or its generation of other pollutants, such as hazardous and radioactive waste types, at its facilities by 50 percent by December 31, 2006.

**Sec. 206. *Reductions in Ozone-Depleting Substances.*** Through evaluating present and future uses of ozone-depleting substances and maximizing the purchase and the use of safe, cost effective, and environmentally preferable alternatives, each agency shall develop a plan to phase out the procurement of Class I ozone-depleting substances for all non-excepted uses by December 31, 2010.

**Sec. 207. *Environmentally and Economically Beneficial Landscaping.*** Each agency shall strive to promote the sustainable management of Federal facility lands through the implementation of cost-effective, environmentally sound landscaping practices, and programs to reduce adverse impacts to the natural environment.

### **PART 3—PLANNING AND ACCOUNTABILITY**

**Sec. 301. *Annual Budget Submission.*** Federal agencies shall place high priority on obtaining funding and resources needed for implementation of the Greening the Government Executive Orders, including funding to address findings and recommendations from environmental management system audits or facility compliance audits conducted under sections 401 and 402 of this order. Federal agencies shall make such requests as required in Office of Management and Budget (OMB) Circular A-11.

**Sec. 302. *Application of Life Cycle Assessment Concepts.*** Each agency with facilities shall establish a pilot program to apply life cycle assessment and environmental cost accounting principles. To the maximum extent feasible and cost-effective, agencies shall apply those principles elsewhere in the agency to meet the goals and requirements of this order. Such analysis shall be considered in the process established in the OMB Capital Programming Guide and OMB Circular A-11. The Environmental Protection Agency (EPA), in coordination with the Workgroup established in section 306 of this order, shall, to the extent feasible, assist agencies in identifying, applying, and developing tools that reflect life cycle assessment and environmental cost accounting principles and provide technical assistance to agencies in developing life cycle assessments and environmental cost accounting assessments under this Part.

**Sec. 303. *Pollution Prevention to Address Compliance.*** Each agency shall ensure that its environmental regulatory compliance funding policies promote the use of pollution prevention to achieve and maintain environmental compliance at the agency's facilities. Agencies shall adopt a policy to preferentially use pollution prevention projects and activities to correct and prevent noncompliance with environmental regulatory requirements. Agency funding requests for facility compliance with Federal, State, and local environmental regulatory requirements shall emphasize pollution prevention through source reduction as the means of first choice to ensure compliance, with reuse and recycling alternatives having second priority as a means of compliance.

**Sec. 304. *Pollution Prevention Return-on-Investment Programs.*** Each agency shall develop and implement a pollution prevention program at its facilities that compares the life cycle costs of treatment and/or disposal of waste and pollutant streams to the life cycle costs of alternatives that eliminate or reduce toxic chemicals or pollutants at the source. Each agency shall implement those projects that are life-cycle cost-effective, or otherwise offer substantial environmental or economic benefits.

**Sec. 305. *Policies, Strategies, and Plans.***

(a) Within 12 months of the date of this order, each agency shall ensure that the goals and requirements of this order are incorporated into existing agency environmental directives, policies, and documents affected by the requirements and goals of this order. Where such directives and policies do not already exist, each agency shall, within 12 months of the date of this order, prepare and endorse a written agency environmental management strategy to achieve the requirements and goals of this order. Agency preparation of directives, policies, and documents shall reflect the nature, scale, and environmental impacts of the agency's activities, products, or services. Agencies are encouraged to include elements of relevant

agency policies or strategies developed under this part in agency planning documents prepared under the Government Performance and Results Act of 1993, Public Law 103–62.

(b) By March 31, 2002, each agency shall ensure that its facilities develop a written plan that sets forth the facility's contribution to the goals and requirements established in this order. The plan should reflect the size and complexity of the facility. Where pollution prevention plans or other formal environmental planning instruments have been prepared for agency facilities, an agency may elect to update those plans to meet the requirements and goals of this section.

(c) The Federal Acquisition Regulation (FAR) Council shall develop acquisition policies and procedures for contractors to supply agencies with all information necessary for compliance with this order. Once the appropriate FAR clauses have been published, agencies shall use them in all applicable contracts. In addition, to the extent that compliance with this order is made more difficult due to lack of information from existing contractors, or concessionaires, each agency shall take practical steps to obtain the information needed to comply with this order from such contractors or concessionaires.

**Sec. 306. *Interagency Environmental Leadership Workgroup.*** Within 4 months of the date of this order, EPA shall convene and chair an Interagency Environmental Leadership Workgroup (the Workgroup) with senior-level representatives from all executive agencies and other interested independent Government agencies affected by this order. The Workgroup shall develop policies and guidance required by this order and member agencies shall facilitate implementation of the requirements of this order in their respective agencies. Workgroup members shall coordinate with their Agency Environmental Executive (AEE) designated under section 301(d) of Executive Order 13101 and may request the assistance of their AEE in resolving issues that may arise among members in developing policies and guidance related to this order. If the AEEs are unable to resolve the issues, they may request the assistance of the Chair of the Council on Environmental Quality (CEQ).

**Sec. 307. *Annual Reports.*** Each agency shall submit an annual progress report to the Administrator on implementation of this order. The reports shall include a description of the progress that the agency has made in complying with all aspects of this order, including, but not limited to, progress in achieving the reduction goals in sections 502, 503, and 505 of this order. Each agency may prepare and submit the annual report in electronic format. A copy of the report shall be submitted to the Federal Environmental Executive (FEE) by EPA for use in the biennial Greening the Government Report to the President prepared in accordance with Executive Order 13101. Within 9 months of the date of this order, EPA, in coordination with the Workgroup established under section 306 of this order, shall prepare guidance regarding the information and timing for the annual report. The Workgroup shall coordinate with those agencies responsible for Federal agency reporting guidance under the Greening the Government Executive orders to streamline reporting requirements and reduce agency and facility-level reporting burdens. The first annual report shall cover calendar year 2000 activities.

#### **PART 4—PROMOTING ENVIRONMENTAL MANAGEMENT AND LEADERSHIP**

**Sec. 401. *Agency and Facility Environmental Management Systems.*** To attain the goals of section 201 of this order:

(a) Within 18 months of the date of this order, each agency shall conduct an agency-level environmental management system self assessment based on the Code of Environmental Management Principles for Federal Agencies developed by the EPA (61 Fed. Reg. 54062) and/or another appropriate environmental management system framework. Each assessment shall include a review of agency environmental leadership goals, objectives, and targets. Where appropriate, the assessments may be conducted at the service, bureau, or other comparable level.

(b) Within 24 months of the date of this order, each agency shall implement environmental management systems through pilot projects at selected agency facilities based on the Code of Environmental Management Principles for Federal Agencies and/or another appropriate environmental management

system framework. By December 31, 2005, each agency shall implement an environmental management system at all appropriate agency facilities based on facility size, complexity, and the environmental aspects of facility operations. The facility environmental management system shall include measurable environmental goals, objectives, and targets that are reviewed and updated annually. Once established, environmental management system performance measures shall be incorporated in agency facility audit protocols.

**Sec. 402. *Facility Compliance Audits.*** To attain the goals of section 202 of this order:

(a) Within 12 months of the date of this order, each agency that does not have an established regulatory environmental compliance audit program shall develop and implement a program to conduct facility environmental compliance audits and begin auditing at its facilities within 6 months of the development of that program.

(b) An agency with an established regulatory environmental compliance audit program may elect to conduct environmental management system audits in lieu of regulatory environmental compliance audits at selected facilities.

(c) Facility environmental audits shall be conducted periodically. Each agency is encouraged to conduct audits not less than every 3 years from the date of the initial or previous audit. The scope and frequency of audits shall be based on facility size, complexity, and the environmental aspects of facility operations. As appropriate, each agency shall include tenant, contractor, and concessioner activities in facility audits.

(d) Each agency shall conduct internal reviews and audits and shall take such other steps, as may be necessary, to monitor its facilities' compliance with sections 501 and 504 of this order.

(e) Each agency shall consider findings from the assessments or audits conducted under Part 4 in program planning under section 301 of this order and in the preparation and revisions to facility plans prepared under section 305 of this order.

(f) Upon request and to the extent practicable, the EPA shall provide technical assistance in meeting the requirements of Part 4 by conducting environmental management reviews at Federal facilities and developing policies and guidance for conducting environmental compliance audits and implementing environmental management systems at Federal facilities.

**Sec. 403. *Environmental Leadership and Agency Awards Programs.***

(a) Within 12 months of the date of this order, the Administrator shall establish a Federal Government environmental leadership program to promote and recognize outstanding environmental management performance in agencies and facilities.

(b) Each agency shall develop an internal agency-wide awards program to reward and highlight innovative programs and individuals showing outstanding environmental leadership in implementing this order. In addition, based upon criteria developed by the EPA in coordination with the Workgroup established in section 306 of this order, Federal employees who demonstrate outstanding leadership in implementation of this order may be considered for recognition under the White House awards program set forth in section 803 of Executive Order 13101 of September 14, 1998.

**Sec. 404. *Management Leadership and Performance Evaluations.***

(a) To ensure awareness of and support for the environmental requirements of this order, each agency shall include training on the provisions of the Greening the Government Executive orders in standard senior level management training as well as training for program managers, contracting personnel, procurement and acquisition personnel, facility managers, contractors, concessioners, and other personnel as appropriate. In coordination with the Workgroup established under section 306 of this order, the EPA shall prepare guidance on implementation of this section.

(b) To recognize and reinforce the responsibilities of facility and senior headquarters program managers, regional environmental coordinators and officers, their superiors, and, to the extent practicable and appropriate, others vital to the implementation of this order, each agency shall include successful

implementation of pollution prevention, community awareness, and environmental management into its position descriptions and performance evaluations for those positions.

**Sec. 405. Compliance Assistance.**

(a) Upon request and to the extent practicable, the EPA shall provide technical advice and assistance to agencies to foster full compliance with environmental regulations and all aspects of this order.

(b) Within 12 months of the date of this order, the EPA shall develop a compliance assistance center to provide technical assistance for Federal facility compliance with environmental regulations and all aspects of this order.

(c) To enhance landscaping options and awareness, the United States Department of Agriculture (USDA) shall provide information on the suitability, propagation, and the use of native plants for landscaping to all agencies and the general public by USDA in conjunction with the center under subsection (b) of this section. In implementing Part 6 of this order, agencies are encouraged to develop model demonstration programs in coordination with the USDA.

**Sec. 406. Compliance Assurance.**

(a) In consultation with other agencies, the EPA may conduct such reviews and inspections as may be necessary to monitor compliance with sections 501 and 504 of this order. Each agency is encouraged to cooperate fully with the efforts of the EPA to ensure compliance with those sections.

(b) Whenever the Administrator notifies an agency that it is not in compliance with section 501 or 504 of this order, the agency shall provide the EPA a detailed plan for achieving compliance as promptly as practicable.

(c) The Administrator shall report annually to the President and the public on agency compliance with the provisions of sections 501 and 504 of this order.

**Sec. 407. Improving Environmental Management.** To ensure that government-wide goals for pollution prevention are advanced, each agency is encouraged to incorporate its environmental leadership goals into its Strategic and Annual Performance Plans required by the Government Performance and Results Act of 1993, Public Law 103-62, starting with performance plans accompanying the FY 2002 budget.

**PART 5—EMERGENCY PLANNING, COMMUNITY RIGHT-TO-KNOW, AND POLLUTION PREVENTION**

**Sec. 501. Toxics Release Inventory/Pollution Prevention Act Reporting.** To attain the goals of section 203 of this order:

(a) Each agency shall comply with the provisions set forth in section 313 of EPCRA, section 6607 of PPA, all implementing regulations, and future amendments to these authorities, in light of applicable EPA guidance.

(b) Each agency shall comply with these provisions without regard to the Standard Industrial Classification (SIC) or North American Industrial Classification System (NAICS) delineations. Except as described in subsection (d) of this section, all other existing statutory or regulatory limitations or exemptions on the application of EPCRA section 313 to specific activities at specific agency facilities apply to the reporting requirements set forth in subsection (a) of this section.

(c) Each agency required to report under subsection (a) of this section shall do so using electronic reporting as provided in EPA's EPCRA section 313 guidance.

(d) Within 12 months of the date of this order, the Administrator shall review the impact on reporting of existing regulatory exemptions on the application of EPCRA section 313 at Federal facilities. Where feasible, this review shall include pilot studies at Federal facilities. If the review indicates that application of existing exemptions to Federal Government reporting under this section precludes public reporting of substantial amounts of toxic chemicals under subsection 501(a), the EPA shall prepare guidance, in coordination with the Workgroup established under section 306 of this order, clarifying application of the

exemptions at Federal facilities. In developing the guidance, the EPA should consider similar application of such regulatory limitations and exemptions by the private sector. To the extent feasible, the guidance developed by the EPA shall be consistent with the reasonable application of such regulatory limitations and exemptions in the private sector. The guidance shall ensure reporting consistent with the goal of public access to information under section 313 of EPCRA and section 6607 of PPA. The guidance shall be submitted to the AEEs established under section 301(d) of Executive Order 13101 for review and endorsement. Each agency shall apply any guidance to reporting at its facilities as soon as practicable but no later than for reporting for the next calendar year following release of the guidance.

(e) The EPA shall coordinate with other interested Federal agencies to carry out pilot projects to collect and disseminate information about the release and other waste management of chemicals associated with the environmental response and restoration at their facilities and sites. The pilot projects will focus on releases and other waste management of chemicals associated with environmental response and restoration at facilities and sites where the activities generating wastes do not otherwise meet EPCRA section 313 thresholds for manufacture, process, or other use. Each agency is encouraged to identify applicable facilities and voluntarily report under subsection (a) of this section the releases and other waste management of toxic chemicals managed during environmental response and restoration, regardless of whether the facility otherwise would report under subsection (a). The releases and other waste management of chemicals associated with environmental response and restoration voluntarily reported under this sub-section will not be included in the accounting established under sections 503(a) and (c) of this order.

**Sec. 502. Release Reduction: Toxic Chemicals.** To attain the goals of section 204 of this order:

(a) Beginning with reporting for calendar year 2001 activities, each agency reporting under section 501 of this order shall adopt a goal of reducing, where cost effective, the agency's total releases of toxic chemicals to the environment and off-site transfers of such chemicals for treatment and disposal by at least 10 percent annually, or by 40 percent overall by December 31, 2006. Beginning with activities for calendar year 2001, the baseline for measuring progress in meeting the reduction goal will be the aggregate of all such releases and off-site transfers of such chemicals for treatment and disposal as reported by all of the agency's facilities under section 501 of this order. The list of toxic chemicals applicable to this goal is the EPCRA section 313 list as of December 1, 2000. If an agency achieves the 40 percent reduction goal prior to December 31, 2006, that agency shall establish a new baseline and reduction goal based on agency priorities.

(b) Where an agency is unable to pursue the reduction goal established in subsection (a) for certain chemicals that are mission critical and/or needed to protect human health and the environment or where agency off-site transfer of toxic chemicals for treatment is directly associated with environmental restoration activities, that agency may request a waiver from the EPA for all or part of the requirement in subsection (a) of this section. As appropriate, waiver requests must provide: (1) an explanation of the mission critical use of the chemical; (2) an explanation of the nature of the need for the chemical to protect human health; (3) a description of efforts to identify a less harmful substitute chemical or alternative processes to reduce the release and transfer of the chemical in question; and (4) a description of the off-site transfers of toxic chemicals for treatment directly associated with environmental restoration activities. The EPA shall respond to the waiver request within 90 days and may grant such a waiver for no longer than 2 years. An agency may resubmit a request for waiver at the end of that period. The waiver under this section shall not alter requirements to report under section 501 of this order.

(c) Where a specific component (e.g., bureau, service, or command) within an agency achieves a 75 percent reduction in its 1999 reporting year publicly reported total releases of toxic chemicals to the environment and off-site transfers of such chemicals for treatment and disposal, based on the 1994 baseline established in Executive Order 12856, that agency may independently elect to establish a reduction goal for that component lower than the 40 percent target established in subsection (a) of this section. The agency shall formally notify the Workgroup established in section 306 of this order of the elected reduction target.

**Sec. 503. Use Reduction: Toxic Chemicals, Hazardous Substances, and Other Pollutants.** To attain the goals of section 205 of this order:

(a) Within 18 months of the date of this order, each agency with facilities shall develop and support goals to reduce the use at such agencies' facilities of the priority chemicals on the list under subsection (b) of this section for identified applications and purposes, or alternative chemicals and pollutants the agency identifies under subsection (c) of this section, by at least 50 percent by December 31, 2006.

(b) Within 9 months of the date of this order the Administrator, in coordination with the Workgroup established in section 306 of this order, shall develop a list of not less than 15 priority chemicals used by the Federal Government that may result in significant harm to human health or the environment and that have known, readily available, less harmful substitutes for identified applications and purposes. In addition to identifying the applications and purposes to which such reductions apply, the Administrator, in coordination with the Workgroup shall identify a usage threshold below, which this section shall not apply. The chemicals will be selected from listed EPCRA section 313 toxic chemicals and, where appropriate, other regulated hazardous substances or pollutants. In developing the list, the Administrator, in coordination with the Workgroup shall consider: (1) environmental factors including toxicity, persistence, and bio-accumulation; (2) availability of known, less environmentally harmful substitute chemicals that can be used in place of the priority chemical for identified applications and purposes; (3) availability of known, less environmentally harmful processes that can be used in place of the priority chemical for identified applications and purposes; (4) relative costs of alternative chemicals or processes; and (5) potential risk and environmental and human exposure based upon applications and uses of the chemicals by Federal agencies and facilities. In identifying alternatives, the Administrator should take into consideration the guidance issued under section 503 of Executive Order 13101.

(c) If an agency, which has facilities required to report under EPCRA, uses at its facilities less than five of the priority chemicals on the list developed in subsection (b) of this section for the identified applications and purposes, the agency shall develop, within 12 months of the date of this order, a list of not less than five chemicals that may include priority chemicals under subsection (b) of this section or other toxic chemicals, hazardous substances, and/or other pollutants the agency uses or generates, the release, transfer or waste management of which may result in significant harm to human health or the environment.

(d) In lieu of requirements under subsection (a) of this section, an agency may, upon concurrence with the Workgroup established under section 306 of this order, develop within 12 months of the date of this order, a list of not less than five priority hazardous or radioactive waste types generated by its facilities. Within 18 months of the date of this order, the agency shall develop and support goals to reduce the agency's generation of these wastes by at least 50 percent by December 31, 2006. To the maximum extent possible, such reductions shall be achieved by implementing source reduction practices.

(e) The baseline for measuring reductions for purposes of achieving the 50 percent reduction goal in subsections (a) and (d) of this section for each agency is the first calendar year following the development of the list of priority chemicals under subsection (b) of this section.

(f) Each agency shall undertake pilot projects at selected facilities to gather and make publicly available materials accounting data related to the toxic chemicals, hazardous substances, and/or other pollutants identified under subsections (b), (c), or (d) of this section.

(g) Within 12 months of the date of this order, the Administrator shall develop guidance on implementing this section in coordination with the Workgroup. The EPA shall develop technical assistance materials to assist agencies in meeting the 50 percent reduction goal of this section.

(h) Where an agency can demonstrate to the Workgroup that it has previously reduced the use of a priority chemical identified in subsection 503(b) by 50 percent, then the agency may elect to waive the 50 percent reduction goal for that chemical.

**Sec. 504. Emergency Planning and Reporting Responsibilities.** Each agency shall comply with the provisions set forth in sections 301 through 312 of the EPCRA, all implementing regulations, and any future amendments to these authorities, in light of any applicable guidance as provided by the EPA.



**Sec. 505. *Reductions in Ozone-Depleting Substances.*** To attain the goals of section 206 of this order:

(a) Each agency shall ensure that its facilities: (1) maximize the use of safe alternatives to ozone-depleting substances, as approved by the EPA's Significant New Alternatives Policy (SNAP) program; (2) consistent with subsection (b) of this section, evaluate the present and future uses of ozone-depleting substances, including making assessments of existing and future needs for such materials, and evaluate use of, and plans for recycling, refrigerants, and halons; and (3) exercise leadership, develop exemplary practices, and disseminate information on successful efforts in phasing out ozone-depleting substances.

(b) Within 12 months of the date of this order, each agency shall develop a plan to phase out the procurement of Class I ozone-depleting substances for all non-excepted uses by December 31, 2010. Plans should target cost effective reduction of environmental risk by phasing out Class I ozone depleting substance applications as the equipment using those substances reaches its expected service life. Exceptions to this requirement include all exceptions found in current or future applicable law, treaty, regulation, or Executive order.

(c) Each agency shall amend its personal property management policies and procedures to preclude disposal of ozone depleting substances removed or reclaimed from its facilities or equipment, including disposal as part of a contract, trade, or donation, without prior coordination with the Department of Defense (DoD). Where the recovered ozone-depleting substance is a critical requirement for DoD missions, the agency shall transfer the materials to the DoD. The DoD will bear the costs of such transfer.

## **PART 6—LANDSCAPING MANAGEMENT PRACTICES**

**Sec. 601. *Implementation.***

(a) Within 12 months from the date of this order, each agency shall incorporate the Guidance for Presidential Memorandum on Environmentally and Economically Beneficial Landscape Practices on Federal Landscaped Grounds (60 Fed. Reg. 40837) developed by the FEE into landscaping pro-grams, policies, and practices.

(b) Within 12 months of the date of this order, the FEE shall form a workgroup of appropriate Federal agency representatives to review and up-date the guidance in subsection (a) of this section, as appropriate.

(c) Each agency providing funding for nonfederal projects involving landscaping projects shall furnish funding recipients with information on environmentally and economically beneficial landscaping practices and work with the recipients to support and encourage application of such practices on Federally funded projects.

**Sec. 602. *Technical Assistance and Outreach.*** The EPA, the General Services Administration (GSA), and the USDA shall provide technical assistance in accordance with their respective authorities on environmentally and economically beneficial landscaping practices to agencies and their facilities.

## **PART 7—ACQUISITION AND PROCUREMENT**

**Sec. 701. *Limiting Procurement of Toxic Chemicals, Hazardous Substances, and Other Pollutants.***

(a) Within 12 months of the date of this order, each agency shall implement training programs to ensure that agency procurement officials and acquisition program managers are aware of the requirements of this order and its applicability to those individuals.

(b) Within 24 months of the date of this order, each agency shall determine the feasibility of implementing centralized procurement and distribution (e.g., “pharmacy”) programs at its facilities for tracking, distribution, and management of toxic or hazardous materials and, where appropriate, implement such programs.

(c) Under established schedules for review of standardized documents, DoD and GSA, and other agencies, as appropriate, shall review their standardized documents and identify opportunities to eliminate or reduce their use of chemicals included on the list of priority chemicals developed by the EPA under subsection 503(b) of this order, and make revisions as appropriate.

(d) Each agency shall follow the policies and procedures for toxic chemical release reporting in accordance with FAR section 23.9 effective as of the date of this order and policies and procedures on

Federal compliance with right-to-know laws and pollution prevention requirements in accordance with FAR section 23.10 effective as of the date of this order.

**Sec. 702. *Environmentally Benign Adhesives.*** Within 12 months after environmentally benign pressure sensitive adhesives for paper products become commercially available, each agency shall revise its specifications for paper products using adhesives and direct the purchase of paper products using those adhesives, whenever technically practicable and cost effective. Each agency should consider products using the environmentally benign pressure sensitive adhesives approved by the U.S. Postal Service (USPS) and listed on the USPS Qualified Products List for pressure sensitive recyclable adhesives.

**Sec. 703. *Ozone-Depleting Substances.*** Each agency shall follow the policies and procedures for the acquisition of items that contain, use, or are manufactured with ozone-depleting substances in accordance with FAR section 23.8 and other applicable FAR provisions.

**Sec. 704. *Environmentally and Economically Beneficial Landscaping Practices.***

(a) Within 18 months of the date of this order, each agency shall have in place acquisition and procurement practices, including provision of landscaping services that conform to the guidance referred to in section 601 of this order, for the use of environmentally and economically beneficial landscaping practices. At a minimum, such practices shall be consistent with the policies in the guidance referred to in section 601 of this order.

(b) In implementing landscaping policies, each agency shall purchase environmentally preferable and recycled content products, including EPA-designated items such as compost and mulch, that contribute to environmentally and economically beneficial practices.

## **PART 8—EXEMPTIONS**

**Sec. 801. *National Security Exemptions.*** Subject to subsection 902(c) of this order and except as otherwise required by applicable law, in the interest of national security, the head of any agency may request from the President an exemption from complying with the provisions of any or all provisions of this order for particular agency facilities, provided that the procedures set forth in section 120(j)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9620(j)(1)), are followed, with the following exceptions: (a) an exemption issued under this section will be for a specified period of time that may exceed 1 year; (b) notice of any exemption granted under this section for provisions not otherwise required by law is only required to the Director of OMB, the Chair of the CEQ, and the Director of the National Security Council; and (c) an exemption under this section may be issued due to lack of appropriations, provided that the head of the agency requesting the exemption shows that necessary funds were requested by the agency in its budget submission and agency plan under Executive Order 12088 of October 13, 1978, and were not contained in the President's budget request or the Congress failed to make available the requested appropriation. To the maximum extent practicable, and without compromising national security, each agency shall strive to comply with the purposes, goals, and implementation steps in this order. Nothing in this order affects limitations on the dissemination of classified information pursuant to law, regulation, or Executive order.

**Sec. 802. *Compliance.*** After January 1, 2002, OMB, in consultation with the Chair of the Workgroup established by section 306 of this order, may modify the compliance requirements for an agency under this order, if the agency is unable to comply with the requirements of the order. An agency requesting modification must show that it has made substantial good faith efforts to comply with the order. The cost-effectiveness of implementation of the order can be a factor in OMB's decision to modify the requirements for that agency's compliance with the order.

## **PART 9—GENERAL PROVISIONS**

**Sec. 901. *Revocation.*** Executive Order 12843 of April 21, 1993, Executive Order 12856 of August 3, 1993, the Executive Memorandum on Environmentally Beneficial Landscaping of April 26, 1994, Executive Order 12969 of August 8, 1995, and section 1–4. “Pollution Control Plan” of Executive Order 12088 of October 13, 1978, are revoked.

### **Sec. 902. *Limitations.***

(a) This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person.

(b) This order applies to Federal facilities in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction. Each agency with facilities outside of these areas, however, is encouraged to make best efforts to comply with the goals of this order for those facilities.

(c) Nothing in this order alters the obligations under EPCRA, PPA, and CAA independent of this order for Government-owned, contractor-operated facilities and Government corporations owning or operating facilities or subjects such facilities to EPCRA, PPA, or CAA if they are otherwise excluded. However, each agency shall include the releases and other waste management of chemicals for all such facilities to meet the agency’s reporting responsibilities under section 501 of this order.

(d) Nothing in this order shall be construed to make the provisions of CAA sections 304 and EPCRA sections 325 and 326 applicable to any agency or facility, except to the extent that an agency or facility would independently be subject to such provisions.

**Sec. 903. *Community Outreach.*** Each agency is encouraged to establish a process for local community advice and outreach for its facilities relevant to aspects of this and other related Greening the Government Executive orders. All strategies and plans developed under this order shall be made available to the public upon request.

## **PART 10—DEFINITIONS**

For purposes of this order:

**Sec. 1001. *General.*** Terms that are not defined in this part but that are defined in Executive Orders 13101 and 13123 have the meaning given in those Executive orders. For the purposes of Part 5 of this order all definitions in EPCRA and PPA and implementing regulations at 40 CFR Parts 370 and 372 apply.

**Sec. 1002.** “Administrator” means the Administrator of the EPA.

**Sec. 1003.** “Environmental cost accounting” means the modification of cost attribution systems and financial analysis practices specifically to directly track environmental costs that are traditionally hidden in overhead accounts to the responsible products, processes, facilities or activities.

**Sec. 1004.** “Facility” means any building, installation, structure, land, and other property owned or operated by, or constructed or manufactured and leased to, the Federal Government, where the Federal Government is formally accountable for compliance under environmental regulation (e.g., permits, reports/records and/or planning requirements) with requirements pertaining to discharge, emission, release, spill, or management of any waste, contaminant, hazardous chemical, or pollutant. This term includes a group of facilities at a single location managed as an integrated operation, as well as government owned contractor operated facilities.

**Sec. 1005.** “Environmentally benign pressure sensitive adhesives” means adhesives for stamps, labels, and other paper products that can be easily treated and removed during the paper recycling process.

**Sec. 1006.** “Ozone-depleting substance” means any substance designated as a Class I or Class II substance by EPA in 40 CFR Part 82.

**Sec. 1007.** “Pollution prevention” means “source reduction,” as defined in the PPA, and other practices that reduce or eliminate the creation of pollutants through: (a) increased efficiency in the use of raw materials, energy, water, or other resources; or (b) protection of natural resources by conservation.

**Sec. 1008.** “Greening the Government Executive orders” means this order and the series of orders on greening the government including Executive Order 13101 of September 14, 1998, Executive Order 13123 of June 3, 1999, Executive Order 13134 of August 12, 1999, and other future orders as appropriate. Activities, products, or services that can interact with the environment.

WILLIAM J. CLINTON  
THE WHITE HOUSE,  
*April 21, 2000.*

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Billing code 3195-01-P

## • Executive Order 13149 - GREENING THE GOVERNMENT THROUGH FEDERAL FLEET AND TRANSPORTATION EFFICIENCY

April 21, 2000

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Energy Policy and Conservation Act, as amended (42 U.S.C. 6201 *et seq.*), the Energy Policy Act of 1992 (Public Law 102-486), section 301 of title 3, United States Code, and the Energy Conservation Reauthorization Act of 1998 (Public Law 105-388), it is hereby ordered as follows:

### PART 1 PREAMBLE

**Section 101. *Federal Leadership.*** The purpose of this order is to ensure that the Federal Government exercises leadership in the reduction of petroleum consumption through improvements in fleet fuel efficiency and the use of alternative fuel vehicles (AFVs) and alternative fuels. Reduced petroleum use and the displacement of petroleum by alternative fuels will help promote markets for more alternative fuel and fuel efficient vehicles, encourage new technologies, enhance the United States' energy self-sufficiency and security, and ensure a healthier environment through the reduction of greenhouse gases and other pollutants in the atmosphere.

### PART 2 GOALS

**Sec. 201. *Reduced Petroleum Fuel Consumption.*** Each agency operating 20 or more motor vehicles within the United States shall reduce its entire vehicle fleet's annual petroleum consumption by at least 20 percent by the end of FY 2005, compared with FY 1999 petroleum consumption levels.

**Sec. 202. *Performance Strategies.*** Agencies have numerous options for developing a strategy to meet the petroleum reduction levels established in section 201 of this order. Measures include: the use of alternative fuels in light, medium, and heavy-duty vehicles; the acquisition of vehicles with higher fuel economy, including hybrid vehicles; the substitution of cars for light trucks; an increase in vehicle load factors; a decrease in vehicle miles traveled; and a decrease in fleet size. Each agency will need a strategy that includes most, if not all, of these measures, but can develop a strategy that fits its unique fleet configuration and mission requirements. As part of the strategy, each agency should attempt to accelerate the introduction of vehicles meeting Tier 2 standards. Where feasible, agencies should also consider procurement of innovative vehicles, such as hybrid electric vehicles, capable of large improvements in fuel economy. The strategy should also attempt to minimize costs in achieving the objectives of this order. In developing its strategy, each agency shall include the following:

(a) **AFV Acquisition and Use of Alternative Fuels.** Each agency shall fulfill the acquisition requirements for AFVs established by section 303 of the Energy Policy Act of 1992. Agencies shall use alternative fuels to meet a majority of the fuel requirements of those motor vehicles by the end of FY 2005. Section 402 of this order addresses related issues of alternative fuel infrastructure availability and the ability to track alternative fuel usage data; and

(b) **Acquisition of Higher Fuel Economy Vehicles.** Agencies shall increase the average EPA fuel economy rating of passenger cars and light trucks acquired by at least 1 mile per gallon (mpg) by the end of FY 2002 and at least 3 mpg by the end of FY 2005 compared to FY 1999 acquisitions.

### PART 3 ORGANIZATIONS AND ACCOUNTABILITY

**Sec. 301. *Leadership Responsibilities.*** The Office of Management and Budget (OMB), the Department of Energy (DOE), the Environmental Protection Agency (EPA), and the General Services Administration (GSA) shall be responsible for providing leadership to the other Federal agencies in implementing programs to meet the goals of this order. Therefore, they shall perform the following activities:

(a) OMB shall:

(1) designate a senior official to assume the responsibility for coordinating the collection of agency budget and data submissions pursuant to this order;

(2) amend and issue budget guidance to the agencies that requires each agency to identify in its annual budget submission the funding necessary to meet the requirements of this order;

(3) review annual agency budget submissions to determine adequacy in meeting the goal of this order and to balance requests for increased funding to support achievement of the goals against other mission priorities for the agency; and

(4) review agency submissions for the annual report to the Congress, after budget decisions are made.

(b) DOE shall:

(1) issue guidance to agencies, within 90 days of the issuance of this order, on preparation and submission of agency strategies for complying with this order and the collection and annual reporting of data to demonstrate compliance with this order;

(2) review and evaluate agency strategies prior to their submission to OMB;

(3) provide OMB with copies of the agency strategy evaluations;

(4) provide whatever other support OMB requires to facilitate performance of OMB's role;

(5) establish the data collection and reporting system outlined in the DOE guidance for collecting annual agency performance data on meeting the goals of this order and other applicable statutes and policies;

(6) educate personnel from other agencies on the requirements of this order, the data collection and reporting system, best practices for improving fleet fuel efficiency, and methods for successfully acquiring and using AFVs;

(7) review agencies' annual data submissions for accuracy and produce a scorecard of agency and overall Federal compliance with this order and other applicable statutes and policies; and

(8) report to the President annually on compliance with the order, including the scorecard and level of performance in meeting the goals of the agencies' strategies.

(c) EPA shall support DOE and GSA in their efforts to assist the agencies in the accelerated purchase of Tier 2 vehicles.

(d) GSA shall develop and implement strategies that will ease agencies' financial and administrative burdens associated with the acquisition of AFVs, including:

(1) Agencies shall be allowed to replace their conventionally-fueled vehicles with AFVs by making an initial lump-sum payment for the additional acquisition cost of the AFV and shall be allowed to contribute to the higher replacement costs of the AFV incrementally over the term of the lease, and have the option of averaging AFV incremental costs across the agency fleet as provided by the Energy Policy Act of 1992.

(2) Within 120 days of this order, the Administrator of GSA, in consultation with other agencies, shall:

(A) provide a summary of agency AFV acquisition plans to potential AFV manufacturers to assist in their production planning. At least 4 months in advance of agency vehicle ordering cycles, GSA must provide to agencies the best available information on the production plans of AFV manufacturers;

(B) develop, in coordination with DOE and EPA, methods that will help Federal fleet managers to select vehicles to improve fleet fuel efficiency and to meet Tier 2 vehicle standards; and

(C) collaborate with its customer agencies and their procurement staff and officials to discuss and plan efforts to ensure that the GSA-leased fleet is making progress toward the goals of this order.

**Sec. 302. *Designation of Senior Agency Official.*** Within 90 days of the date of this order, the head of each agency shall designate a senior official to assume responsibility for the agency's AFV and fleet fuel efficiency pro-grams, and for meeting the requirements of this order. Each senior agency official designated by an agency shall be responsible for:

- (a) preparing an agency strategy for meeting the goals of this order, in accordance with guidance issued by DOE;
- (b) submitting the agency strategy to DOE within 180 days of the issuance of this order for evaluation and submission to OMB;
- (c) implementing the data collection and reporting system outlined in the DOE guidance for collecting annual agency performance data on meeting the goals of this order and reporting the data to DOE;
- (d) ensuring the agency's strategy for meeting the goals of this order is incorporated in the annual budget submission to OMB; and
- (e) assembling the appropriate team and resources in the agency necessary to attain the goals of this order.

**Sec. 303. *Management and Government Performance.*** Agencies may use the following management strategies to assist them in meeting the goals of this order:

(a) *Awards.* Agencies may use employee incentive programs to reward exceptional performance in implementing this order.

(b) *Performance Evaluations.* Agencies shall, where appropriate, include successful implementation of the provisions of this order in the position descriptions and performance evaluations of agency heads, the senior official, fleet managers, their superiors, and other relevant employees.

**Sec. 304. *Applicability.*** This order applies to each agency operating 20 or more motor vehicles within the United States. Agency means an executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

#### **PART 4 IMPLEMENTATION**

**Sec. 401. *Vehicle Reporting Credits.*** When preparing the annual report to DOE and OMB, each agency acquisition of an alternative fuel light-duty vehicle, regardless of geographic placement, shall count as one credit towards fulfilling the AFV acquisition requirements of the Energy Policy Act of 1992. Agencies shall receive one additional credit for each light-duty AFV that exclusively uses an alternative fuel and for each Zero Emission Vehicle of any size. Agencies shall receive three credits for dedicated medium-duty AFVs and four credits for dedicated heavy-duty AFVs. Agencies can also receive one credit for every 450 gallons of pure bio-diesel used in diesel vehicles.

**Sec. 402. *Infrastructure.*** To support the use of alternative fuel in AFVs, agencies should arrange for fueling at commercial facilities that offer alternative fuels for sale to the public.

(a) Agencies should team with State, local, and private entities to support the expansion and use of public access alternative fuel refueling stations;

(b) Agencies should use the authority granted to them in section 304 of the Energy Policy Act of 1992 to establish nonpublic access alternative fuel infrastructure for fueling Federal AFVs where public fueling is unavailable.

(c) Agencies are encouraged to work with DOE and GSA to resolve alternative fuel usage tracking issues with alternative and petroleum fuel providers.

**Sec. 403. *Procurement of Environmentally Preferable Motor Vehicle Products.***

(a) Consistent with Executive Order 13101 and section 6002 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6962, effective 6 months after the date of this order, no Federal agency shall purchase, sell, or arrange for the purchase of virgin petroleum motor vehicle lubricating oils when re-refined motor vehicle lubricating oils are reasonably available and meet the vehicle manufacturer's recommended performance standards.

(b) Consistent with Executive Order 13101 and RCRA section 6962, in acquiring and maintaining motor vehicles, agencies shall acquire and use United States EPA-designated Comprehensive Procurement

Guideline items, including but not limited to retread tires, when such products are reasonably available and meet applicable performance standards. In addition, Federal agencies should consider acquiring other recycled content products, such as tires containing a minimum of 5–10 percent post-consumer recovered rubber.

(c) Consistent with Executive Order 13101, Federal agencies are encouraged to use biobased motor vehicle products when such products are reasonably available and meet applicable performance standards.

## **PART 5 GENERAL PROVISIONS**

**Sec. 501. *Revocation.*** Executive Order 13031 of December 13, 1996, is revoked.

**Sec. 502. *Statutory Authority.*** Agencies must carry out the provisions of this order to the extent consistent with their statutory authority.

**Sec. 503. *Limitations.*** This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person.

**Sec. 504. *Independent Agencies.*** Independent agencies and agencies excepted from coverage by section 304 are encouraged to comply with the provisions of this order.

**Sec. 505. *Government-Owned Contractor-Operated Vehicles.*** Agencies must ensure that all Government-owned contractor-operated vehicles comply with all applicable goals and other requirements of this order and that these goals and requirements are incorporated into each contractor's management contract.

**Sec. 506. *Exemptions for Military Tactical, Law Enforcement, and Emergency Vehicles.*** Department of Defense military tactical vehicles are exempt from this order. Law enforcement, emergency, and any other vehicle class or type determined by OMB, in consultation with DOE, are exempted from this order's requirements for Federal fleet fuel efficiency and alternative fuel vehicle acquisition. Agencies claiming vehicle exemptions must provide information on the number of each class or type of vehicle claimed as exempt as well as an estimate of total fuel consumption of exempt vehicles on an annual basis. Agencies should examine options for increasing fuel efficiency in these exempt vehicles and should report actions taken to increase fuel efficiency in these vehicles or fleets. All information required by this section must be submitted annually under Part 3 of this order.

**Sec. 507. *Compliance.*** (a) If an agency fails to meet requirements of the Energy Policy Act of 1992 or this order, its report to the DOE and OMB under section 302(c) must include an explanation for such failure and an updated strategy for achieving compliance using the agency's current and requested budgets.

(b) OMB, in consultation with DOE, may modify the compliance requirements for an agency under Part 2 of this order, if the agency is unable to comply with the requirements of that part. An agency requesting modification must show that it has made substantial good faith efforts to comply with that part. The availability and costs of alternative fuels and AFVs can be a factor in OMB's decision to modify the agency's compliance with Part 2 of this order.

**Sec. 508. *Definitions.*** Terms used in this order shall have the same definitions as those in the Energy Policy Act of 1992 and Executive Order 13101, unless specifically changed in guidance to be issued by DOE under section 301(b) of this order.

WILLIAM J. CLINTON  
THE WHITE HOUSE,  
April 21, 2000.

[FR Doc. 00-10551, Filed 4-25-00; 8:45 am] Billing code 3195-01-P



## • Executive Order 13158 - MARINE PROTECTED AREAS

May 26, 2000

By the authority vested in me as President by the Constitution and the laws of the United States of America and in furtherance of the purposes of the National Marine Sanctuaries Act (16 U.S.C. 1431 *et seq.*), National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-ee), National Park Service Organic Act (16 U.S.C. 1 *et seq.*), National Historic Preservation Act (16 U.S.C. 470 *et seq.*), Wilderness Act (16 U.S.C. 1131 *et seq.*), Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*), Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), Marine Mammal Protection Act (16 U.S.C. 1362 *et seq.*), Clean Water Act of 1977 (33 U.S.C. 1251 *et seq.*), National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*), Outer Continental Shelf Lands Act (42 U.S.C. 1331 *et seq.*), and other pertinent statutes, it is ordered as follows:

**Section 1. Purpose.** This Executive Order will help protect the significant natural and cultural resources within the marine environment for the benefit of present and future generations by strengthening and expanding the Nation's system of marine protected areas (MPAs). An expanded and strengthened comprehensive system of marine protected areas throughout the marine environment would enhance the conservation of our Nation's natural and cultural marine heritage and the ecologically and economically sustainable use of the marine environment for future generations. To this end, the purpose of this order is to, consistent with domestic and international law:

(a) strengthen the management, protection, and conservation of existing marine protected areas and establish new or expanded MPAs;

(b) develop a scientifically based, comprehensive national system of MPAs representing diverse U.S. marine ecosystems, and the Nation's natural and cultural resources; and

(c) avoid causing harm to MPAs through federally conducted, approved, or funded activities.

**Sec. 2. Definitions.** For the purposes of this order: (a) "Marine protected area" means any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein.

(b) "Marine environment" means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands there-under, over which the United States exercises jurisdiction, consistent with international law.

(c) The term "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

**Sec. 3. MPA Establishment, Protection, and Management.** Each Federal agency whose authorities provide for the establishment or management of MPAs shall take appropriate actions to enhance or expand protection of existing MPAs and establish or recommend, as appropriate, new MPAs. Agencies implementing this section shall consult with the agencies identified in sub-section 4(a) of this order, consistent with existing requirements.

**Sec. 4. National System of MPAs.** (a) To the extent permitted by law and subject to the availability of appropriations, the Department of Commerce and the Department of the Interior, in consultation with the Department of Defense, the Department of State, the United States Agency for International Development, the Department of Transportation, the Environmental Protection Agency, the National Science Foundation, and other pertinent Federal agencies shall develop a national system of MPAs. They shall coordinate and share information, tools, and strategies, and provide guidance to enable and encourage the use of the

following in the exercise of each agency's respective authorities to further enhance and expand protection of existing MPAs and to establish or recommend new MPAs, as appropriate:

- (1) science-based identification and prioritization of natural and cultural resources for additional protection;
- (2) integrated assessments of ecological linkages among MPAs, including ecological reserves in which consumptive uses of resources are prohibited, to provide synergistic benefits;
- (3) a biological assessment of the minimum area where consumptive uses would be prohibited that is necessary to preserve representative habitats in different geographic areas of the marine environment;
- (4) an assessment of threats and gaps in levels of protection currently afforded to natural and cultural resources, as appropriate;
- (5) practical, science-based criteria and protocols for monitoring and evaluating the effectiveness of MPAs;
- (6) identification of emerging threats and user conflicts affecting MPAs and appropriate, practical, and equitable management solutions, including effective enforcement strategies, to eliminate or reduce such threats and conflicts;
- (7) assessment of the economic effects of the preferred management solutions; and
- (8) identification of opportunities to improve linkages with, and technical assistance to, international marine protected area programs.

(b) In carrying out the requirements of section 4 of this order, the Department of Commerce and the Department of the Interior shall consult with those States that contain portions of the marine environment, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, tribes, Regional Fishery Management Councils, and other entities, as appropriate, to promote coordination of Federal, State, territorial, and tribal actions to establish and manage MPAs.

(c) In carrying out the requirements of this section, the Department of Commerce and the Department of the Interior shall seek the expert advice and recommendations of non-Federal scientists, resource managers, and other interested persons and organizations through a Marine Protected Area Federal Advisory Committee. The Committee shall be established by the Department of Commerce.

(d) The Secretary of Commerce and the Secretary of the Interior shall establish and jointly manage a website for information on MPAs and Federal agency reports required by this order. They shall also publish and maintain a list of MPAs that meet the definition of MPA for the purposes of this order.

(e) The Department of Commerce's National Oceanic and Atmospheric Administration shall establish a Marine Protected Area Center to carry out, in cooperation with the Department of the Interior, the requirements of subsection 4(a) of this order, coordinate the website established pursuant to subsection 4(d) of this order, and partner with governmental and non-governmental entities to conduct necessary research, analysis, and exploration. The goal of the MPA Center shall be, in cooperation with the Department of the Interior, to develop a framework for a national system of MPAs, and to provide Federal, State, territorial, tribal, and local governments with the information, technologies, and strategies to support the system. This national system framework and the work of the MPA Center is intended to support, not interfere with, agencies' independent exercise of their own existing authorities.

(f) To better protect beaches, coasts, and the marine environment from pollution, the Environmental Protection Agency (EPA), relying upon existing Clean Water Act authorities, shall expeditiously propose new science-based regulations, as necessary, to ensure appropriate levels of protection for the marine environment. Such regulations may include the identification of areas that warrant additional pollution protections and the enhancement of marine water quality standards. The EPA shall consult with the Federal agencies identified in subsection 4(a) of this order, States, territories, tribes, and the public in the development of such new regulations.

**Sec. 5. Agency Responsibilities.** Each Federal agency whose actions affect the natural or cultural resources that are protected by an MPA shall identify such actions. To the extent permitted by law and to the maximum extent practicable, each Federal agency, in taking such actions, shall avoid harm to the natural

and cultural resources that are protected by an MPA. In implementing this section, each Federal agency shall refer to the MPAs identified under subsection 4(d) of this order.

**Sec. 6. *Accountability.*** Each Federal agency that is required to take actions under this order shall prepare and make public annually a concise description of actions taken by it in the previous year to implement the order, including a description of written comments by any person or organization stating that the agency has not complied with this order and a response to such comments by the agency.

**Sec. 7. *International Law.*** Federal agencies taking actions pursuant to this Executive Order must act in accordance with international law and with Presidential Proclamation 5928 of December 27, 1988, on the Territorial Sea of the United States of America, Presidential Proclamation 5030 of March 10, 1983, on the Exclusive Economic Zone of the United States of America, and Presidential Proclamation 7219 of September 2, 1999, on the Contiguous Zone of the United States.

**Sec. 8. *General.*** (a) Nothing in this order shall be construed as altering existing authorities regarding the establishment of Federal MPAs in areas of the marine environment subject to the jurisdiction and control of States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and Indian tribes.

(b) This order does not diminish, affect, or abrogate Indian treaty rights or United States trust responsibilities to Indian tribes.

(c) This order does not create any right or benefit, substantive or procedural, enforceable in law or equity by a party against the United States, its agencies, its officers, or any person.

WILLIAM J. CLINTON  
THE WHITE HOUSE,  
*May 26, 2000.*

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## • Executive Order 13175 - CONSULTATION AND COORDINATION WITH INDIAN TRIBAL GOVERNMENTS

November 6, 2000

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes; it is hereby ordered as follows:

**Section 1. Definitions.** For purposes of this order:

(a) “Policies that have tribal implications” refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

(b) “Indian tribe” means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(c) “Agency” means any authority of the United States that is an “agency” under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) “Tribal officials” means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

**Sec. 2. Fundamental Principles.** In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

(a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

(b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

**Sec. 3. Policymaking Criteria.** In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

(a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:

(1) encourage Indian tribes to develop their own policies to achieve program objectives;

- (2) where possible, defer to Indian tribes to establish standards; and
- (3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

**Sec. 4. *Special Requirements for Legislative Proposals.*** Agencies shall not submit to the Congress legislation that would be inconsistent with the policy-making criteria in Section 3.

**Sec. 5. *Consultation.*** (a) Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:

- (1) funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or
- (2) the agency, prior to the formal promulgation of the regulation,
  - (A) consulted with tribal officials early in the process of developing the proposed regulation;
  - (B) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and
  - (C) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(c) to the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,

- (1) consulted with tribal officials early in the process of developing the proposed regulation;
- (2) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and
- (3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

**Sec. 6. *Increasing Flexibility for Indian Tribal Waivers.***

(a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

**Sec. 7. Accountability.**

(a) In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

**Sec. 8. Independent Agencies.** Independent regulatory agencies are encouraged to comply with the provisions of this order.

**Sec. 9. General Provisions.** (a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review), Executive Order 12988 (Civil Justice Reform), OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.

(b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism).

(c) Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) is revoked at the time this order takes effect.

(d) This order shall be effective 60 days after the date of this order.

**Sec. 10. Judicial Review.** This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

WILLIAM J. CLINTON  
THE WHITE HOUSE,  
November 6, 2000.

[FR Doc. 00-29003  
Filed 11-8-00; 8:45 am]  
Billing code 3195-01-P

## • Executive Order 13178 - NORTHWESTERN HAWAIIAN ISLANDS CORAL REEF ECOSYSTEM RESERVE

December 4, 2000

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Marine Sanctuaries Act, (16 U.S.C. 1431 *et seq.*), and the National Marine Sanctuaries Amendments Act of 2000, Public Law 106-513, and in furtherance of the purposes of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1401 *et seq.*), Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*), Endangered Species Act (16 U.S.C. 1531 *et seq.*), Marine Mammal Protection Act (16 U.S.C. 1362 *et seq.*), Clean Water Act (33 U.S.C. 1251 *et seq.*), National Historic Preservation Act (16 U.S.C. 470 *et seq.*), National Wildlife Refuge System Administration Act (16 U.S.C. 668dd-ee), and other pertinent statutes, it is ordered as follows:

**Section 1. Preamble.** The world's coral reefs—the rain forests of the sea— are in serious decline. These important and sensitive areas of biodiversity warrant special protection. While United States waters contain approximately 3 percent of the world's coral reefs, approximately 70 percent of U.S. coral reefs are in the Northwestern Hawaiian Islands. The 3.5 million acres of coral reefs around the remote, mostly uninhabited Northwestern Hawaiian Islands are spectacular and almost undisturbed by humans. The approximately 1,200 mile stretch of coral islands, seamounts, banks, and shoals are unquestionably some of the healthiest and most extensive coral reefs in the United States. In their own right, the spectacular coral reefs and lands provide an amazing geological record of volcanic and erosive powers that have shaped this area. This vast area supports a dynamic reef ecosystem that supports more than 7,000 marine species, of which approximately half are unique to the Hawaiian Island chain. This incredibly diverse ecosystem is home to many species of coral, fish, birds, marine mammals, and other flora and fauna including the endangered Hawaiian monk seal, the threatened green sea turtle, and the endangered leatherback and hawksbill sea turtles. In addition, this area has great cultural significance to Native Hawaiians as well as linkages to early Polynesian culture—making it additionally worthy of protection and understanding. This is truly a unique and special place, a coral reef ecosystem like no place on earth, and a source of pride, inspiration, and satisfaction for all Americans, especially the people of Hawaii. It is fully worthy of our best efforts to preserve a legacy of America's natural wonders for future generations. Due to the special significance of this area, I have determined that it is in the best interest of our Nation, and of future generations, to provide strong and lasting protection for the coral reef ecosystem of the Northwestern Hawaiian Islands. On May 26, 2000, I directed the Secretaries of Commerce and the Interior, working cooperatively with the State of Hawaii and consulting with the Western Pacific Fishery Management Council, to develop recommendations for a new, coordinated management regime to increase protection of the coral reef ecosystem of the Northwestern Hawaiian Islands and provide for sustainable use of the area. Upon consideration of their recommendations and comments received during the public visioning process on this initiative, and based on the statutory authorities set forth above, I am issuing this Executive Order.

**Sec. 2. Purpose.** The purpose of this Executive Order is to ensure the comprehensive, strong, and lasting protection of the coral reef ecosystem and related marine resources and species (resources) of the Northwestern Hawaiian Islands.

**Sec. 3. Establishment of Coral Reef Ecosystem Reserve.** There is hereby established in the Northwestern Hawaiian Islands a coral reef ecosystem reserve to be known as the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve). The Reserve shall include submerged lands and waters of the

Northwestern Hawaiian Islands, extending approximately 1,200 nautical miles (nm) long and 100nm wide. The Reserve shall be adjacent to and seaward of the seaward boundaries of the State of Hawaii and the Midway Atoll National Wildlife Refuge, and shall overlay the Hawaiian Islands National Wildlife Refuge to the extent that it extends beyond the seaward boundaries of the State of Hawaii. The boundaries of the Reserve are described in section 6 of this order.

**Sec. 4. *Management Principles.*** The Secretary of Commerce, or his designee, (hereafter “Secretary”) shall, subject to section 10(b) of this order, manage the Reserve in accordance with the following principles:

(a) The principal purpose of the Reserve is the long-term conservation and protection of the coral reef ecosystem and related marine resources and species of the Northwestern Hawaiian Islands in their natural character;

(b) The Reserve shall be managed using available science and applying a precautionary approach with resource protection favored when there is a lack of information regarding any given activity, to the extent not contrary to law;

(c) Culturally significant, noncommercial subsistence, cultural, and religious uses by Native Hawaiians should be allowed within the Reserve, consistent with applicable law and the long-term conservation and protection of Reserve resources;

(d) The Reserve shall be managed using, when appropriate, geographical zoning and innovative management techniques to ensure that the Reserve resources are protected from degradation or harm;

(e) To the extent consistent with the primary purpose of the Reserve, the Reserve shall be managed to support, promote, and coordinate appropriate scientific research and assessment, and long-term monitoring of Reserve resources, and the impacts or threats thereto from human and other activities, to help better understand, protect, and conserve these resources and species for future generations;

(f) To the extent consistent with the primary purpose of the Reserve, the Reserve shall be managed to enhance public awareness, understanding, and appreciation of Reserve resources, and the impacts or threats thereto from human and other activities;

(g) The Reserve shall be managed to further restoration and remediation of degraded or injured Reserve resources; and

(h) The Reserve shall be managed to facilitate coordinated management among Federal and State agencies and other entities, as appropriate, to provide comprehensive (looking beyond jurisdictional boundaries) conservation of the coral reef ecosystem and related marine resources and species throughout the Northwestern Hawaiian Islands, consistent with applicable authorities and the Management Principles of this section.

**Sec. 5. *Implementation.*** (a) Management of the Reserve. The Secretary shall manage the Reserve under the National Marine Sanctuaries Act and in accordance with this order.

(b) *Reserve Operations Plan.* The Secretary, in consultation with the Secretary of the Interior and the Governor of Hawaii, shall develop an operations plan to govern the management of the Reserve. In developing the Reserve Operations Plan the Secretary shall consider the advice and recommendations of the Reserve Council established pursuant to paragraph (c) of this section. The Reserve Operations Plan shall be directed at priority issues and actions that, at a minimum, provide for:

(1) Coordinated management among the Reserve, Hawaiian Islands National Wildlife Refuge, Midway Atoll National Wildlife Refuge, and the State of Hawaii, consistent with relevant authorities;

(2) Coordination among Federal agencies and the Director of the National Science Foundation to make vessels and other resources available for conservation and research activities for the Reserve;

(3) The cleanup and prevention of marine debris in the Reserve;

(4) The restoration or remediation of any degraded or injured resources of the Reserve;

(5) Research, monitoring, and assessment of the Reserve;

(6) Education and outreach about the Reserve and its resources and efforts to conserve them;

(7) Enforcement and surveillance for the Reserve, including the use of new technologies and coordination with the United States Coast Guard and other relevant agencies;



(8) Identification and coordination with Native Hawaiian interests, regarding culturally significant, noncommercial subsistence, cultural, and religious uses and locations within the Reserve;

(9) Identification of potential tourism, recreational, and commercial activities within the Reserve and actions necessary to ensure that these activities do not degrade the Reserve's resources or diminish the Reserve's natural character;

(10) Use of vessel monitoring systems for any vessel entering or transiting the Reserve, if warranted. To this end, the Secretary in consultation with the Department of State, United States Coast Guard, and the Department of Defense, shall evaluate the need for the establishment of vessel monitoring systems and, if warranted, shall initiate the steps necessary to have the appropriate domestic agencies, and request that the International Maritime Organization, adopt a vessel monitoring system requirement for the Reserve;

(11) Any regulations, in addition to the conservation measures and Reserve Preservation Areas established under this order, that the Secretary determines are necessary to manage the Reserve in accordance with this order; and

(12) Coordination of all relevant activities with the process to designate the Reserve as a National Marine Sanctuary, as provided under paragraph (f) of this section.

(c) *Conservation Measures.* The Reserve Operations Plan shall also include the conservation measures in section 7 of this order and the Reserve Preservation Areas in section 8 of this order.

(d) *Memorandum of Agreement.* To further paragraph (b)(1) of this section, and subject to section 10(b) of this order, and in particular to promote coordinated management of the entirety of the shallow areas of the coral reef ecosystem throughout the Northwestern Hawaiian Islands, the Secretary shall work with the Secretary of the Interior and Governor of the State of Hawaii to enter into one or more memoranda of agreement for the coordinated conservation and management of the Reserve, Midway Atoll and Hawaiian Islands National Wildlife Refuges, and State of Hawaii submerged lands and waters within the Northwestern Hawaiian Islands.

(e) *National Marine Sanctuary.* The Secretary shall initiate the process to designate the Reserve as a national marine sanctuary pursuant to sections 303 and 304 of the National Marine Sanctuaries Act (16 U.S.C. 1433, 1434). In doing so the Secretary shall supplement or complement the existing Reserve. The Secretary shall, in consultation with the Governor of the State of Hawaii, determine whether State submerged lands and waters should be included as part of the sanctuary. In designating and managing the sanctuary, the Secretary shall consider the advice and recommendations of the Reserve Council established pursuant to paragraph (f) of this section.

(f) *Council.* After considering input from the Secretary of the Interior and Governor of the State of Hawaii, the Secretary shall establish a Coral Reef Ecosystem Reserve Council pursuant to section 315 of the National Marine Sanctuaries Act (16 U.S.C. 1445a) to provide advice and recommendations on the Reserve Operations Plan and designation and management of any sanctuary. The Council shall include:

(1) Three Native Hawaiian representatives, including one Native Hawaiian elder, with experience or knowledge regarding Native Hawaiian subsistence, cultural, religious, or other activities in the Northwestern Hawaiian Islands.

(2) Three representatives from the non-Federal science community with experience specific to the Northwestern Hawaiian Islands and with expertise in at least one of the following areas:

(A) Marine mammal science.

(B) Coral reef ecology.

(C) Native marine flora and fauna of the Hawaiian Islands.

(D) Oceanography.

(E) Any other scientific discipline the Secretary determines to be appropriate.

(3) Three representatives from nongovernmental wildlife/marine life, environmental, and/or conservation organizations.

(4) One representative from the commercial fishing industry that conducts activities in the Northwestern Hawaiian Islands.

(5) One representative from the recreational fishing industry that conducts activities in the Northwestern Hawaiian Islands.

(6) One representative from the ocean-related tourism industry.

(7) One representative from the non-Federal community with experience in education and outreach regarding marine conservation issues.

(8) One citizen-at-large representative.

(9) One representative from the State of Hawaii as appointed by the Governor.

(10) One representative each, as nonvoting, *ex officio* members, from the Department of the Interior, United States Coast Guard, Department of Defense, Department of State, the National Marine Fisheries Service, the Hawaiian Islands Humpback Whale National Marine Sanctuary, National Science Foundation, Marine Mammal Commission, and Western Pacific Regional Fishery Management Council.

(g) *Report.* The Secretary shall provide a progress report on the implementation of this order to the Chair of the Council on Environmental Quality within 1 year from the date of this order.

**Sec. 6. *Area of the Reserve.*** The Reserve includes the waters and submerged lands of the Northwestern Hawaiian Islands as follows:

(a) The seaward boundary of the Reserve is 50nm from the approximate center geographical positions of Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Atoll, and Kure Island. Where the areas are not contiguous, parallel lines drawn tangent to and connecting those semi-circles of the 50nm areas that lie around such areas shall delimit the remainder of the Reserve.

(b) The inland boundary of the Reserve around each of the areas named in subparagraph (a) of this section is the seaward boundary of Hawaii State waters and submerged lands, and the seaward boundary of the Midway Atoll National Wildlife Refuge, as appropriate.

(c) The Reserve boundary is generally depicted on the map attached to this order. The Secretary, after consultation with the Governor of the State of Hawaii, may make technical modifications to the boundary of the Reserve, including providing straight-line boundaries for the Reserve for clarity and ease of identification, as appropriate.

**Sec. 7. *Protection and Conservation Measures.*** The conservation measures in this section apply throughout the Reserve.

(a) (1) *Commercial Fishing.* All currently existing commercial Federal fishing permits and current levels of fishing effort and take, as determined by the Secretary and pursuant to regulations in effect on the date of this order, shall be capped as follows:

(A) No commercial fishing may occur in Reserve Preservation Areas pursuant to section 8 of this order;

(B) There shall be no increase in the number of permits of any particular type of fishing (such as for bottomfishing) beyond the number of permits of that type in effect the year preceding the date of this order;

(C) The annual level of aggregate take under all permits of any particular type of fishing may not exceed the aggregate level of take under all permits of that type of fishing in the years preceding the date of this order, as determined by the Secretary, provided that the Secretary shall equitably divide the aggregate level into individual levels per permit, and further provided that the Secretary may make a one-time reasonable increase to the total aggregate to allow for the use of two Native Hawaiian bottomfishing permits;

(D) There shall be no permits issued for any particular type of fishing for which there were no permits issued in the year preceding the date of this order; and

(E) The type of fishing gear used by any permit holder may not be changed except with the permission of the Secretary, as provided under paragraph 3 of this section.

(2) *Recreational Fishing.* All currently existing (preceding the date of this order) levels of recreational fishing effort, as determined by the Secretary and pursuant to regulations in effect on the

day of this order, shall be capped (i.e., no increase of take levels or levels of fishing effort, species targeted, or change in gear types) throughout the Reserve. However, fishing is further restricted as provided in section 8 of this order.

(3) The Secretary, after consultation with the Secretary of the Interior and Governor of the State of Hawaii, and after public review and comment and consideration of any advice or recommendations of the Reserve Council and Western Pacific Regional Fishery Management Council, may further restrict the fishing activities under subparagraphs (a)(1) and (a)(2) of this section if necessary to protect Reserve resources, or may authorize or require alternate gear types if such gear would offer equal or greater protection for Reserve resources.

(b) In addition to the conservation measures in paragraph (a) of this section, the following activities are prohibited throughout the Reserve:

(1) Exploring for, developing, or producing oil, gas, or minerals;

(2) Having a vessel anchored on any living or dead coral with an anchor, an anchor chain, or an anchor rope when visibility is such that the seabed can be seen;

(3) Drilling into, dredging, or otherwise altering the seabed; or constructing, placing, or abandoning any structure, material, or other matter on the seabed, except as an incidental result of anchoring vessels;

(4) Discharging or depositing any material or other matter into the Reserve, or discharging or depositing any material or other matter outside the Reserve that subsequently enters the Reserve and injures any resource of the Reserve, except fish parts (i.e., chumming material or bait) used in and during authorized fishing operations, or discharges incidental to vessel use such as deck wash, approved marine sanitation device effluent, cooling water, and engine exhaust; and

(5) Removal, moving, taking, harvesting, or damaging any living or nonliving Reserve resources, except as provided under paragraph (a) of this section and sections 8(a) and 9 of this order.

(c) The Secretary may conduct, or authorize by permit the activities listed in subparagraphs (b)(3)-(5) of this section to the extent that they are necessary for research, monitoring, education, or management activities that further the Management Principles of section 4 of this order.

#### **Sec. 8. Reserve Preservation Areas.**

(a) To further protect Reserve resources, the following areas are hereby established as Reserve Preservation Areas until some or all are made permanent after adequate public review and comment, within which all activities referred to in paragraph (b) of this section are prohibited.

(1) From the seaward boundary of Hawaii State waters and submerged lands to a mean depth of 100 fathoms (fm) around:

(A) Nihoa Island, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 10fm, unless and until the Secretary determines otherwise after adequate public review and comment;

(B) Necker Island, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 20fm, unless and until the Secretary determines otherwise after adequate public review and comment;

(C) French Frigate Shoals;

(D) Gardner Pinnacles, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 10fm, unless and until the Secretary determines otherwise after adequate public review and comment;

(E) Maro Reef, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 20fm, unless and until the Secretary determines otherwise after adequate public review and comment;

(F) Laysan Island, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 50fm, unless and until the Secretary determines otherwise after adequate public review and comment;

- (G) Lisianski Island, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 50fm, unless and until the Secretary determines otherwise after adequate public review and comment;
  - (H) Pearl and Hermes Atoll; and
  - (I) Kure Island.
- (2) Twelve nautical miles around the approximate geographical centers of:
- (A) The first bank immediately east of French Frigate Shoals;
  - (B) Southeast Brooks Bank, which is the first bank immediately west of French Frigate Shoals, provided that the closure area shall not be closer than approximately 3nm of the next bank immediately west;
  - (C) St. Rogatien Bank, provided that the closure area shall not be closer than approximately 3nm of the next bank immediately east, provided further that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue, unless and until the Secretary determines otherwise after adequate public review and comment;
  - (D) The first bank west of St. Rogatien Bank, east of Gardner Pinnacles;
  - (E) Raita Bank; and
  - (F) Pioneer Bank, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue, unless and until the Secretary determines otherwise after adequate public review and comment.
- (b) Activities Prohibited Within Reserve Preservation Areas.
- (1) In addition to the conservation measures in section 7 of this order, which are applicable to the entire Reserve, the following activities are prohibited within the Reserve Preservation Areas listed in paragraph (a) of this section, except as expressly otherwise stated in this paragraph and sections (8)(a) and 9 of this order:
- (A) Commercial and recreational fishing;
  - (B) Anchoring in any area that contains available mooring buoys, or anchoring outside an available anchoring area when the Secretary has designated such area;
  - (C) Any type of touching or taking of living or dead coral;
  - (D) Discharging or depositing any material or other matter except cooling water or engine exhaust; and
  - (E) Such other activities that the Secretary identifies after adequate public review and comment, and after consideration of any advice and recommendations of the Reserve Council.
- (2) Notwithstanding the prohibitions in this paragraph, the Secretary may conduct, or authorize by permit, research, monitoring, education, or management activities within any Reserve Preservation Area that further the Management Principles of section 4 of this order.
- (3) The Reserve Preservation Areas in this section are approximated using fathoms. The Secretary will develop straight line boundaries based on longitude and latitude coordinates to encompass each Reserve Preservation Area, to provide for clarity and ease of identification. The Secretary may make technical modifications to any such boundaries.

**Sec. 9. *Native Hawaiian Uses.*** Native Hawaiian noncommercial subsistence, cultural, or religious uses may continue, to the extent consistent with existing law, within the Reserve and Reserve Preservation Areas identified under section 8 of this order. The Secretary shall work with Native Hawaiian interests to identify those areas where such Native Hawaiian uses of the Reserve's resources may be conducted without injury to the Reserve's coral reef ecosystem and related marine resources and species, and may revise the areas where such activities may occur after public review and comment, and consideration of any advice and recommendations of the Reserve Council.

**Sec. 10. *National Wildlife Refuges.***

(a) The Secretary of the Interior, in managing, through the U.S. Fish and Wildlife Service the Hawaiian Islands and Midway Atoll National Wildlife Refuges pursuant to the National Wildlife Refuge System

Administration Act (16 U.S.C. 668dd-668ee) and other applicable laws, shall follow the Management Principles of section 4 of this order, to the extent consistent with applicable law.

(b) Wherever the Reserve overlaps the Hawaiian Islands National Wildlife Refuge, the Reserve shall be managed to supplement and complement management of the Refuge to ensure coordinated conservation and management of the Reserve and the Refuge, consistent with the purposes and policies of the National Marine Sanctuaries Act, the National Marine Sanctuaries Amendments Act of 2000, and this order, and the authorities of the U.S. Fish and Wildlife Service under the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd-668ee) and other laws with respect to management of the Refuge. Nothing in this order shall enlarge or diminish the jurisdiction or authority of the Secretary or Secretary of the Interior in managing the Reserve or Refuge, respectively.

(c) The Secretary of the Interior, through the U.S. Fish and Wildlife Service, shall coordinate with the Secretary and the Governor of the State of Hawaii, as provided under section 5(b) of this order, to ensure coordinated protection and management among the Reserve, Refuges, and State, consistent with relevant authorities.

**Sec. 11. Administration and Judicial Review.**

(a) *International Law.* Management of the Reserve and any regulations issued pursuant thereto and all other provisions of this order shall be applied consistently with the 1983 Presidential Proclamation on the Exclusive Economic Zone, the 1988 Presidential Proclamation on the Territorial Sea, and the 1999 Presidential Proclamation on Contiguous Zone and in accordance with generally recognized principles of international law, and with the treaties, conventions, and other agreements to which the United States is a party. The Secretary shall consult with the Department of State in implementing this order.

(b) *Agency Responsibilities.* All Federal agencies whose actions may affect the Reserve and any National Marine Sanctuary established by the Secretary pursuant to this order shall carry out such actions in accordance with applicable laws, regulations and Executive Orders, including Executive Orders 13089 of June 11, 1998, and 13158 of May 26, 2000.

(c) *National Security and Emergency Actions.* Consistent with applicable law, nothing in this order is intended to apply to military activities (including those carried out by the United States Coast Guard), including military exercises, conducted within or in the vicinity of the Reserve, consistent with the requirements of Executive Orders 13089 of June 11, 1998, and 13158 of May 26, 2000. Further, nothing in this order is intended to restrict the Department of Defense from conducting activities necessary during time of war or national emergency, or when necessary for reasons of national security as determined by the Secretary of Defense, consistent with applicable law. In addition, consistent with applicable law, nothing in this order shall limit agency actions to respond to emergencies posing an unacceptable threat to human health or safety or to the marine environment and admitting of no other feasible solution.

(d) *United States Coast Guard.* Nothing in this order is intended to limit the authority of the United States Coast Guard to enforce any Federal law, or install or maintain aids to navigation.

(e) *Funding.* This order shall be carried out subject to the availability of appropriated funds and to the extent permitted by law.

(f) *Territorial Waters.* Nothing in this order shall enlarge or diminish the jurisdiction or authority of the State of Hawaii or the United States over submerged or other lands within the territorial waters off the coast of Hawaii.

(g) *Judicial Review.* This order does not create any right or benefit, substantive or procedural, enforceable in law or equity by a party against the United States, its agencies, its officers, or any person.

WILLIAM J. CLINTON  
THE WHITE HOUSE,  
December 4, 2000.

[FR Doc. 00-31313;  
Filed 12-6-00; 8:45 am]  
Billing code 3195-01-P

## • Executive Order 13186 - RESPONSIBILITIES OF FEDERAL AGENCIES TO PROTECT MIGRATORY BIRDS

January 10, 2001

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in furtherance of the purposes of the migratory bird conventions, the Migratory Bird Treaty Act (16 U.S.C. 703–711), the Bald and Golden Eagle Protection Acts (16 U.S.C. 668–668d), the Fish and Wildlife Coordination Act (16 U.S.C. 661–666c), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347), and other pertinent statutes, it is hereby ordered as follows:

**Section 1. Policy.** Migratory birds are of great ecological and economic value to this country and to other countries. They contribute to biological diversity and bring tremendous enjoyment to millions of Americans who study, watch, feed, or hunt these birds throughout the United States and other countries. The United States has recognized the critical importance of this shared resource by ratifying international, bilateral conventions for the conservation of migratory birds. Such conventions include the Convention for the Protection of Migratory Birds with Great Britain on behalf of Canada 1916, the Convention for the Protection of Migratory Birds and Game Mammals- Mexico 1936, the Convention for the Protection of Birds and Their Environment- Japan 1972, and the Convention for the Conservation of Migratory Birds and Their Environment-Union of Soviet Socialist Republics 1978. These migratory bird conventions impose substantive obligations on the United States for the conservation of migratory birds and their habitats, and through the Migratory Bird Treaty Act (Act), the United States has implemented these migratory bird conventions with respect to the United States. This Executive Order directs executive departments and agencies to take certain actions to further implement the Act.

**Sec. 2. Definitions.** For purposes of this order:

- (a) “Take” means take as defined in 50 C.F.R. 10.12, and includes both “intentional” and “unintentional” take.
- (b) “Intentional take” means take that is the purpose of the activity in question.
- (c) “Unintentional take” means take that results from, but is not the purpose of, the activity in question.
- (d) “Migratory bird” means any bird listed in 50 C.F.R. 10.13.
- (e) “Migratory bird resources” means migratory birds and the habitats upon which they depend.
- (f) “Migratory bird convention” means, collectively, the bilateral conventions (with Great Britain/Canada, Mexico, Japan, and Russia) for the conservation of migratory bird resources.
- (g) “Federal agency” means an executive department or agency, but does not include independent establishments as defined by 5 U.S.C. 104.
- (h) “Action” means a program, activity, project, official policy (such as a rule or regulation), or formal plan directly carried out by a Federal agency. Each Federal agency will further define what the term “action” means with respect to its own authorities and what programs should be included in the agency-specific Memoranda of Understanding required by this order. Actions delegated to or assumed by nonfederal entities, or carried out by nonfederal entities with Federal assistance, are not subject to this order. Such actions, however, continue to be subject to the Migratory Bird Treaty Act.
- (i) “Species of concern” refers to those species listed in the periodic report “Migratory Nongame Birds of Management Concern in the United States,” priority migratory bird species as documented by established plans (such as Bird Conservation Regions in the North American Bird Conservation Initiative or Partners in Flight physiographic areas), and those species listed in 50 C.F.R. 17.11.

**Sec. 3. Federal Agency Responsibilities.** (a) Each Federal agency taking actions that have, or are likely to have, a measurable negative effect on migratory bird populations is directed to develop and implement,

within 2 years, a Memorandum of Understanding (MOU) with the Fish and Wildlife Service (Service) that shall promote the conservation of migratory bird populations.

(b) In coordination with affected Federal agencies, the Service shall develop a schedule for completion of the MOUs within 180 days of the date of this order. The schedule shall give priority to completing the MOUs with agencies having the most substantive impacts on migratory birds.

(c) Each MOU shall establish protocols for implementation of the MOU and for reporting accomplishments. These protocols may be incorporated into existing actions; however, the MOU shall recognize that the agency may not be able to implement some elements of the MOU until such time as the agency has successfully included them in each agency's formal planning processes (such as revision of agency land management plans, land use compatibility guidelines, integrated resource management plans, and fishery management plans), including public participation and NEPA analysis, as appropriate. This order and the MOUs to be developed by the agencies are intended to be implemented when new actions or renewal of contracts, permits, delegations, or other third party agreements are initiated as well as during the initiation of new, or revisions to, land management plans.

(d) Each MOU shall include an elevation process to resolve any dispute between the signatory agencies regarding a particular practice or activity.

(e) Pursuant to its MOU, each agency shall, to the extent permitted by law and subject to the availability of appropriations and within Administration budgetary limits, and in harmony with agency missions:

(1) support the conservation intent of the migratory bird conventions by integrating bird conservation principles, measures, and practices into agency activities and by avoiding or minimizing, to the extent practicable, adverse impacts on migratory bird resources when conducting agency actions;

(2) restore and enhance the habitat of migratory birds, as practicable;

(3) prevent or abate the pollution or detrimental alteration of the environment for the benefit of migratory birds, as practicable;

(4) design migratory bird habitat and population conservation principles, measures, and practices, into agency plans and planning processes (natural resource, land management, and environmental quality planning, including, but not limited to, forest and rangeland planning, coastal management planning, watershed planning, etc.) as practicable, and coordinate with other agencies and nonfederal partners in planning efforts;

(5) within established authorities and in conjunction with the adoption, amendment, or revision of agency management plans and guidance, ensure that agency plans and actions promote programs and recommendations of comprehensive migratory bird planning efforts such as Partners-in-Flight, U.S. National Shorebird Plan, North American Waterfowl Management Plan, North American Colonial Waterbird Plan, and other planning efforts, as well as guidance from other sources, including the Food and Agricultural Organization's International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries;

(6) ensure that environmental analyses of Federal actions required by the NEPA or other established environmental review processes evaluate the effects of actions and agency plans on migratory birds, with emphasis on species of concern;

(7) provide notice to the Service in advance of conducting an action that is intended to take migratory birds, or annually report to the Service on the number of individuals of each species of migratory birds intentionally taken during the conduct of any agency action, including but not limited to banding or marking, scientific collecting, taxidermy, and depredation control;

(8) minimize the intentional take of species of concern by: (i) delineating standards and procedures for such take; and (ii) developing procedures for the review and evaluation of take actions. With respect to intentional take, the MOU shall be consistent with the appropriate sections of 50 C.F.R. parts 10, 21, and 22;

(9) identify where unintentional take reasonably attributable to agency actions is having, or is likely to have, a measurable negative effect on migratory bird populations, focusing first on species of concern, priority habitats, and key risk factors. With respect to those actions so identified, the agency shall develop and use principles, standards, and practices that will lessen the amount of unintentional take,

developing any such conservation efforts in cooperation with the Service. These principles, standards, and practices shall be regularly evaluated and revised to ensure that they are effective in lessening the detrimental effect of agency actions on migratory bird populations. The agency also shall inventory and monitor bird habitat and populations within the agency's capabilities and authorities to the extent feasible to facilitate decisions about the need for, and effectiveness of, conservation efforts;

(10) within the scope of its statutorily-designated authorities, control the import, export, and establishment in the wild of live exotic animals and plants that may be harmful to migratory bird resources;

(11) promote research and information exchange related to the conservation of migratory bird resources, including coordinated inventorying and monitoring and the collection and assessment of information on environmental contaminants and other physical or biological stressors having potential relevance to migratory bird conservation. Where such information is collected in the course of agency actions or supported through Federal financial assistance, reasonable efforts shall be made to share such information with the Service, the Biological Resources Division of the U.S. Geological Survey, and other appropriate repositories of such data (e.g., the Cornell Laboratory of Ornithology);

(12) provide training and information to appropriate employees on methods and means of avoiding or minimizing the take of migratory birds and conserving and restoring migratory bird habitat;

(13) promote migratory bird conservation in international activities and with other countries and international partners, in consultation with the Department of State, as appropriate or relevant to the agency's authorities;

(14) recognize and promote economic and recreational values of birds, as appropriate; and

(15) develop partnerships with non-Federal entities to further bird conservation.

(f) Notwithstanding the requirement to finalize an MOU within 2 years, each agency is encouraged to immediately begin implementing the conservation measures set forth above in subparagraphs (1) through (15) of this section, as appropriate and practicable.

(g) Each agency shall advise the public of the availability of its MOU through a notice published in the **Federal Register**.

**Sec. 4. Council for the Conservation of Migratory Birds.** (a) The Secretary of Interior shall establish an interagency Council for the Conservation of Migratory Birds (Council) to oversee the implementation of this order. The Council's duties shall include the following: (1) sharing the latest resource information to assist in the conservation and management of migratory birds; (2) developing an annual report of accomplishments and recommendations related to this order; (3) fostering partnerships to further the goals of this order; and (4) selecting an annual recipient of a Presidential Migratory Bird Federal Stewardship Award for contributions to the protection of migratory birds.

(b) The Council shall include representation, at the bureau director/administrator level, from the Departments of the Interior, State, Commerce, Agriculture, Transportation, Energy, Defense, and the Environmental Protection Agency and from such other agencies as appropriate.

**Sec. 5. Application and Judicial Review.** (a) This order and the MOU to be developed by the agencies do not require changes to current contracts, permits, or other third party agreements.

(b) This order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, separately enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON  
THE WHITE HOUSE,  
January 10, 2001.

[FR Doc. 01-1387

Filed 1-12-01; 8:45 am]Billing code 3195-01-P



## • Executive Order 13195 - TRAILS FOR AMERICA IN THE 21ST CENTURY

January 18, 2001

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in furtherance of purposes of the National Trails System Act of 1968, as amended (16 U.S.C. 1241–1251), the Transportation Equity Act for the 21st Century (Public Law 105–178), and other pertinent statutes, and to achieve the common goal of better establishing and operating America’s national system of trails, it is hereby ordered as follows:

**Section 1. Federal Agency Duties.** Federal agencies will, to the extent permitted by law and where practicable—and in cooperation with Tribes, States, local governments, and interested citizen groups—protect, connect, promote, and assist trails of all types throughout the United States. This will be accomplished by:

(a) Providing trail opportunities of all types, with minimum adverse impacts and maximum benefits for natural, cultural, and community resources;

(b) Protecting the trail corridors associated with national scenic trails and the high priority potential sites and segments of national historic trails to the degrees necessary to ensure that the values for which each trail was established remain intact;

(c) Coordinating maps and data for the components of the national trails system and Millennium Trails network to ensure that these trails are connected into a national system and that they benefit from appropriate national programs;

(d) Promoting and registering National Recreation Trails, as authorized in the National Trails System Act, by incorporating where possible the commitments and partners active with Millennium Trails;

(e) Participating in a National Trails Day the first Saturday of June each year, coordinating Federal events with the National Trails Day’s sponsoring organization, the American Hiking Society;

(f) Familiarizing Federal agencies that are active in tourism and travel with the components of a national system of trails and the Millennium Trails network and including information about them in Federal promotional and outreach programs;

(g) Fostering volunteer programs and opportunities to engage volunteers in all aspects of trail planning, development, maintenance, management, and education as outlined in 16 U.S.C. 1250;

(h) Encouraging participation of qualified youth conservation or service corps, as outlined in 41 U.S.C. 12572 and 42 U.S.C. 12656, to perform construction and maintenance of trails and trail-related projects, as encouraged in sections 1108(g) and 1112(e) of the Transportation Equity Act for the 21st Century, and also in trail planning protection, operations, and education;

(i) Promoting trails for safe transportation and recreation within communities;

(j) Providing and promoting a wide variety of trail opportunities and experiences for people of all ages and abilities;

(k) Providing historical interpretation of trails and trail sites and enhancing cultural and heritage tourism through special events, artworks, and programs; and

(l) Providing training and information services to provide high-quality information and training opportunities to Federal employees, Tribal, State, and local government agencies, and the other trail partners.

**Sec. 2. *The Federal Interagency Council on Trails.*** The Federal Interagency Council on Trails (Council), first established by agreement between the Secretaries of Agriculture and the Interior in 1969, is hereby recognized as a long-standing interagency working group. Its core members represent the Department of the Interior's Bureau of Land Management and National Park Service, the Department of Agriculture's Forest Service, and the Department of Transportation's Federal Highway Administration. Other Federal agencies, such as those representing cultural and heritage interests, are welcome to join this council. Leadership of the Council may rotate among its members as decided among themselves at the start of each fiscal year. The Council's mission is to coordinate information and program decisions, as well as policy recommendations, among all appropriate Federal agencies (in consultation with appropriate nonprofit organizations) to foster the development of America's trails through the following means:

- (a) Enhancing federally designated trails of all types (e.g., scenic, historic, recreation, and Millennium) and working to integrate these trails into a fully connected national system;
- (b) Coordinating mapping, signs and markers, historical and cultural interpretations, public information, training, and developing plans and recommendations for a national trails registry and database;
- (c) Ensuring that trail issues are integrated in Federal agency programs and that technology transfer and education programs are coordinated at the national level; and
- (d) Developing a memorandum of understanding among the agencies to encourage long-term interagency coordination and cooperation to further the spirit and intent of the National Trails System Act and related programs.

**Sec. 3. *Issue Resolution and Handbook for Federal Administrators of the National Trails System.*** Federal agencies shall together develop a process for resolving interagency issues concerning trails. In addition, reflecting the authorities of the National Trails System Act, participating agencies shall coordinate preparation of (and updates for) an operating handbook for Federal administrators of the National Trails System and others involved in creating a national system of trails. The handbook shall reflect each agencies' governing policies and provide guidance to each agencies' field staff and partners about the roles and responsibilities needed to make each trail in the national system fully operational.

**Sec. 4. *Observance of Existing Laws.*** Nothing in this Executive Order shall be construed to override existing laws, including those that protect the lands, waters, wildlife habitats, wilderness areas, and cultural values of this Nation.

**Sec. 5. *Judicial Review.*** This order is intended only to improve the internal management of the executive branch. It does not create any right or benefit, substantive or procedural, enforceable in law or equity by any party against the United States, its agencies, its officers or employees, or any other person.

WILLIAM J. CLINTON  
THE WHITE HOUSE,  
*January 18, 2001.*

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## • Executive Order 13196 - FINAL NORTHWESTERN HAWAIIAN ISLANDS CORAL REEF ECOSYSTEM RESERVE

January 18, 2001

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Marine Sanctuaries Act, (16 U.S.C. 1431 *et seq.*), and the National Marine Sanctuaries Amendments Act of 2000, Public Law 106–513, and in furtherance of the purposes of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1401 *et seq.*), Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*), Endangered Species Act (16 U.S.C. 1531 *et seq.*), Marine Mammal Protection Act (16 U.S.C. 1362 *et seq.*), Clean Water Act (33 U.S.C. 1251 *et seq.*), National Historic Preservation Act (16 U.S.C. 470 *et seq.*), National Wildlife Refuge System Administration Act (16 U.S.C. 668dd–e), and other pertinent statutes, it is ordered as follows:

### **Sec. 1. Preamble.**

On December 4, 2000, I issued Executive Order 13178 establishing the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve) pursuant to my authority under the National Marine Sanctuaries Act, as amended by the National Marine Sanctuary Amendments Act of 2000 (Act). In establishing the Reserve, I set forth a number of conservation measures and created specific Reserve Preservation Areas to protect the coral reef ecosystem and related marine resources and species (resources) of the Reserve. The Act provides that no closure areas can become permanent without adequate notice and comment. Accordingly, I proposed to make permanent the Reserve Preservation Areas and initiated a 30-day comment period on this proposal. I also sought comment on the conservation measures for the Reserve. On my behalf, the Secretary of Commerce received the public comments and held seven public hearings, including six throughout Hawaii. After considering the comments expressed at the hearings and received in writing, I have determined to make permanent the Reserve Preservation Areas with certain modifications set forth below. Further, I have modified certain conservation measures to address concerns raised, particularly regarding commercial and recreational fishing within the Reserve. With this action, the establishment of the Reserve under the Act, including the conservation measures and permanent Reserve Preservation Areas, is complete. The Secretary of Commerce will manage the Reserve pursuant to Executive Order 13178, as modified by this order, under the Act. The Secretary shall also initiate the process to designate the Reserve as a National Marine Sanctuary, as required by the Act.

### **Sec. 2. Purpose.**

The purpose of this order is to amend Executive Order 13178, and to make permanent Reserve Preservation Areas, as modified below, to ensure the comprehensive, strong, and lasting protection of the resources of the Northwestern Hawaiian Islands.

### **Sec. 3. Amendments to Sections 7 of Executive Order 13178.**

1. Section 7(a)(1) of Executive Order 13178 is hereby amended by revising the first sentence to read as follows: “Commercial Fishing. All currently existing commercial Federal fishing permits and current levels of fishing effort and take, which also includes the non-permitted level of trolling for pelagic species by currently permitted bottom fishers, as determined by the Secretary and pursuant to regulations in effect on December 4, 2000, shall be capped as follows:”

2. Section 7(a)(1)(C) of Executive Order 13178 is hereby revised to read as follows:

“(C) The annual level of aggregate take under all permits of any particular type of fishing may not exceed the aggregate level of take under all permits of that type of fishing as follows:

(1) Bottomfishing—the annual aggregate level for each permitted bottomfisher shall be that permittee’s individual average taken over the 5 years preceding December 4, 2000, as determined by the Secretary, provided that the Secretary, in furtherance of the principles of the reserve, may make a one-time reasonable increase to the total aggregate to allow for the use of two Native Hawaiian bottomfishing permits;

(2) All other commercial fishing—the annual aggregate level shall be the permittee’s individual take in the year preceding December 4, 2000, as determined by the Secretary.”

3. A new section 7(a)(1)(F) is hereby added to Executive Order 13178 and reads as follows:

“(F) Trolling for pelagic species shall be capped based on reported landings for the year preceding December 4, 2000.”

4. Section 7(b)(4) is revised to read as follows: “(4) Discharging or depositing any material or other matter into the Reserve, or discharging or depositing any material or other matter outside the Reserve that subsequently enters the Reserve and injures any resource of the Reserve, except:

(A) fish parts (i.e., chumming materia or bait) used in and during fishing operations authorized under this order;

(B) biodegradable effluent incident to vessel use and generated by a marine sanitation device in accordance with section 312 of the Federal Water Pollution Control Act, as amended;

(C) water generated by routine vessel operations (e.g., deck wash down and graywater as defined in section 312 of the Federal Water Pollution Control Act), excluding oily wastes from bilge pumping; or

(D) cooling water from vessels or engine exhaust; and”.

#### **Sec. 4. Amendments to Sections 8 of Executive Order 13178.**

1. Section 8 of Executive Order 13178 is modified by substituting “provided that commercial bottomfishing and commercial and recreational trolling for pelagic species in accordance with the requirements of sections 7(a)(1) and 7(a)(2) of this order, respectively,” for “provided that bottomfishing in accordance with the requirements of section 7(a)(1)” everywhere the latter phrase appears in section 8.

2. Section 8(a)(1)(A) is modified by substituting “a mean depth of 25 fm” for “a mean depth of 10fm.”

3. Section 8(a)(1)(B) is modified by substituting “a mean depth of 25 fm” for “a mean depth of 20fm.”

4. Section 8(a)(1)(D) is modified by substituting “a mean depth of 25 fm” for “a mean depth of 10fm.”

5. Section 8(a)(1)(E) is modified by substituting “a mean depth of 25 fm” for “a mean depth of 20fm.”

6. Section 8(a)(1)(G) is modified by substituting “a mean depth of 25 fm” for “a mean depth of 50fm.”

7. Section 8(a)(1)(I) is revised to read “Kure Atoll.”

8. Sections 8(a)(2)(D) and (E) are hereby deleted and a new section 8(a)(3) is hereby substituted as follows: “(3) Twelve nautical miles around the approximate geographical centers of

(A) The first bank west of St. Rogation Bank, east of Gardner Pinnacles, provided that commercial bottomfishing and commercial and recreational trolling for pelagic species in accordance with the requirements of sections 7(a)(1) and 7(a)(2) of this order, shall be allowed to continue for a period of 5 years from the date of this order; and

(B) Raita Bank, provided that commercial bottomfishing and commercial and recreational trolling for pelagic species in accordance with the requirements of sections 7(a)(1) and 7(a)(2) of this order, shall be allowed to continue for a period of 5 years from the date of this order; and

(C) Provided that both banks described above in (3)(A) and (3)(B) shall only continue to allow commercial bottomfishing and commercial and recreational trolling for pelagic species after the 5-year time period if it is determined that continuation of such activities will have no adverse impact on the resources of these banks.”

**Sec. 5. Reserve Preservation Areas.** The Reserve Preservation Areas, as modified in sections 3 and 4 of this order, are hereby made permanent in accordance with the Act.

**Sec. 6. *Judicial Review.*** This order does not create any right or benefit, substantive or procedural, enforceable in law or equity by a party against the United States, its agencies, its officers, or any person.

WILLIAM J. CLINTON  
THE WHITE HOUSE,  
*January 18, 2001.*

[FR Doc. 01-2214  
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## Appendix A - CROSS REFERENCE TABLE for LAWS

| Legislative Title                              | Popular Name(s)  | U.S. Code   | Public Law* | Public Law Date*  | Statute Citation* | Code of Federal Regulations   |
|--|--|---|-------------|-------------------|-------------------|---|
| Abandoned Shipwreck Act of 1987                | ASA  | 43 U.S.C. §§ 2101-2106                                  | 100-298     | April 28, 1988    | 102 Stat. 432     | 33 C.F.R. 325, App. C.  |
| American Folklife Preservation Act             | None Identified  | 20 U.S.C. §§ 2101-2107                                  | 94--201     | January 2, 1976   | 89 Stat. 1129     | None  |
| American Indian Religious Freedom Act          | None Identified  | 42 U.S.C. § 1996  | 95--341     | August 11, 1979   | 92 Stat. 469      | 33 C.F.R. 325, App. C.  |
| Anadromous Fish Conservation Act               | None Identified  | 16 U.S.C. §§ 757a-757g                                  | 89--304     | October 30, 1965  | 79 Stat. 1125     | 50 C.F.R. Part 401  |
| Antiquities Act of 1906                        | National Monument Act, American Antiquities Preservation Act                       | 16 U.S.C. §§ 431-433                                    | 59--209     | June 8, 1906      | 34 Stat. 225      | 43 C.F.R. 3<br>33 C.F.R. 325 App. C   |
| Archeological Resources Protection Act of 1979 | ARPA   | 16 U.S.C. § 470 et seq.                                 | 96--95      | October 31, 1979  | 93 Stat. 721      | 43 C.F.R. 7<br>36 C.F.R. 79<br>33 C.F.R. 320-330<br>33 C.F.R. 325, App. C   |
| Atlantic Striped Bass Conservation Act         | None Identified  | 16 U.S.C. § 1851  | 106-555     | December 21, 2000 | 114 Stat.2765     | None  |
| Bald Eagle Protection Act                      | Bald Eagle Act; Bald and Golden Eagle Protection Act                               | 16 U.S.C. §§ 668, 668 note, 668a-668d                   | Chapter 278 | June 8, 1940      | 54 Stat. 250      | 50 C.F.R. 402<br>50 C.F.R. 450<br>33 C.F.R. 325   |
| Clean Air Act                                  | CAA; Air Pollution Prevention and Control Act                                      | 42 U.S.C. §§ 7401-7671g                                 | Chapter 360 | July 14, 1955     | 69 Stat. 322      | 40 C.F.R. 50, 58, 60, 61 93; Office of Counsel CECC-E Memorandum on EPA's Clean Air Act General Conformity Rule, 20 April 1994. |
| Clean Water Act                                | Federal Water Pollution Control Act; FWPCA; CWA                                    | 33 U.S.C. §§ 1251 et seq.                               | Chapter 758 | June 30, 1948     | 62 Stat. 1155     | 40 C.F.R. 230<br>33 C.F.R. 222, 320-330   |
| Coastal Barrier Resources Act of 1982          | Coastal Barrier Resources Act; CBRA; Coastal Barrier Improvement Act of 1990; CBIA | 16 U.S.C. §§ 3501 et seq.;<br>12 U.S.C. §§ 1441 et seq. | 97-348      | October 15, 1982  | 96 Stat. 1653     | 13 C.F.R. 116.40<br>33 C.F.R. 220-230   |

| Legislative Title  | Popular Name(s)  | U.S. Code              | Public Law*                   | Public Law Date*  | Statute Citation* | Code of Federal Regulations  |
|--|--|------------------------|-------------------------------|-------------------|-------------------|--|
| Coastal Wetlands Planning, Protection and Restoration Act  | Breaux-Johnston Act; Breaux Bill; Title III of PL 101-646, "Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990"   | 16 U.S.C. §§ 3951-3955 | 101-646 (Title III § 301-308) | November 29, 1990 | 104 Stat. 4778    | None   |
| Coastal Zone Management Act of 1972  | CZMA; Coastal Zone Act Reauthorization Amendments of 1990; CZARA; Coastal Zone Management Act Amendments of 1976; Coastal Zone Management Improvement Act of 1980; Coastal Zone Management Reauthorization Act of 1985 | 16 U.S.C. §§ 1451-1464 | 92-583                        | October 27, 1972  | 86 Stat. 1280     | 15 C.F.R. 923<br>15 C.F.R. 930, Subpart D<br>15 C.F.R. 933<br>33 C.F.R. 220-230<br>33 C.F.R. 320, 325 and 330  |
| Coastal Zone Protection Act of 1996  | None Identified  | 16 U.S.C 1451 et seq   | 104-150                       | June 3, 1996      | 110 Stat. 1380    | See Coastal Zone Management Act  |
| Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), amended by Superfund Amendments and Reauthorization Act of 1986 (SARA) | CERCLA; Superfund; SARA; Solid Waste Disposal Act Amendments   | 42 U.S.C. § 9601-9675  | 96-510                        | December 11, 1980 | 94 Stat. 2767     | 40 C.F.R. 300, 302,355, 373  |
| Conservation Programs on Government Lands (Sikes Act (Fish and Wildlife Conservation on Military Reservations)   | Sikes Act; Fish and Wildlife Conservation on Military Reservations; Subchapter I: Conservation Programs on Military Reservations   | 16 U.S.C. § 670a-670f  | 95-420                        | October 5, 1978   | 92 Stat. 921      | 32 C.F.R. 190;<br>43 C.F.R. 8000, 8300, 8370   |
| Deepwater Port Act of 1974   | None Identified  | 33 U.S.C. § 1501-1524  | 93--627                       | January 3, 1975   | 88 Stat. 2126     | 33 C.F.R. 62, 64, 66, 67, 70, 137, 140, 142-146, 148-150, 320<br>40 C.F.R. 110<br>46 C.F.R. 2, 4, 50, 54, 56, 58, 61, 108-110, 170, 173, 174, 197<br>49 C.F.R. 146 |

| Legislative Title  | Popular Name(s)   | U.S. Code                 | Public Law*              | Public Law Date*  | Statute Citation* | Code of Federal Regulations  |
|--|---|---------------------------|--------------------------|-------------------|-------------------|--|
| Emergency Planning and Community Right-To-Know Act of 1986                                     | SARA Title III, EPCRA   | 42 U.S.C. §§ 11001        | 99-499                   | October 17, 1986  | 100 Stat. 1728    | 40 C.F.R. 355<br>40 C.F.R. 370<br>40 C.F.R. 372<br>EO 12856; EO 12088,   |
| Emergency Wetlands Resources Act   | None Identified   | 16 U.S.C. §§ 3901-3932    | 99-645                   | November 10, 1986 | 100 Stat. 3582    | 50 C.F.R. 25   |
| Endangered Species Act of 1973   | ESA; Conservation, Protection and Propagation of Endangered Species | 16 U.S.C. §§ 1531 et seq. | 93--205                  | December 28, 1973 | 87 Stat. 884      | 33 C.F.R. 320, 323, 325, 330<br>50 C.F.R. 450<br>50 C.F.R. 402   |
| Environmental Quality Improvement Act of 1970  | None Identified   | 42 U.S.C. §§ 4371-4375    | 91-224                   | April 3, 1970     | 84 Stat. 114      | 45 C.F.R. 640  |
| Estuaries-Inventory- Study   | Estuary Protection Act; Estuarine Protection Act                    | 16 U.S.C. § 1221 et seq   | 90-454                   | August 3, 1968    | 82 Stat. 625      | 33 C.F.R. 220-230, 320   |
| Estuary Restoration Act of 2000  | Estuary Restoration Act   | 33 U.S.C. § 2901, et seq. | 106-457                  | November 7, 2000  | 114 Stat. 1957    | None.  |
| Farmland Protection Policy Act, Subtitle I of Title XV of the Agriculture and Food Act of 1981 | Farmland Protection Policy Act                                      | 7 U.S.C. § 4201 et seq.   | 97-98 (Title XV, § 1539) | December 22, 1981 | 95 Stat. 1341     | 7 C.F.R. 658   |
| Federal Facilities Compliance Act of 1992  | FFCA  | 42 U.S.C. § 6901 et seq.  | 102-386                  | October 6, 1982   | 106 Stat. 1505    | F.R. Vol 58, No. 181, page 49044, 9/21/93, FFCA: Enforcement Authorities Implementation; F.R. Vol. 60 , No. 55, page 15208, 3/22/95, Hazardous Waste: Technical Revision for the FCCA of 1992 Amendments |
| Federal Insecticide, Fungicide, and Rodenticide Act  | FIFRA, Federal Environmental Pesticide Control Act, FEPCA           | 7 U.S.C. § 136 et seq.    | 100-532                  | October 25, 1988  | 102 Stat. 2654    | 40 C.F.R. 152-180, except 157  |
| Federal Land Policy and Management Act of 1976   | None Identified   | 43 U.S.C. §§ 1701 et seq. | 94--579                  | October 21, 1976  | 90 Stat. 2744     | None applicable  |



| Legislative Title                                | Popular Name(s)   | U.S. Code  | Public Law*                  | Public Law Date*  | Statute Citation*   | Code of Federal Regulations   |
|--|---|--|------------------------------|---|---|---|
| Federal Water Project Recreation Act             | None Identified   | 16 U.S.C.460I-12 to 460I-22, 662                       | 89--72                       | July 9, 1965  | 79 Stat. 213  | None  |
| Fish and Wildlife Conservation Act of 1980       | None Identified   | 16 U.S.C. §§ 2901-2911                                 | 96--366                      | September 29, 1980                                      | 94 Stat. 1322   | 33 C.F.R. 320<br>50 C.F.R. 83   |
| Fish and Wildlife Coordination Act               | Coordination Act; Fish Conservation and Water Resource Developments-Coordination; FWCA  | 16 U.S.C. § 661 et seq.                                | Chapter 55                   | March 10, 1934  | 48 Stat. 401  | 33 C.F.R. 222, 320<br>43 C.F.R. 24.1-24.7                                       |
| Flood Control Act of 1944                        | None Identified   | 16 U.S.C. §§ 460d et seq.;<br>33 U.S.C. §§ 701 et seq. | Chapter 665                  | December 22, 1944                                       | 58 Stat. 887  | 36 C.F.R. 327<br>33 C.F.R. 208, 209,<br>211<br>33 C.F.R. 222                    |
| Food Security Act of 1985                        | "Swampbuster;" 1985 Farm Bill; Food Agriculture, Conservation and Trade Act of 1990; Federal Agriculture Improvement and Reform Act of 1996; 1996 Farm Bill; Erodible Land and Wetland Conservation and Reserve Program | 16 U.S.C. §§ 3801-3862                                 | 99-198<br>101-624<br>104-127 | December 23, 1985<br>November 28, 1990<br>April 4, 1996 | 99 Stat. 1354<br>104 Stat. 3380<br>(PL 104-127 not yet in statutes) | 7 C.F.R. 12<br>MOA - January 6, 1994<br>between ACOE and<br>Dept of Agriculture |
| Hazardous Materials Transportation Act           | HMTA, DOT regulations   | 49 U.S.C. §§ 1801-1819                                 | 93-633                       | January 3, 1975   | 88 Stat. 2156   | 49 C.F.R. 170-178<br>40 C.F.R. 263  |
| Historic Sites Act of 1935                       | Historic Sites, Buildings and Antiquities Act , Historic Sites Act  | 16 U.S.C. §§ 461-467                                   | Chapter 593                  | August 21, 1935   | 49 Stat. 666  | 36 C.F.R. 62, 65, 68  |
| Historical and Archeological Data - Preservation | Moss-Bennet Act; Historical Data - Dam Construction; Reservoir Salvage Act Amendment; Archeological and Historic Preservation Act   | 16 U.S.C. § 469 et seq.                                | 93--291                      | May 24, 1974  | 88 Stat. 174  | 33 C.F.R. 320-330<br>33 C.F.R. 325, App. C                                      |
| Land and Water Conservation Fund Act of 1965     | Land and Water Conservation Act   | 16 U.S.C. § 460I-4 et seq                              | 88--578                      | September 3, 1964                                       | 78 Stat. 897  | 43 C.F.R. 71.1 et seq<br>36 C.F.R. 291.9<br>36 C.F.R. 327.23                    |

| Legislative Title  | Popular Name(s)                                       | U.S. Code   | Public Law*        | Public Law Date*  | Statute Citation* | Code of Federal Regulations  |
|--|---|---|--------------------|-------------------|-------------------|--|
| Magnuson Fishery Conservation and Management Act         | Fishery Conservation and Management Act; Magnuson Act | 16 U.S.C. § 1801 et seq.  | 94--265            | April 13, 1976    | 90 Stat. 331      | 50 C.F.R. 600-695, excluding Part 697                                |
| Marine Mammal Protection Act of 1972                     | Marine Mammal Act                                     | 16 U.S.C. §§ 1361, 1362, 1371-1384, 1401-1407, 1538, 4107             | 92-522             | October 21, 1972  | 86 Stat. 1027     | 33 C.F.R. 320  |
| Marine Protection, Research, and Sanctuaries Act of 1972 | Ocean Dumping Act; MPRSA                              | 33 U.S.C. §§ 1401-1445<br>16 U.S.C. §§ 1431 et seq.<br>33 U.S.C. 1271 | 92-532             | October 23, 1972  | 86 Stat. 1052     | 40 C.F.R. 220-228<br>33 C.F.R. 209, 320, 322, 324-327, 330, 335-338  |
| Migratory Bird Conservation Act                          | None Identified                                       | 16 U.S.C. §§ 715-715s   | Chapter 257        | February 28, 1929 | 45 Stat. 1222     | None applicable  |
| National Environmental Policy Act of 1969                | NEPA  | 42 U.S.C. §§ 4321-4347  | 91-190             | January 1, 1970   | 83 Stat. 852      | 40 C.F.R. 1500-1508<br>33 C.F.R. 222, 230, 320, 325 (App. C)         |
| National Historic Preservation Act of 1966               | None Identified                                       | 16 U.S.C. §§ 470 et seq.  | 89--665            | October 15, 1966  | 80 Stat. 915-919  | 36 C.F.R. 60, 63, 78, 79, 800<br>33 C.F.R. 320, 325 (App. C)         |
| National Invasive Species Act of 1996                    | None Identified                                       | 16 U.S.C. § 4701 et seq   | 104-332            | October 26, 1996  | 110 Stat. 4073    | None.  |
| National Trails System Act                               | None Identified                                       | 16 U.S.C. §§ 1241-1251  | 90--543            | October 2, 1968   | 82 Stat. 919      | 43 C.F.R. 8342, 8351 et seq.,  |
| Native American Graves Protection and Repatriation Act   | NAGPRA  | 25 U.S.C. §§ 3001 et seq.   | 101-601            | November 16, 1990 | 104 Stat. 3048    | Title 43, Subtitle A, Part 10 (Pending)<br>33 C.F.R. 320, 325 App. C |
| Neotropical Migratory Bird Conservation Act              | Migratory Bird Conservation Act                       | 16 U.S.C. § 6101  | 106-247            | July 20, 2000     | 114 Stat.593      | None.  |
| Noise Control Act of 1972                                | None Identified                                       | 42 U.S.C. §§ 4901-4918  | 92-574             | October 27, 1972  | 86 Stat. 1234     | 40 C.F.R. 209-210  |
| North American Wetland Conservation Act                  | None Identified.                                      | 16 U.S.C. § 4401 et seq   | 101-233, Section 1 | December 13, 1989 | 103 Stat. 1968    | None.  |

| Legislative Title   | Popular Name(s)   | U.S. Code  | Public Law* | Public Law Date*  | Statute Citation*   | Code of Federal Regulations   |
|---|---|--|-------------|-------------------|---------------------|---|
| Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 | None Identified.  | 16 U.S.C. § 4701 et seq  | 101-646     | November 29, 1990 | 104 Stat. 4761      | None.   |
| Oil Pollution Act of 1990   | OPA; Great Lakes Oil Pollution Research & Development Act                     | 33 U.S. Code §§ 2701-2761 et seq   | 101-380     | August 18, 1990   | 104 Stat. 484       | 40 C.F.R. 112<br>33 C.F.R. 135, 137,150, et seq.<br>49 C.F.R. 106 et seq<br>15 C.F.R. 990 |
| Outer Continental Shelf Lands Act                                 | None Identified   | 43 U.S.C. § 1331 et seq.<br>43 U.S.C. § 1801 et seq.   | Chapter 345 | August 7, 1953    | 67 Stat. 462        | 33 C.F.R. 320, 322  |
| Pollution Prevention Act of 1990                                  | PPA   | 42 U.S.C. §§ 13101, 13101 note, 13102-13109  | 101-508     | November 5, 1990  | 101 Stat. 1388-321  | 40 C.F.R. 370, 372<br>EO 12856<br>EO 12088  |
| Reclamation Projects Authorization and Adjustments Act of 1992    | None Identified.  | 43 U.S.C. § 390h-1 et seq.<br>16 U.S.C. § 460f-31-460f-34<br>43 U.S.C. § 371<br>16 U.S.C. 470a et seq. | 102-575     | October 31, 1992  | 106 Stat. 4600-4769 | None applicable   |
| Reservoir Areas-Forest Cover                                      | Forest Conservation Act   | 16 U.S.C. § 580m   | 86--717     | September 6, 1960 | 74 Stat. 817        | None  |
| Resource Conservation and Recovery Act of 1976                    | RCRA; Solid Waste Disposal Act; SWDA; Federal Facilities Compliance Act; FFCA | 42 U.S.C. §§ 6901 et seq.  | 94--580     | October 21, 1976  | 92 Stat. 1471       | 40 C.F.R. 240-280<br>49 C.F.R. 171-179  |
| Rivers and Harbors Appropriation Act of 1899                      | River and Harbors Act of 1899   | 33 U.S.C. §§ 401, 403, 407, 610  | Chapter 425 | March 3, 1899     | 30 Stat. 1151       | 23 C.F.R. 650<br>33 C.F.R. 114-116<br>33 C.F.R. 320-330 (sections 9 and 10)               |
| Safe Drinking Water Act   | SDWA  | 42 U.S.C. § 300f et seq., 6939b, 15 U.S.C. § 1261 et seq.  | 93--523     | December 16, 1974 | 88 Stat. 1660       | 40 C.F.R. 141-148   |
| Soil and Water Resources Conservation Act of 1977                 | None Identified   | 16 U.S.C. §§ 2001-2009   | 95--192     | November 18, 1977 | 91 Stat. 1407-1411  | None  |

| Legislative Title                                  | Popular Name(s)   | U.S. Code  | Public Law*        | Public Law Date*  | Statute Citation* | Code of Federal Regulations                       |
|--|---|--|--------------------|-------------------|-------------------|---|
| Solid Waste Disposal Act                           | SWDA  | 42 U.S.C. §§ 3251 et seq.  | 89--272 (Title II) | October 20, 1965  | 79 Stat. 997      | None applicable                                   |
| Submerged Land Act                                 | None Identified   | 10 U.S.C. §§ 7421-7426, 7428-7438<br>43 U.S.C. §§ 1301-1303, 1311-1315 | Chapter 65         | May 22, 1953      | 67 Stat. 29       | 33 C.F.R. 320                                     |
| Surface Mining Control and Reclamation Act of 1977 | None Identified   | 30 U.S.C. §§ 1201-1328<br>18 U.S.C. § 1114                             | 95--87             | August 3, 1977    | 91 Stat. 445      | Chapter VII of 30 C.F.R. 700-899<br>33 C.F.R. 330 |
| Sustainable Fisheries Act                          | 1996 Amendments to the Magnuson Act; Magnuson-Stevens Act       | 16 U.S.C. § 1801 et seq.   | 104-297            | October 11, 1996  | 11 Stat. 3559     | 50 C.F.R. 600-695, excluding Part 697             |
| Toxic Substances Control Act                       | TSCA; ToSCA; The Asbestos Hazard Emergency Response Act of 1986 | 15 U.S.C. §§ 2601-2671   | 94--469            | October 11, 1976  | 90 Stat. 2003     | 40 C.F.R. 61, 403, 761, 763, 766, 790, 795-799.   |
| Water Resources Development Acts                   | WRDAs   |  |                    |                   |                   |   |
| Water Resources Development Act of 1986            | WRDA 1986   | See specific section in WRDA Profile.                                  | 99-662             | November 17, 1986 | 100 Stat. 4082    | 33 C.F.R. 241                                     |
| Water Resources Development Act of 1988            | WRDA 1988   | See specific section in WRDA Profile.                                  | 100-676            | November 17, 1988 | 102 Stat. 4012    | None applicable                                   |
| Water Resources Development Act of 1990            | WRDA 1990   | See specific section in WRDA Profile.                                  | 101-640            | November 28, 1990 | 104 Stat. 4604    | None applicable                                   |
| Water Resources Development Act of 1992            | WRDA 1992   | See specific section in WRDA Profile.                                  | 102-580            | October 31, 1992  | 106 Stat. 4797    | None applicable                                   |
| Water Resources Development Act of 1996            | WRDA 1996   | See specific section in WRDA Profile.                                  | 104-303            | October 12, 1996  | 110 Stat. 3658    | None applicable                                   |
| Water Resources Development Act of 1999            | WRDA 1999   | See specific section in WRDA Profile                                   | 106-53             | August 17, 1999   | 113 Stat. 269     | None applicable                                   |
| Water Resources Development Act of 2000            | WRDA 2000   | See specific section in WRDA Profile                                   | 106-541            | December 11, 2000 | 114 Stat. 2646    | None applicable                                   |
| Water Resources Planning Act                       | WRPA  | 42 U.S.C. §§ 1962 et seq.  | 89--80             | July 22, 1965     | 79 Stat. 244      | 18 C.F.R. 701                                     |
| Watershed Protection & Flood Prevention Act        | None Identified   | 16 U.S.C. §§ 1001 et seq.<br>33 U.S.C. §§ 701b                         | Chapter 656        | August 4, 1954    | 68 Stat. 666      | 7 C.F.R. 622<br>33 C.F.R. 222                     |

| Legislative Title          | Popular Name(s) | U.S. Code                 | Public Law* | Public Law Date*     | Statute Citation* | Code of Federal Regulations                                   |
|----------------------------|-----------------|---------------------------|-------------|----------------------|-------------------|---|
| Wild and Scenic Rivers Act | WSRA            | 16 U.S.C. §§ 1271 et seq. | 90--542     | October 2, 1968      | 82 Stat. 906      | 33 C.F.R. 320, 325<br>36 C.F.R. 297                           |
| The Wilderness Act         | WA              | 16 U.S.C. §§ 1131 et seq. | 88--577     | September 3,<br>1964 | 78 Stat. 890      | 50 C.F.R. 35<br>43 C.F.R. 19, 8560<br>36 C.F.R. 219, 261, 293 |

## Appendix B - CORPS IMPLEMENTING GUIDANCE TABLE

| LEGISLATIVE TITLE                            | PLANNING  | ENGINEERING                    | CONSTRUCTION   | O&M   | REGULATORY   | OTHER RELEVANT GUIDANCE |
|--|---|--------------------------------|--|---|--|-------------------------|
| <b>Abandoned Shipwreck Act of 1987</b>       | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies. Appendix C, Environmental Compliance | None specific to this statute  | ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies                                   | ER 1130-2-540, Env. Stewardship O&M Policies, and EP 1130-2-540, Env. Stewardship O&M Guidance and Procedures; Dredging Gdnce Ltr No. 89-01, Policy and Proc. for the Conduct of Underwater Historic Resource Surveys for Maint. Dredging & Disposal Activities | 33 C.F.R 325, App. C, Processing Dept Army Permits, Procedures for Protection of Historic Properties.    | None identified.        |
| <b>American Folklife Preservation Act</b>    | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance | None specific to this statute  | None specific to this statute  | None specific to this statute   | None specific to this statute  | None identified.        |
| <b>American Indian Religious Freedom Act</b> | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies. Appendix C, Environmental Compliance | None specific to this statute. | ER 1130-2-540, Env. Stewardship O&M Policies, and EP 1130-2-540, Env. Stewardship O&M Guidance and Procedures; | ER 1130-2-540, Env. Stewardship O&M Policies, and EP 1130-2-540, Env. Stewardship O&M Guidance and Procedures;  | 33 C.F.R 325, App. C, Processing Dept Army Permits, Procedures for the Protection of Historic Properties | None identified.        |
| <b>Anadromous Fish Conservation Act</b>      | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance | None specific to this statute  | None specific to this statute  | None specific to this statute   | None specific to this statute  | None identified.        |
| <b>Antiquities Act of 1906</b>               | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance | None specific to this statute. | ER 1130-2-540, Env. Stewardship O&M Policies   | ER 1130-2-540, Env. Stewardship O&M Policies, and EP 1130-2-540, Env. Stewardship O&M Guidance and Procedures   | 33 C.F.R. 325, Appendix C, Processing Department of the Army Permits                                     | None identified.        |

| LEGISLATIVE TITLE  | PLANNING  | ENGINEERING  | CONSTRUCTION  | O&M  | REGULATORY  | OTHER RELEVANT GUIDANCE   |
|--|---|--|---|--|---|---|
| <b>Archeological Resources Protection Act of 1979</b>            | ER 1105-2-100, Gdnce for Conducting CW Planning Studies, Appendix C, Environmental Compliance ;ER 1130-2-540, Env. Stewardship O&M Policies, 36 C.F.R 800, Protection of Historic Properties Sec. 106 Review Process; 36 C.F.R 79, Curation of Federally-Owned and Admin. Archeological Collection. | 36 C.F.R 800, Protection of Historic Properties Section 106 Review Process; 36 C.F.R 79, Curation of Federally-Owned and Administered Archeological Collections  | ER 1130-2-540, Env. Stewardship O&M Policies; 36 C.F.R 800, Protection of Historic Properties Section 106 Review Process; 36 C.F.R 79, Curation of Federally-Owned and Administered Archeological Collections | ER 1130-2-540, Env. Stewardship O&M Policies, and EP 1130-2-540, Env. Stewardship O&M Guidance and Procedures; 36 C.F.R 800, Protection of Historic Properties Section 106 Review Process; 36 C.F.R 79, Curation of Federally-Owned and Administered Archeological Collections | 33 C.F.R 320-330; 33 C.F.R 325 (Appendix C) - Processing of Department of the Army permits Procedures for the Protection of Historic Properties | ER 405-1-12 Change 27, Oct 88, Real Estate Handbook, Para. 8-65 Implementation of ARPA Uniform Regulations.                               |
| <b>Atlantic Striped Bass Conservation Act Amendments of 1997</b> | None specific to this statute   | None specific to this statute  | None specific to this statute   | None specific to this statute  | None specific to this statute   | None specific to this statute   |
| <b>Bald Eagle Protection Act</b>                                 | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies., Appendix C, Environmental Compliance  | None specific to this statute  | None specific to this statute   | None specific to this statute  | 33 C.F.R 325  | None identified.  |
| <b>Clean Air Act</b>   | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies. Appendix C, Environmental Compliance.  | ER 1165-2-116 Pollution Control at Civil Works Projects, Ch 1, Measures to be Taken; ETL 1110-1-118 Hazards involved with use of asbestos containing material(ACM) and prohibition on use of friable asbestos. | None specific to this statute   | ER 200-2-3, Env. Compliance Policies, and EP 200-2-3, Env. Compliance Guidance and Procedures  | None specific to this statute   | CECW-ON & CEEC-S, 30 Jan 89, Guidance for Radon Assessment and Mitigation for USACE Civil Research and Development and Military Missions. |

| LEGISLATIVE TITLE  | PLANNING   | ENGINEERING   | CONSTRUCTION  | O&M  | REGULATORY  | OTHER RELEVANT GUIDANCE   |
|--|--|---|---|--|---|---|
| <b>Clean Water Act</b>   | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.; Interagency Memorandum dated 3 November 1999, Subject: Special Emphasis Given to Coral Reef Protection under the Clean Water Act, Marine Protection, Research, and Sanctuaries Act, Rivers and Harbors Act, and Federal Project Authorities. | ER 1110-2-8154, Water Quality & Environmental Management for Corps Civil Works Projects; ER 1165-2-116 Pollution Control at Civil Works Projects, Ch 1; ER 1130-2-520 Navigation and Dredging Operations and Maintenance Policies, 29 November 1996; ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects; 33 C.F.R. 222 | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies. ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects. | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies. ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects; ER 200-2-3, Environmental Compliance Policies, and EP 200-2-3, Environmental Compliance Guidance and Procedures. | 33 C.F.R. 320-330; 33 C.F.R. 330 updated November 22, 1991; 33 CFR 331, The Administrative Appeal Process, which was added to the CFR on March 9, 1999, and updated on March 28, 2000. The Corps supplements it Regulatory regulations with Regulatory Guidance Letters (RGL's) that provide guidance to districts on specific issues. RGLs are published annually in the Federal Register. | 40 CFR 230, Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material |
| <b>Coastal Barrier Resources Act of 1982</b>                     | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies  | None specific to this statute.  | None specific to this statute.  | None specific to this statute  | 33 C.F.R 220-230  | None identified.  |
| <b>Coastal Wetlands Planning, Protection and Restoration Act</b> | None specific to this statute  | None specific to this statute   | None specific to this statute   | None specific to this statute  | None specific to this statute   | None identified.  |
| <b>Coastal Zone Protection Act of 1996</b>                       | See Coastal Zone Management Act  | None specific to this statute.  | None specific to this statute.  | See Coastal Zone Management Act  | See Coastal Zone Management Act   | None identified.  |
| <b>Coastal Zone Management Act of 1972</b>                       | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance  | None specific to this statute.  | None specific to this statute   | 33 C.F.R Parts 209, 335,336, 337, 338  | 33 C.F.R 220-230; 33 C.F.R. 320, 325, 330 (Updated November 29, 1991)   | None identified.  |



| LEGISLATIVE TITLE   | PLANNING   | ENGINEERING   | CONSTRUCTION   | O&M  | REGULATORY  | OTHER RELEVANT GUIDANCE   |
|---|--|---|--|--|---|---|
| <b>Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), amended by Superfund Amendments and Reauthorization Act of 1986 (SARA)</b> | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance; EP 1165-2-1 Water Resources Policies and Authorities; Real Estate Policy Letter 4 dated 13 September 1991 and amended 8 May 1992. | ETL 1110-1-154, HTRW Guide Scopes of Work; ER 1110-1-263 Chemical Data Quality Management for Haz. Waste Remedial Activities; Also, ER 200-2-3, Environmental Compliance Policies, and EP 200-2-3, Environmental Compliance Guidance and Procedures . | EP 200-1-2, Process and Procedures for RCRA Manifesting. | ER 200-2-3, Environmental Compliance Policies, and EP 200-2-3, Environmental Compliance Guidance and Procedures  | None specific to this statute                               | DODD 5030.41, Oil and Hazardous Substance Pollution Prevention and Contingency Program; AR200-1 Environmental Protection and Enhancement; AR200-2, Environmental Effects of Army Actions; ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects; ER 385-1-92 Safety and Occupational Health Document Requirements HTR Waste & OEW Activities. |
| <b>Conservation Programs on Government Lands Sikes Act- Fish and Wildlife Conservation on Military Reservations</b>   | None specific to this statute  | None specific to this statute   | None specific to this statute                            | None specific to this statute.   | None specific to this statute                               | None identified.  |
| <b>Deepwater Port Act of 1974</b>   | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.   | None specific to this statute   | None specific to this statute                            | None specific to this statute  | 33 C.F.R. 320   | None identified.  |
| <b>Emergency Planning and Community Right-To-Know Act of 1986</b>   | None specific to this statute  | ER 200-2-3, Environmental Compliance Policies, and EP 200-2-3 Environmental Compliance Guidance and Procedures .  | None specific to this statute                            | ER 200-2-3, Environmental Compliance Policies, and EP 200-2-3, Environmental Compliance Guidance and Procedures  | None specific to this statute                               | AR 200-1, Environmental Protection and Enhancement (Draft)  |
| <b>Emergency Wetlands Resources Act</b>   | None specific to this statute  | None specific to this statute   | None specific to this statute                            | None specific to this statute  | 50 C.F.R. 25  | None identified.  |
| <b>Endangered Species Act of 1973</b>   | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.   | None specific to this statute   | None specific to this statute                            | ER 1130-2-540, Env. Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Env. Stewardship Operations and Maintenance Guidance and Procedures. | 33 C.F.R 320, 323, 325, and 330 (updated November 22, 1991) | None identified.  |

| LEGISLATIVE TITLE   | PLANNING   | ENGINEERING  | CONSTRUCTION   | O&M   | REGULATORY                     | OTHER RELEVANT GUIDANCE  |
|---|--|--|--|---|--------------------------------|--|
| <b>Environmental Quality Improvement Act of 1970</b>  | None specific to this statute  | None specific to this statute  | None specific to this statute                            | ER 1165-2-28 Corps of Engineers Participation Improvements for Environmental Quality  | None specific to this statute  | None identified.   |
| <b>Estuaries-Inventory-Study</b>  | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance. | None specific to this statute.   | None specific to this statute.                           | None specific to this statute   | 33 C.F.R 220-230; 33 CFR 320   | None identified.   |
| <b>Estuaries and Clean Waters Act of 2000</b>   | None specific to this statute  | None specific to this statute  | None specific to this statute                            | None specific to this statute   | None specific to this statute  | None specific to this statute  |
| <b>Estuary Protection Act</b>   | None specific to this statute  | None specific to this statute  | None specific to this statute                            | None specific to this statute   | None specific to this statute  | None specific to this statute  |
| <b>Estuary Restoration Act</b>  | None specific to this statute  | None specific to this statute  | None specific to this statute                            | None specific to this statute   | None specific to this statute  | None specific to this statute  |
| <b>Farmland Protection Policy Act, Subtitle I of Title XV of the Agriculture and Food Act of 1981</b> | ER 1105-2-100. Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance. | None specific to this statute  | None specific to this statute                            | None specific to this statute   | None specific to this statute  | None identified.   |
| <b>Federal Facilities Compliance Act of 1992</b>  | None specific to this statute  | None specific to this statute  | EP-200-1-2, Process and Procedures for RCRA Manifesting. | None specific to this statute   | None specific to this statute  | In general, see list of available guidance under the Resource Conservation and Recovery Act. ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects; USACE Facilities Environmental Compliance Guidance Letter No. 2, FFCA of 1992, Fines and Penalties at Civil Works Funded Projects, Facilities, and Activities. |
| <b>Federal Insecticide, Fungicide, and Rodenticide Act</b>  | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance. | ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies | None specific to this statute.                           | ER 1130-2-540, Env. Stewardship Operations and Maintenance Policies, and EP 1130-2-540, Env. Stewardship Operations and Maintenance Guidance and Procedures | None specific to this statute. | None identified.   |

| LEGISLATIVE TITLE  | PLANNING  | ENGINEERING  | CONSTRUCTION   | O&M  | REGULATORY                    | OTHER RELEVANT GUIDANCE       |
|--|---|--|--|--|-------------------------------|-------------------------------|
| <b>Federal Land Policy and Management Act of 1976</b>  | None specific to this statute   | None specific to this statute  | None specific to this statute  | None specific to this statute  | None specific to this statute | None identified.              |
| <b>Federal Water Project Recreation Act</b>  | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance; ER 1165-2-400, Recreational Planning, Devel., and Mgt Policies, CH 1; PGL 30-Recreation Cost Sharing Credit for Increased Real Estate Interest for Recreation Development at Non-Reservoir Projects; PG L 36, Recreation Development at Structural Flood Control Projects (Non-Reservoir); PGL No. 59, Recreation Development at Ecosystem Restoration Projects, 11 June, 1998 | EM 1110-2-410, Design of Recreation Facilities - Access and Circulation  | ER 1130-2-550, Recreation Operations and Maintenance Policies  | ER 1130-2-550, Recreation Operations and Maintenance Policies; EP 1130-2-550, Recreation O&M Guidance and Procedures   | None specific to this statute | None identified.              |
| <b>Fish and Wildlife Conservation Act</b>  | None specific to this statute   | None specific to this statute  | None specific to this statute  | None specific to this statute  | 33 C.F.R 320                  | None identified.              |
| <b>Fish and Wildlife Coordination Act</b>  | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance; ER 1165-2-501, Civil Works Ecosystem Restoration Policy; EP1165-2-502, Ecosystem Restoration-Supporting Policy Information.  | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance; ER 1165-2-501, Civil Works Ecosystem Restoration Policy; and EP 1165-2-502, Ecosystem Restoration-Supporting Policy Information; ; 33 C.F.R. 222. | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance. | ER 1130-2-540, Env. Stewardship O&M Policies, and EP 1130-2-540, Env. Stewardship O&M Guidance and Procedures, EC 1165-2-200, Procedures for Implementing NEPA; ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance. | 33 C.F.R 320                  | None identified.              |
| <b>Fish &amp; Wildlife Programs Improvement and National Wildlife Refuge System Centennial Act of 2000</b> | None specific to this statute   | None specific to this statute  | None specific to this statute  | None specific to this statute  | None specific to this statute | None specific to this statute |

| LEGISLATIVE TITLE                                     | PLANNING  | ENGINEERING  | CONSTRUCTION                                 | O&M   | REGULATORY   | OTHER RELEVANT GUIDANCE   |
|---|---|--|--|---|--|---|
| <b>Flood Control Act of 1944</b>                      | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies; ER 1165-2-400, Recreational Planning, Development, and Management Policies Chapter 1; ER 1165-2-130, Federal Participation in Shoreline Protection | ER 1110-2-1150, Engineering and Design for Civil Works Projects ; EM 1110-1-400, Recreation Planning and Design Criteria; ER 1110-2-2902, Prescribed Procedures for the Maintenance and Operation of Shore Protection Works. | None specific to this statute                | ER 1130-2-540, Env. Stewardship O&M Policies, and EP 1130-2-540, Env. Stewardship O&M Guidance and Procedures   | 33 C.F.R. 222  | None identified.  |
| <b>Food Security Act of 1985</b>                      | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, .  | None specific to this statute  | None specific to this statute                | None specific to this statute   | None specific to this statute  | None identified.  |
| <b>Hazardous Materials Transportation Act</b>         | None specific to this statute   | ER 200-2-3, Environmental Compliance Policies, and EP 200-2-3, Environmental Compliance Guidance and Procedures .  | None specific to this statute                | ER 200-2-3, Environmental Compliance Policies, and EP 200-2-3 Environmental Compliance Guidance and Procedures. | None specific to this statute  | AR 55-355, Defense Traffic Management Regulation, 31 July 1986; EP 200-1-2, Process and Procedures for RCRA Manifesting, 31 March 1994; Construction Bulletin 96-9 (dated 3/13/96), Hazardous Waste Manifesting Signature Policy and Procedures |
| <b>Historic Sites of 1935</b>                         | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies., Appendix C, Environmental Compliance  | None specific to this statute.   | ER 1130-2-540, Env. Stewardship O&M Policies | ER 1130-2-540, Env. Stewardship O&M Policies, and EP 1130-2-540, Env. Stewardship O&M Guidance and Procedures   | None specific to this statute  | None identified.  |
| <b>Historical and Archeological Data-Preservation</b> | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance   | ER 1110-2-1150, Engineering and Design for Civil Works Projects  | ER 1130-2-540, Env. Stewardship O&M Policies | ER 1130-2-540, Env. Stewardship O&M Policies, and EP 1130-2-540, Env. Stewardship O&M Guidance and Procedures   | Title II, 33 C.F.R. 320-330, Regulatory Programs of the Corps of Engineers; Final Rule November 13, 1986; 33 C.F.R. 325 (App. C) | None identified.  |
| <b>Land and Water Conservation Fund Act of 1965</b>   | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance; ER 1165-2-400, Recreational Planning, Development, and Management Policies.                                  | None specific to this statute  | None specific to this statute                | ER 1165-2-400, Recreational Planning, Development, and Management Policies.                                     | None specific to this statute  | None identified.  |

| LEGISLATIVE TITLE   | PLANNING  | ENGINEERING   | CONSTRUCTION   | O&M   | REGULATORY  | OTHER RELEVANT GUIDANCE |
|---|---|---|--|---|---|-------------------------|
| <b>Magnuson Fishery Conservation Act</b>                        | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies., Appendix C, Environmental Compliance  | None specific to this statute   | None specific to this statute  | None specific to this statute   | None specific to this statute   | 50 CFR Part 600.        |
| <b>Marine Mammal Protection Act of 1972</b>                     | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies., Appendix C, Environmental Compliance  | None specific to this statute   | None specific to this statute  | None specific to this statute   | 33 C.F.R. 320   | None identified.        |
| <b>Marine Protection, Research, and Sanctuaries Act of 1972</b> | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies; Dredging Guidance Letter 19 September 1989; EPA/COE-503/8-91/001, Evaluation of Dredged Material Proposed for Ocean Disposal: Testing Manual, February 1991; PGL Number 22, Guidance for Placement of Material on Beaches; PGL 27, Beach Fill Shore Protection Policies and Non-Federal Responsibilities and Use of PL 84-99 Funds; ER 1130-2-520 Navigation and Dredging Operations and Maintenance Policies; EC 1165-2-200 Implementation Guidance on Dredged Material Management Plans<br><br>Interagency Memorandum dated 3 November, 1999, Subject: Special Emphasis Given to Coral Reef Protection under the Clean Water Act, Marine Protection, Research, and Sanctuaries Act, Rivers and Harbors Act, and Federal Project Authorities. | ER 1110-2-1150, Engineering and Design for Civil Works; Dredging Guidance Letter 19 September 1989; EPA/COE-503/8-91/001, Evaluation of Dredged Material Proposed for Ocean Disposal: Testing Manual; PGL Number 22, Guidance for Placement of Material on Beaches; PGL 27, Beach Fill Shore Protection Policies and Non-Federal Responsibilities and Use of PL 84-99 Funds; ER 1130-2-520 Navigation and Dredging Operations and maintenance Policies. | Dredging Guidance Letter 19 September 1989; EPA/COE-503/8-91/001, Evaluation of Dredged Material Proposed for Ocean Disposal: Testing Manual, February, 1991; PGL Number 22, Guidance for Placement of Material on Beaches; PGL 27, Beach Fill Shore Protection Policies and Non-Federal Responsibilities and Use of PL 84-99 Funds; ER 1130-2-520 Navigation and Dredging Operations and Maintenance Policies | Dredging Guidance Letter 19 September 1989; EPA/COE-503/8-91/001, Evaluation of Dredged Material Proposed for Ocean Disposal: Testing Manual, February, 1991; PGL Number 22, Guidance for Placement of Material on Beaches; PGL 27, Beach Fill Shore Protection Policies and Non-Federal Responsibilities and Use of PL 84-99 Funds; ER 1130-2-520 Navigation and Dredging Operations and maintenance Policies; EC 1165-2-200 Implementation Guidance on Dredged Material Management Plans. | 33 C.F.R 209, 335, 336, 337, and 338, Final Rule for O&M of Corps CW Projects Involving the Discharge of Dredged Material into Waters of the U.S. or Ocean Waters; Regulatory Guidance Letter 83-3, Section 103 versus Section 404 in the Territorial Seas, 28 February 1983; 33 C.F.R. 320, 322, 324-327, 330; EPA/COE-503/8-91/001, Evaluation of Dredged Material Proposed for Ocean Disposal: Testing Manual, February 1991; EC 1165-2-200 Implementation Guidance on Dredged Material Plans. | None identified.        |

| LEGISLATIVE TITLE                                 | PLANNING   | ENGINEERING   | CONSTRUCTION   | O&M  | REGULATORY  | OTHER RELEVANT GUIDANCE |
|---|--|---|--|--|---|-------------------------|
| <b>Migratory Bird Conservation Act</b>            | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies., Appendix C, Environmental Compliance.  | None specific to this statute   | None specific to this statute  | None specific to this statute  | None specific to this statute   | None identified.        |
| <b>National Environmental Policy Act of 1969</b>  | ER 200-2-2, Procedures for Implementing NEPA; ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies. Appendix C, Environmental Compliance; ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects; PGL 29-Expenditures on Aesthetics at CW Projects | ER 200-2-2, Procedures for Implementing NEPA; ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies. Appendix C, Environmental Compliance; ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects; 33 C.F.R. 222 | ER 200-2-2, Procedures for Implementing NEPA; ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects. | ER 200-2-2, Procedures for Implementing NEPA; ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects.   | 33 C.F.R 230, 320 and 325 (App. B)  | None identified.        |
| <b>National Historic Preservation Act of 1966</b> | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance. PGL 18-Cost Sharing for Historic Preservation   | None specific to this statute.  | ER 1130-2-540, Env. Stewardship O&M Policies   | ER 1130-2-540, Env. Stewardship O&M Policies, and EP 1130-2-540, Env. Stewardship O&M Guidance and Procedures; Dredging Guidance Letter No. 89-01, Policy and Procedures for the Conduct of Underwater Historic Resource Surveys for Maintenance Dredging and Disposal Activities [33 C.F.R 336.1(c)(6)] | 33 C.F.R 320 and 325, Appendix C, Processing Department of the Army Permits, Procedures for the Protection of Historic Properties | None identified         |
| <b>National Trails System Act</b>                 | None specific to this statute.   | EM 1110-2-410, Design of Recreation Areas and Facilities- Access and Circulation, December 31, 1982   | None specific to this statute  | None specific to this statute.   | None specific to this statute.  | .None identified        |

| LEGISLATIVE TITLE   | PLANNING  | ENGINEERING                   | CONSTRUCTION                  | O&M   | REGULATORY                    | OTHER RELEVANT GUIDANCE       |
|---|---|-------------------------------|-------------------------------|---|-------------------------------|-------------------------------|
| <b>Native American Graves Protection and Repatriation Act</b> | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies. CECW-O/CECW-P, Interim Guidance for the Native American Graves Protection and Repatriation Act, Public Law 101-601, 5 June 1991. CECW-AO/CECW-PD/CECC Memorandum, Application of the Native American Graves Protection and Repatriation Act to Water Resources Development Activities; PGL No. 57, Indian Sovereignty and Government-to-Government Relations with Indian Tribes; CECW-PG memorandum, 1 May 2001, Initial Implementation Guidance for Section 208, WRDA 2000, Reburial and Conveyance Authority for Native American Remains | See Planning                  | See Planning                  | See planning; ER 1130-2-540, Env. Stewardship O&M Policies, and EP 1130-2-540, Env. Stewardship O&M Guidance and Procedures | None specific to this statute | None identified               |
| <b>Neotropical Migratory Bird Conservation Act</b>            | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies   | None specific to this statute | None specific to this statute | None specific to this statute   | None specific to this statute | None specific to this statute |
| <b>Noise Control Act of 1972</b>                              | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.  | None specific to this statute | None specific to this statute | None specific to this statute   | None specific to this statute | None identified.              |
| <b>North American Wetlands Conservation Act</b>               | None specific to this statute   | None specific to this statute | None specific to this statute | None specific to this statute   | None specific to this statute | None identified.              |
| <b>Oil Pollution Act of 1990</b>                              | None specific to this statute   | None specific to this statute | None specific to this statute | ER 200-2-3, Environmental Compliance Policies, and EP 200-2-3, Environmental Compliance Guidance and Procedures .           | None specific to this statute | None identified.              |

| LEGISLATIVE TITLE   | PLANNING   | ENGINEERING   | CONSTRUCTION   | O&M  | REGULATORY                     | OTHER RELEVANT GUIDANCE   |
|---|--|---|--|--|--------------------------------|---|
| <b>Outer Continental Shelf Lands Act</b>                              | None specific to this statute  | None specific to this statute   | None specific to this statute  | None specific to this statute  | 33 C.F.R. 320 and 322          | None identified.  |
| <b>Pollution Prevention Act of 1990</b>                               | ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects.   | ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects; Also, ER 200-2-3, Environmental Compliance Policies, and EP 200-2-3, Environmental Compliance Guidance and Procedures.   | ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects. | ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects USACE Operated Facilities Environmental Compliance Guidance Letter No.4, Spill Planning and Response Requirements; Also, ER 200-2-3, Environmental Compliance Guidance and Procedures. | None specific to this statute  | None identified.  |
| <b>Reclamation Projects Authorization and Adjustments Act of 1992</b> | None specific to this statute  | None specific to this statute   | None specific to this statute  | None specific to this statute  | None specific to this statute  | None identified.  |
| <b>Reservoir Areas-Forest Cover</b>                                   | None specific to this statute.   | None specific to this statute   | None specific to this statute  | ER 1130-2-540, Env. Stewardship O&M Policies, and EP 1130-2-540, Env. Stewardship O&M Guidance and Procedures.   | None specific to this statute  | None identified.  |
| <b>Resource Conservation and Recovery Act of 1976</b>                 | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance; ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects.. | All of Planning Guidance plus: EM 1110-5-502 (Apr 94) Technical Guidelines for Hazardous and Toxic Water Treatment and Cleanup Activities ER 1110-1-263, Chemical Data Quality Management for Haz. Waste and Remedial Activities. Also, ER 200-2-3, Environmental Compliance Policies, and EP 200-2-3, Environmental Compliance Guidance and Procedures . | All of Planning Guidance plus: ER 200-2-3 Environmental Compliance Policies              | Planning Guidance plus: ER 200-2-3 Environmental Compliance Policies, and EP 200-2-3, Environmental Compliance Guidance and Procedures; Environmental Review Guide for Operations (ERGO, CECW-OF, January 1995).   | None specific to this statute. | ER 385-1-92, Safety and Occupational Health Document Requirements Hazardous Waste Site Remedial Act; AR 200-1 Environmental Protection and Enhancement (Draft); DOD Directive 6050.8, Storage and Disposal of Non-DOD-Owned Hazardous or Toxic Materials on DOD Installations (2/27/86); DODD 4165.60 Solid Waste Management; DODD 4145.19-1 Storage and Handling; USACE Facilities Environmental Compliance Guidance Letter No. 2 FFCA of 1992, Fines and Penalties at Civil Works Funded Projects, Facilities and Activities. |



| LEGISLATIVE TITLE  | PLANNING   | ENGINEERING  | CONSTRUCTION   | O&M   | REGULATORY  | OTHER RELEVANT GUIDANCE |
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| <b>Rivers and Harbors Appropriation Act of 1899</b>      | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies., Appendix C, Environmental Compliance.; Interagency Memorandum dated 3 November, 1999, Subject: Special Emphasis Given to Coral Reef Protection under the Clean Water Act, Marine Protection, Research, and Sanctuaries Act, Rivers and Harbors Act, and Federal Project Authorities. | None specific to this statute  | None specific to this statute  | None specific to this statute   | 33 C.F.R 320-330 (sections 9 and 10, updated November 22, 1991) | None identified.        |
| <b>Safe Drinking Water Act</b>                           | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies.   | ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects. | ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects. | ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects. ER 200-2-3 Environmental Compliance Policies, and EP 200-2-3, Environmental Compliance Guidance and Procedures                                 | None specific to this statute                                   | None identified.        |
| <b>Soil and Water Resources Conservation Act of 1977</b> | None specific to this statute  | None specific to this statute  | None specific to this statute  | None specific to this statute   | None specific to this statute                                   | None identified.        |
| <b>Solid Waste Disposal Act</b>                          | ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects.   | ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects. | ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects. | ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects; Memorandum, USACE, CECW-OF, 24 November 1992, subject: USACE Facilities Environmental Compliance Guidance Letter No. 1, Solid Waste Recycling. | None specific to this statute                                   | None identified.        |
| <b>Submerged Land Act</b>                                | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies., Appendix C, Environmental Compliance.  | None specific to this statute  | None specific to this statute  | None specific to this statute   | 33 C.F.R. 320   | None identified.        |

| LEGISLATIVE TITLE   | PLANNING  | ENGINEERING  | CONSTRUCTION   | O&M  | REGULATORY                    | OTHER RELEVANT GUIDANCE   |
|---|---|--|--|--|-------------------------------|---|
| <b>Surface Mining Control and Reclamation Act of 1977</b> | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies., Appendix C, Environmental Compliance.   | None specific to this statute  | None specific to this statute  | None specific to this statute  | 33 CFR 330                    | None identified.  |
| <b>Sustainable Fisheries Act</b>                          | None specific to this statute   | None specific to this statute  | None specific to this statute  | None specific to this statute  | None specific to this statute | 50 CFR Part 600; Essential Fish Habitat: New Marine Fish Habitat Conservation Mandate for Federal Agencies, National Marine Fisheries Service, SE Regional Office, February 1999. |
| <b>Toxic Substances Control Act</b>                       | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies. ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects. | ER 200-2-3 Environmental Compliance Policies, and EP 200-2-3, Environmental Compliance Guidance and Procedures; ETL 1110-1-118 Hazards involved with use of asbestos containing material(ACM) and prohibition on use of friable asbestos; CECW-ON & CEEC-S, 30 Jan 89, Guidance for Radon Assessment and Mitigation for USACE Civil Research and Development and Military Missions; ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects. | ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects. | ER 1165-2-132, Hazardous, Toxic and Radioactive Waste Guidance for Civil Works Projects. Also, ER 200-2-3, Environmental Compliance Policies, and EP 200-2-3, Environmental Compliance Guidance and Procedures | None specific to this statute | None identified.  |
| <b>Water Resources Development Acts</b>                   |   |  |  |  |                               |   |
| <b>WRDA 76</b>  | Section 150; ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.                                       | None specific to this statute  | None specific to this statute  | None specific to this statute  | None specific to this statute | None identified.  |

| LEGISLATIVE TITLE | PLANNING  | ENGINEERING  | CONSTRUCTION                  | O&M   | REGULATORY                    | OTHER RELEVANT GUIDANCE |
|-------------------|---|--|-------------------------------|---|-------------------------------|-------------------------|
| <b>WRDA 86</b>    | <p><u>Section 704(b)</u>: ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies.</p> <p><u>Section 906</u>: ER 1105-2-100 Guidance for Conducting CW Planning Studies;</p> <p><u>Section 907</u>: ER 1105-2-100; ER 1165-2-501, Civil Works Ecosystem Restoration Policy; and EP 1165-2-502, Ecosystem Restoration-Supporting Policy Information.</p> <p>;</p> <p><u>Section 1135</u>: ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies.</p> | <p><u>Section 907</u>: ER 1165-2-501, Civil Works Ecosystem Restoration Policy; and EP 1165-2-502, Ecosystem Restoration-Supporting Policy Information ; EC 1105-2-206 Project Modifications for Improvement of the Environment</p> <p><u>Section 1135</u>: ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies.</p> | None specific to this statute | <p><u>Section 943</u>: ER 1130-2-540, Env. Stewardship O&amp;M Policies, and EP 1130-2-540, Env. Stewardship O&amp;M Guidance and Procedures</p>                          | None specific to this statute | None identified.        |
| <b>WRDA 90</b>    | <p><u>Section 306</u>: ER 1165-2-501, Civil Works Ecosystem Restoration Policy; and EP 1165-2-502, Ecosystem Restoration-Supporting Policy Information.</p> <p><u>Section 307</u>: ER 1105-2-100 Guidance for Conducting CW Planning Studies; ER 1165-2-501, Civil Works Ecosystem Restoration Policy; and EP 1165-2-502, Ecosystem Restoration-Supporting Policy Information.</p> <p><u>Section 312</u>, PGL No. 49, Environmental Dredging, 28 Jan 98</p>                   | <p><u>Section 306</u>: ER 1165-2-501, Civil Works Ecosystem Restoration Policy; and EP 1165-2-502, Ecosystem Restoration-Supporting Policy Information.</p>  | None specific to this statute | <p><u>Section 306</u>: ER 1165-2-501, Civil Works Ecosystem Restoration Policy; and EP 1165-2-502, Ecosystem Restoration-Supporting Policy Information.</p>               | None specific to this statute | None identified.        |
| <b>WRDA 92</b>    | <p><u>Section 204</u>: ER 1105-2-100, Guidance for conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.;</p>  | <p><u>Section 204</u>: ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.</p>  | None specific to this statute | <p><u>Section 225</u>: ER 1130-2-500, Partners and Support (Work Management Policies); EP 1130-2-500, Partners and Support, (Work Management Guidance and Procedures)</p> | None specific to this statute | None identified.        |

| LEGISLATIVE TITLE     | PLANNING   | ENGINEERING                          | CONSTRUCTION                         | O&M                                  | REGULATORY                           | OTHER RELEVANT GUIDANCE |
|-----------------------|--|--------------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|-------------------------|
| <p><b>WRDA 96</b></p> | <p><u>Section 204</u>: CECW-PM, Planning GL #97-1 WRDA 96 Implementation, 19 November 1996</p> <p><u>Section 205</u>., PGL No. 49, Environmental Dredging, 28 Jan 98</p> <p><u>Section 206</u>: CECW-PM, Planning GL #97-5 - Implementation of the WRDA of 1996, Section 206, Aquatic Ecosystem Restoration, 18 February 1997. ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies.</p> <p><u>Section 207</u>: PGL No. 56, Beneficial Use of Dredged Material, 5 Nov 99</p> <p><u>Section 221</u>: CECW-PF Memorandum, Implementation of Section 221, Planning Assistance to States, of the WRDA of 1996, 7 January 1997</p> <p><u>Section 232</u>: CECW-PD Planning GL No. 97-9, Scenic and Aesthetic Considerations, 1 July 1997; ER 200-2-2, Procedures for Implementing NEPA; ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies; Policy GL No. 29, Expenditures on Aesthetics at Civil Works Projects, 15 August 1991.</p> | <p>None specific to this statute</p> | <p>None specific to this statute</p> | <p>None specific to this statute</p> | <p>None specific to this statute</p> | <p>None identified.</p> |

| LEGISLATIVE TITLE                                    | PLANNING  | ENGINEERING                   | CONSTRUCTION                  | O&M                           | REGULATORY                    | OTHER RELEVANT GUIDANCE |
|--|---|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------|
| <b>WRDA 99</b>                                       | None specific to this statute. Implementation guidance memoranda available at:<br><a href="http://www.usace.army.mil/inet/functions/cw/cecwp/branches/mp_and_dev/specifcguidance.htm">http://www.usace.army.mil/inet/functions/cw/cecwp/branches/mp_and_dev/specifcguidance.htm</a><br>Section 224, PGL No. 49, Environmental Dredging, 28 January 1998   |                               |                               |                               |                               |                         |
| <b>WRDA 2000</b>                                     | Implementation guidance memoranda available at:<br><a href="http://www.usace.army.mil/inet/functions/cw/cecwp/branches/mp_and_dev/WRDA2001guidanceindex.htm">http://www.usace.army.mil/inet/functions/cw/cecwp/branches/mp_and_dev/WRDA2001guidanceindex.htm</a><br>Section 208 CECW-PG Memorandum 1 May, 2001, Initial Implementation Guidance for Section 208 of WRDA 2000, Reburial and Conveyance Authority for Native American Remains   |                               |                               |                               |                               |                         |
| <b>Water Resources Planning Act</b>                  | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance.; Unified Federal Policy for a Watershed Approach to Federal Land and Resource Management. Federal Register/Vol 65, No. 202/Wed. October 18, 2000, p. 62566.; Interagency Memorandum dated 3 November, 1999, Subject: Special Emphasis Given to Coral Reef Protection under the Clean Water Act, Marine Protection, Research, and Sanctuaries Act, Rivers and Harbors Act, and Federal Project Authorities. | None specific to this statute | None specific to this statute | None specific to this statute | None specific to this statute | None identified.        |
| <b>Watershed Protection and Flood Prevention Act</b> | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies., Appendix C, Environmental Compliance  | None specific to this statute | None specific to this statute | None specific to this statute | None specific to this statute | None identified.        |

| LEGISLATIVE TITLE                 | PLANNING  | ENGINEERING                    | CONSTRUCTION                  | O&M                           | REGULATORY                    | OTHER RELEVANT GUIDANCE |
|-----------------------------------|---|--------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------|
| <b>Wild and Scenic Rivers Act</b> | Planning: ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance;; EP 1165-2-1, Digest of Water Resources Policies and Authorities | None specific to this statute. | None specific to this statute | None specific to this statute | 33 CFR 320 and 325            | None identified.        |
| <b>The Wilderness Act</b>         | ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies, Appendix C, Environmental Compliance   | None specific to this statute  | None specific to this statute | None specific to this statute | None specific to this statute | None identified.        |