Federal Resource Laws

- Federal Water Pollution Control Act (Clean Water Act)
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FEDERAL WATER POLLUTION CONTROL ACT (CLEAN WATER ACT)

33 U.S.C. §§§§ 1251-1387, October 18, 1972, as amended 1973-1983, 1987, 1988, 1990-1992, 1994, 1995 and 1996.

Overview. The Federal Water Pollution Control Act, popularly known as the Clean Water Act, is a comprehensive statute aimed at restoring and maintaining the chemical, physical and biological integrity of the nation's waters. Enacted originally in 1948, the Act was amended numerous times until it was reorganized and expanded in 1972. It continues to be amended almost every year.

Even prior to the enactment of the 1972 version of the Act, the Act authorized the Public Health Service to prepare comprehensive programs for eliminating or reducing the pollution of interstate waters and tributaries and improving the sanitary condition of surface and underground waters. Due regard was to be given to improvements necessary to conserve waters for public water supplies, propagation of fish and aquatic life, recreational purposes, and agricultural and industrial uses. A number of other provisions found in the current Act were adopted prior to 1972.

Primary authority for the implementation and enforcement of the Clean Water Act now rests with the U.S. Environmental Protection Agency (EPA). In addition to the measures authorized before 1972, the Act authorizes water quality programs, requires federal effluent limitations and state water quality standards, requires permits for the discharge of pollutants into navigable waters, provides enforcement mechanisms, and authorizes funding for wastewater treatment works construction grants and state revolving loan programs, as well as funding to states and tribes for their water quality programs. Provisions have also been added to address water quality problems in specific regions and specific waterways.

Important for wildlife protection purposes are the provisions requiring permits to dispose of dredged and fill materials into navigable waters. Permits are issued by the Army Corps of Engineers under guidelines developed by EPA. What is known as Section 404 permitting applies to many wetlands, which has proven controversial.

Findings/Policy. The objective of the Clean Water Act is to restore and maintain the chemical, physical and biological integrity of the nation's waters. Among the national goals stated in the Act are the elimination of the discharge of pollutants into navigable waters by 1985 and, where attainable, the achievement by mid-1983 of an interim goal of water quality sufficient to provide for the protection and propagation of fish, shellfish, and wildlife and for recreation in and on the water.

It is the policy of Congress to recognize the primary responsibilities and rights of states to prevent, reduce and eliminate pollution. Congress also intends that the states manage the wastewater treatment works construction grants program and implement the discharge permit programs under the Act. The federal government will support research and provide

technical services and financial aid to state and interstate agencies and municipalities. Congress emphasized that the authority of each state to allocate quantities of water within its jurisdiction are not superseded, abrogated or otherwise impaired by the Act.

It is also the policy of Congress that the President will take such action as may be necessary to insure that, to the fullest extent possible, foreign countries take meaningful action to prevent, reduce and eliminate pollution in their waters and in international waters. §§ 1251.

Except as otherwise provided, the Administrator of the EPA administers the Act. EPA, in cooperation with other federal agencies, states, interstate agencies, municipalities and industries, is to develop comprehensive programs for preventing, reducing or eliminating pollution and improving the sanitary condition of surface and underground waters. Due regard must be given to the improvements necessary to conserve these waters for the protection and propagation of fish and aquatic life and wildlife, recreational purposes, and the withdrawal of water for public water supply, agricultural, industrial and other purposes. §§§§ 1251 and 1252.

Selected Definitions. Biological monitoring: the determination of the effects of the discharge of pollutants on aquatic life using certain techniques and procedures at appropriate frequencies and locations. Discharge of a pollutant: the addition of any pollutant to navigable waters from a point source and the addition of a pollutant to the waters of the contiguous zone or the ocean from a point source other than a vessel or other floating craft. The word discharge, when used without qualification, refers to the discharge of a pollutant or pollutants. Effluent limitation: any restriction imposed by a state or EPA on quantities, rates and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance. Municipality: Includes a city, town, county, district, or other public body created by or under state law and having jurisdiction over disposal of sewage or other wastes. Also includes an Indian tribe or authorized Indian tribal organization. Navigable waters: the waters of the U.S., including the territorial seas. Point source: any discernible, confined and discrete conveyance, but does not include agricultural stormwater discharges and return flows from irrigated agriculture. Pollutant: dredged soil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water, but the term does not include sewage from vessels or a discharge incidental to the normal operation of a vessel of the Armed Forces with the meaning of §§ 1322, or, in some cases, water or oil injected into wells for oil or gas production purposes. Pollution: the man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of water. Toxic pollutant: those pollutants which, after discharge and upon exposure, ingestion, inhalation or assimilation into an organism will, on the basis of information available to EPA, cause death, disease, behavioral abnormalities, cancer,

genetic mutations, physiological malfunctions or deformations in the organism or its offspring. Treatment works: any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature or necessary to recycle or reuse water at the most economical cost over the estimated life of the works. It also means any other method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal waste, which includes stormwater runoff, or industrial waste, which includes waste in combined stormwater and sanitary systems. §§§§ 1292 and 1362.

Research and Related Programs. The Act authorizes a number of research programs and studies on the prevention, reduction and elimination of pollution, as well as the issuance of grants for these purposes. For example, EPA must conduct research on the harmful effects of pollutants in water on health and welfare in conjunction with the U.S. Fish and Wildlife Service (USFWS) and other federal agencies. This research is to emphasize the effect that the bioaccumulation of pollutants in aquatic species has on the value of aquatic commercial and sport fisheries, and must explore methods to reduce and remove these pollutants from the affected species so as to restore and enhance valuable resources. The Act also authorizes research on the effect of pollution on estuaries and estuarine zones, as well as on the nature of river systems. §§§§ 1254 and 1254a.

The Act authorizes grants to states and interstate agencies for the prevention, reduction and elimination of pollution, including enforcement activities. Beginning in 1974, EPA was not permitted to make grants under this section to any state which, among other things, had not provided for the establishment and operation of devices, methods, systems and procedures to monitor and to compile and analyze data on the quality of navigable waters and, to the extent practicable, ground waters, including biological monitoring. §§ 1256.

Various provisions of the Act address specific regions or waterways. Examples include: Alaska village demonstration projects; a Hudson River reclamation demonstration project; continuation of the Chesapeake Bay program; continuation of the Management Conference of the Long Island Sound Study; establishment of a Lake Champlain Management Conference to develop a comprehensive pollution prevention, control and restoration plan for Lake Champlain. The Great Lakes are discussed in the next paragraph. §§§§ 1263, 1266, 1267, 1269 and 1270.

Great Lakes Programs. The Great Lakes are addressed with a number of programs. The Act authorizes EPA to enter into agreements with states and other public bodies to carry out projects to demonstrate new methods and techniques and develop preliminary plans for the elimination or control of pollution within all or any part of the watersheds of the Great Lakes. A demonstration wastewater management program for the rehabilitation and environmental repair of Lake Erie was specifically authorized. The Act also established a Great Lakes National Program Office within EPA and a Great Lakes Research Office within the National Oceanic and Atmospheric Administration (NOAA). Related federal agencies, including the USFWS, are

required to report to EPA annually regarding agency activities affecting compliance with the 1978 Great Lakes Water Quality Agreement. As part of the Great Lakes program, EPA, in conjunction with USFWS and NOAA, is to conduct research on the harmful effects of pollutants on the general health and welfare. §§§§ 1258 and 1268.

Aquatic Sediment. In 1992, Congress adopted a requirement that EPA, in consultation with NOAA, conduct a comprehensive survey of data on aquatic sediment quality in the U.S. and report to Congress in two years on the results of the survey, with recommendations for actions necessary to prevent contamination of aquatic sediments and to control sources of contamination. EPA was also instructed to conduct a monitoring program to assess aquatic sediment quality, which would, among other things, identify locations where pollutants in sediment may pose a threat to the quality of drinking water supplies, fisheries resources and marine habitats. The report on the findings of the monitoring program is due two years after the survey results are due and biennially thereafter. Related provisions on aquatic sediment can be found in the ocean dumping provisions of the Marine Protection, Research, and Sanctuaries Act of 1972, which is also summarized in this Handbook. §§ 1271.

Waste Treatment Management Plans and Grants. The Act is intended to require and assist in the development and implementation of waste treatment management plans and practices to achieve the goals of the Act. Plans and practices must provide for treatment of waste using the best practicable technology before there is any discharge of pollutants into receiving waters, as well as the confined disposal of pollution so that it will not migrate to cause water or other environmental pollution. To the extent practicable, waste treatment management is to be on an areawide basis and is to provide for the control or treatment of all point and non-point sources of pollution. Among other things, the Administrator shall encourage waste treatment management which combines open space and recreational considerations with such management. §§ 1281.

To encourage and facilitate the states' development of areawide waste treatment management plans, Congress directed EPA to publish guidelines for the identification of areas with substantial water quality control problems. These areas require an areawide waste treatment management plan and a continuing planning process. No national pollution discharge elimination system (NPDES) permit may be issued which is in conflict with an approved plan.

The provisions of the Act on the planning process are wide-ranging. Among other things, USFWS is to provide technical assistance to states requesting help in developing and implementing their plans. Congress also authorized the appropriation of $6 million to the Secretary of Interior to complete the National Wetlands Inventory by 1982, and to provide information to states as it becomes available to assist the states with their programs. Other provisions direct the Secretary of Agriculture, acting through the Soil Conservation Service and other agencies, to establish a program for entering into contracts with owners and operators of rural land, in states

or areas for which a plan has been approved, for the purpose of encouraging the use of best management practices to control nonpoint source pollution. §§ 1288.

Construction Grants and Loans. The Act outlines a program of grants to state, municipalities or intermunicipal or interstate agencies for the construction of publicly owned treatment works (POTWs). There are extensive provisions on the requirements, prerequisites and conditions for the grants, which can also be awarded to privately owned treatment works under certain limited conditions. Funds are allotted among the states by formula, with reservations of funds for small communities, innovative and alternative projects, water quality management planning, nonpoint source pollution programs and marine estuaries. §§§§ 1281-1287 and 1289-1299.

In 1987, Congress began to change its focus from the use of direct grants for the construction of wastewater treatment facilities to the concept of capitalization grants. The Act as amended provides for EPA to make grants to states for the purpose of establishing water pollution control revolving loan funds, which would provide assistance for the construction of POTWs, for implementing nonpoint source management programs under §§ 1329, and for developing and implementing conservation and management plans for estuaries under §§ 1330. The Act reduces the level of funding authorized for capitalization grants each year, with $1.2 billion authorized for 1989 and only $.6 billion authorized for 1994. §§§§ 1381-1387.

Effluent Limitations and Water Quality Standards. The Act prohibits the discharge of pollutants except in compliance with the effluent limitations and other provisions of the Act. Effluent limitations from point sources other than POTWs must be treated using best practicable control technology. Toxic pollutants, defined and otherwise described in the Act, require treatment using the best available technology which is economically achievable. If the source discharges into a POTW, it must comply with applicable pretreatment requirements. Notwithstanding any other provisions, the Act makes it unlawful to discharge any radiological, chemical, or biological warfare agent, any high-level radioactive waste, or any medical waste into navigable waters.

Effluent limitations must be determined for point sources which are consistent with state water quality standards, including toxic and pretreatment standards. Procedures for state assurance of water quality standards must be established, guidelines to identify and evaluate the extent of nonpoint source pollution must be developed, and water quality inventory requirements must be set. The Act also requires EPA to develop national standards of performance for the control of discharge of pollutants from new sources.

When discharges of pollutants from a point source or group of point sources under established effluent limitations would interfere with the attainment or maintenance of water quality necessary to assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish,

fish and wildlife, and allow recreational activities in and on the water, EPA must establish effluent limitations for the point source or sources which can reasonably be expected to contribute to the attainment or maintenance of water quality. §§§§ 1311, 1312, 1314, 1316 and 1317.

The Act provides for states to adopt water quality standards and for EPA to adopt standards for the states which do not. States also are required to develop strategies for cleanup of toxic pollutants in waters where the application of best available technology discharge standards is not sufficient to meet state water quality standards. The state must establish a total maximum daily load for those pollutants suitable for maximum daily load measurements. Further, states must identify waters for which controls on thermal discharges under §§ 1311 are not stringent enough to assure protection and propagation of a balanced indigenous population of shellfish, fish and wildlife. The state is to estimate the total maximum daily thermal load required to assure appropriate protection and propagation. The states must report on their water quality biennially. §§§§ 1313 and 1315.

EPA is expected to provide information and guidelines to assist states in adopting water quality standards, including information on: the identifiable effects on health and welfare, including plankton, fish, shellfish, wildlife, plant life, shorelines, beaches, esthetics and recreation, which may be expected from the presence of pollutants in a body of water, including ground water; the concentration and dispersal of pollutants, or their byproducts, through biological, physical and chemical processes; the effects of pollutants on biological community diversity, productivity and stability. In addition, the Administrator must publish information, for example, on factors necessary to restore and maintain the chemical, physical and biological integrity of all navigable waters, ground waters, waters of the contiguous zone and the oceans, on the factors necessary to the protection and propagation of shellfish, fish and wildlife, and factors to allow recreation activities in and on the water. §§ 1314.

The Act imposes requirements regarding recordkeeping and reporting, and allows for inspections. It also contains extensive provisions on enforcement, with administrative, civil and criminal penalties available for violations. §§§§ 1318 and 1319.

Applicants for federal permits or licenses for activities involving discharges into navigable waters are to provide certification from the state that the proposed activity will not violate applicable effluent limitations and water quality standards. Licenses and permits may not be granted if the state or interstate certification has been denied. §§ 1341.

Discharge Permits. One of the most significant features of the 1972 Act is the creation of a national pollutant discharge elimination system (NPDES). Except as otherwise provided in the Act, industrial sources and publicly owned treatment works may not discharge pollutants into navigable waters without a permit. The Administrator may issue a permit for discharge upon condition that the discharge meets applicable requirements, which are

outlined extensively in the Act and which reflect, among other things, the need to meet federal effluent limitations and state water quality standards. The Act also provides that, with EPA approval, a state may administer its own permit program in lieu of the federal program. There are special provisions on municipal and industrial stormwater discharges. §§ 1342.

EPA was required, by mid-1973, to promulgate guidelines for determining the degradation of the waters of the territorial seas, the contiguous zone and the oceans. These guidelines were to include, for example: the effect of disposal of pollutants on human health or welfare, including but not limited to plankton, fish, shellfish, wildlife, shorelines and beaches; the effect on marine life, changes in marine ecosystem diversity, productivity and stability, or species and community population changes; the effect of disposal of pollutants on aesthetic, recreation and economic values. Discharge permits may not be issued except in compliance with the guidelines. §§ 1343.

Section 404 Permits. Section 1344 of the Act as codified originated as Section 404 of the Act as adopted by Congress. The requirement that persons wanting to dispose of dredged or fill material in navigable waters obtain a permit from the Army Corps of Engineers is important to the current debate over the protection of wetlands.

The Act directs the EPA Administrator to adopt guidelines for disposal sites. Applying these guidelines, the Corps may issue permits on an individual basis or may issue general permits on a state, regional or national basis. A general permit may be issued for any category of activities that are similar in nature, will cause only minimal environmental effects when performed separately, and will have only minimal cumulative adverse impact on the environment. The Secretary of the Army is required to notify USFWS when an application for an individual permit is received and when the Secretary proposes to issue a general permit. USFWS must submit any comments on the application or the proposed general permit within 90 days.

EPA is authorized to prohibit the use of a site for disposal if discharges would have an unacceptable adverse effect on municipal water supplies, shellfish beds, fishery areas, and wildlife or recreational uses. On the other hand, permits are not required for certain types of activity, such as the discharge of dredged or fill material resulting from ordinary farming, silviculture and ranching activities.

The Act establishes procedures for state assumption of the program. It includes a requirement that the Director of USFWS, as well as the Corps of Engineers, provide advice to the Administrator regarding transfer of the program to a state. §§ 1344.

Sewage Sludge. The Act regulates the disposal and use of sewage sludge. The disposal of sewage sludge resulting from the operation of a treatment works is prohibited whenever it would result in a pollutant entering navigable waters, except in accordance with a permit issued by EPA or an

approved state program. The Administrator is directed to issue regulations governing the issuance of permits and requiring for these permits the use of the standards and procedures applicable to NPDES permits. By regulation, EPA is required to identify uses for sludge, including disposal, specify the factors to consider in determining measures and practices applicable to each use or disposal, and identify concentrations of pollutants which interfere with each use or disposal. §§ 1345.

Oil and Hazardous Substance Liability. U.S. policy, as stated in the Act, is that there should be no discharges of oil or hazardous substances into or upon the navigable waters of the U.S., on adjoining shorelines or into or upon the waters of the contiguous zone, or which may affect natural resources belonging to, appertaining to, or under the exclusive management or authority of the U.S. The President, by regulation, shall determine the quantities of oil and hazardous substances the discharge of which may be harmful to the public health or welfare or the environment, including but not limited to fish, shellfish, wildlife, public and private property, shorelines and beaches.

The Act imposes liability for the costs of the removal of oil and hazardous substances that have been discharged, as well as for natural resource damages. It also imposes administrative and civil penalties for unlawful discharges and for failure to carry out orders issued under the Act. The word removal refers to the containment and removal of oil or hazardous substances from the water and shorelines or the taking of other actions necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

The Act also establishes a national response system and requires the preparation of a National Contingency Plan by the President to provide for efficient and coordinated action to minimize damage from oil discharges, including containment, dispersal and removal. The Oil Spill Liability Trust Fund established under 26 U.S.C. §§ 9509 is made available for purposes of the Act. Further provisions on oil discharges can be found in the Oil Pollution Act, summarized separately in this Handbook. §§ 1321.

Marine Sanitation Devices. The Act requires that EPA develop performance standards for marine sanitation devices, that is, equipment installed on board vessels to receive, retain, treat or discharge sewage, and any process to treat sewage. In consultation with the Secretary of the department in which the Coast Guard is operating and after giving consideration to the economic costs involved and the limits of available technology, the Administrator of EPA is to adopt standards designed to prevent the discharge of untreated or inadequately treated sewage into navigable waters; the Secretary of the department in which the Coast Guard is operating must promulgate regulations consistent with EPA's standards. Manufacturers may not sell marine sanitation devices unless they are certified by the Secretary as meeting the standards and regulations.

In the Clean Vessel Act of 1992, codified as a note to this section, Congress

observes that there is an inadequate number of pumpout stations for the type of marine sanitation devices used by recreational vessels and that sewage discharged by recreational vessels because of an inadequate number of pumpout stations is a substantial contributor to localized water degradation. The 1992 Act is intended to provide funds to states for the construction, renovation, operation, and maintenance of pumpout stations and waste reception facilities. The program is described in the editor's note to the summary of the Federal Aid in Sport Fish Restoration Act, and its funding referred to in §§§§ 777c and 777g of that Act.

1996 amendments to the Clean Water Act require that the Administrator of EPA and the Secretary of Defense jointly determine the extent to which marine pollution control devices should be used by military vessels to mitigate adverse impacts on the environment of discharges (other than sewage) which are incidental to normal operations. The Secretary of Defense must require the use of a device on board vessels whenever it is determined that the use of a device is reasonable and practical. The Act also provides for some state involvement in the control of discharges from vessels of the Armed Forces. §§§§ 1322 and 1322 note.

Federal Facilities. Federal facilities are subject to all federal, state, interstate and local requirements, administrative authority and sanctions respecting the control and abatement of water pollution to the same extent as any nongovernmental entity. §§ 1323.

Clean Lakes Program. The Act establishes a clean lakes program. States must, on a biennial basis, prepare and submit to EPA for approval an identification and classification, according to eutrophic condition, all publicly owned lakes in the state and a description of the procedures, processes and methods being used to control sources of pollution and restore quality. The states' reports on the water quality of lakes must include methods to mitigate the harmful effects of high acidity. A demonstration program will be funded, with funds to be distributed to the states based on relative acidity problems. §§ 1324.

Thermal Discharges. While §§ 1313 allows for more stringent requirements for thermal discharge when necessary, the Act also permits owners and operators of point sources to propose less stringent limits when appropriate. They need to demonstrate that the effluent limitations established by EPA or the state are more stringent than necessary to assure the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife. Water quality standards must require that the location, design, construction and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact. §§ 1326.

Non-point Source Pollution. As amended in 1987, the Act is paying increased attention to nonpoint source pollution. It provides for states to prepare reports and propose management plans for the control of non-point source pollution for approval by EPA, and encourages the development of plans on a watershed-by-watershed basis. States with approved management programs

are eligible, on a cost-sharing basis, for federal grants to assist in the implementation of the program. Grants are also available to states with approved plans to assist the states in carrying out ground water quality protection activities which will advance the state toward the implementation of a comprehensive nonpoint source pollution control program. Appropriations were authorized for the first several years of the grant program, from $70 million for fiscal year 1988 to $130 million for fiscal year 1991. §§ 1329

Estuaries. The Act authorizes a state/federal cooperative program to nominate estuaries of national significance and to develop and implement management plans to restore and maintain the biological and chemical integrity of estuarine waters. NOAA is directed to conduct water quality research and a trends assessment in estuaries of national significance. §§ 1330.

Administration of the Act. Several sections of the Act are devoted to its administration, to the creation of a Water Pollution Control Advisory Board, to employee protection, to federal procurement, to administrative review and procedure, and to reports to Congress. Citizen suits are permitted under the guidelines and procedures set forth in §§ 1365. The Act provides further that states, their political subdivisions and interstate agencies are not preempted from adopting or enforcing standards, limitations or requirements as long as they are no less stringent than their federal counterparts. Under §§ 1377, EPA is authorized to treat Indian tribes as states for purposes of water quality standards and numerous other provisions of the Act. §§§§ 1361-1377.

Appropriations Authorized. Numerous sections of the Act provide for the authorization of funds to be appropriated for programs and requirements established by the Act. §§§§ 1254-1258, 1262-1270, 1287-1289, 1324, 1325, 1329, 1330, 1345, 1376 and 1387.

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

43 U.S.C. §§§§ 1701-1782, October 21, 1976, as amended 1978, 1984, 1986, 1988, 1990-1992, 1994 and 1996.

Overview. This Act constitutes the organic act for the Bureau of Land Management and governs most uses of the federal public lands, including grazing. The Act requires the Bureau to execute its management powers under a land use planning process that is based on multiple use and sustained yield principles. The Act also provides for public land sales, withdrawals, acquisitions and exchanges.

Findings/Policy. Congress declared it is the policy of the U.S. that: public lands be retained in federal ownership; public lands and their resources be periodically inventoried and their use coordinated with other federal and state planning; the Secretary of the Interior establish rules for administering public lands and adjudicating disputes; public lands management be based generally on multiple use and sustained yield; public lands be managed to protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values; public lands be managed to preserve and protect certain lands in their natural condition, to provide food and habitat for fish, wildlife and domestic animals and to provide outdoor recreation and human use; the U.S. receive fair market value for the use of public lands and their resources unless otherwise provided by statute; uniform procedures for the disposal, acquisition and exchange of public land be established by statute; regulations and plans for protection of public lands of critical environmental concern be promptly developed; public lands be managed in a manner that recognizes the nation's need for domestic sources of minerals, food, timber and fiber; the federal government should compensate state and local governments for burdens created as a result of the immunity of federal lands from state and local taxation. §§ 1701.

Selected Definitions. Allotment management plan: a document prepared in consultation with the lessees or permitees involved, that applies to livestock operations on public lands or on lands within National Forests in the eleven contiguous western states. Areas of critical environmental concern: areas within public lands where special management attention is required to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards. Bureau: Bureau of Land Management. Multiple use: the management of public lands and their various resource values so that they are utilized in the combination that best meets the present and future needs of the American people. Public lands: land and interest in land owned by the U.S. and administered by the Secretary of the Interior through the Bureau of Land Management, except (1) lands on the Outer Continental Shelf and (2) lands held for the benefit of Indians, Aleuts and Eskimos. Right-of-way: an easement, lease, permit or license to occupy, use or traverse public lands. Secretary: Secretary of the Interior. Sustained yield: the achievement and maintenance in perpetuity of a high-level annual or regular periodic output

of the various renewable resources of public lands consistent with multiple use. Withdrawal: withholding an area of federal land from settlement, sale, location or entry, for the purpose of limiting activities in order to maintain other public values in the area or reserving the area for a particular public purpose or program. §§ 1702.

Inventory and Identification of Public Lands. The Secretary must maintain an inventory of all public lands and their resources and other values, giving priority to areas of critical environmental concern, and ascertain the boundaries of public lands. The Secretary also must develop, maintain and revise land use plans whether lands have been classified, withdrawn, set aside, or otherwise designated, and coordinate land use plans in the National Forest System with land use planning and management programs of and for Indian tribes. In the development of land use plans, the Secretary is required to: use and observe the principles of multiple use and sustained yield; use an interdisciplinary approach to achieve consideration of physical, biological, economic and other sciences; give priority to protection of areas of critical environmental concern; consider present and potential uses of public lands; consider the relative scarcity of the values involved; weigh long-term against short-term benefits; coordinate with other federal, state and local agencies. All public lands are subject to inclusion in land use plans developed under the Act. The Secretary must allow for federal, state and local government and public involvement in the planning process. §§§§ 1711 and 1712.

Sales of Public Lands. Land may be sold under the Act when: it is difficult and uneconomic to manage and is not suitable for management by another federal agency; it was acquired for a specific purpose for which it is no longer needed; its disposal will serve important public objectives, such as community expansion or economic development, which outweigh other public objectives and values, including recreation and scenic values. Land of agricultural value and desert in character must be conveyed either under this authority or in accordance with other existing law. Sale of a tract exceeding 2,500 acres may be made only after 90 days after the Secretary has notified Congress. Sizes of agricultural tracts to be sold must be no larger than necessary to support a family-sized farm. Sales are required to be conducted under competitive bidding procedures, at a price not less than their fair market value. If necessary to assure equitable distribution or to recognize equitable considerations or public policies, lands may be sold with modified competitive bidding or without competitive bidding. The Secretary must give the right of first refusal to contiguous land owners at the fair market value. §§§§ 1713 and 1722.

Withdrawals of Lands. The Secretary may make, modify, extend or revoke withdrawals but only in accordance with the Act. The Secretary must publish a notice in the *Federal Register* within 30 days of receipt of an application for withdrawal and whenever the Secretary proposes a withdrawal, and allow a public hearing. After October 21, 1976, a withdrawal aggregating 5,000 acres or more may be made for a maximum of 20 years upon the Secretary's decision or request by a department or agency head, after notice to Congress. A withdrawal of less than 5,000 acres may be

made for a period of time that the Secretary deems desirable as a resource use, for a maximum of 20 years for any other use, or for 5 years to preserve the tract for a specific use under consideration by Congress. When the Secretary determines or is notified that an emergency situation exists requiring preservation of values that otherwise would be lost, the Secretary must immediately make a withdrawal and file notice with Congress. All withdrawals for a specific period must be reviewed by the Secretary and may be extended only in accordance with the procedures for initial withdrawal. The Secretary may not: make, modify or revoke any withdrawal created by Congress; make a withdrawal which can be made only by Congress; modify or revoke any withdrawal creating national monuments; modify or revoke any withdrawal adding lands to the National Wildlife Refuge System. The Act requires the Secretary to review certain withdrawals existing on October 21, 1976 and determine whether the continuation of the withdrawal would be consistent with the statutory objectives of the programs for which the lands were dedicated. §§ 1714.

Acquisition of Public Lands and Access to National Forest System. The Secretary, with respect to public lands, and the Secretary of Agriculture, with respect to acquisition of access to units of the National Forest System, are authorized to acquire by purchase, exchange, donation or eminent domain lands or land interests. Lands and interests in lands acquired by the Secretary become public lands, and those acquired by the Secretary of Agriculture become National Forest System lands. §§ 1715.

Exchanges of Lands or Interests Within the National Forest System. The Secretary may dispose of a tract of public land or land interests by exchange, and the Secretary of Agriculture may do likewise for lands or interests within the National Forest System, when the Secretary concerned determines that the public interest will be well served by that exchange. This determination must take into account the value of the land for several purposes, including for fish and wildlife. The value of the lands exchanged must be equal, or the value equalized by payment of money, as set by appraisal. Lands acquired by the Secretary by exchange which are within the boundaries of the National Forest System, National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, National Wilderness Preservation System, or any other system established by Congress, or within the boundaries of the California Desert Conservation Area or any national conservation area or national recreation area established by Congress, must become part of the unit within which they are located. By August 20, 1989, the Secretaries of the Interior and Agriculture are required to promulgate new and comprehensive regulations governing exchanges pursuant to this Act.

If the Secretary concerned determines it is in the public interest that an exchange be expedited, the Secretary may exchange lands or interests which are of approximately equal value when: the combined value of the lands to be transferred from federal ownership is less than $150,000; the Secretary concerned finds in accordance with the new regulations that a determination of approximately equal value can be made without formal appraisals; the definition of and procedure for determining approximately

equal value has been set forth in regulations by the Secretary concerned.

Upon receipt of an offer to exchange lands or interests in land, the Secretary may temporarily segregate, for up to five years, the federal lands under consideration for exchange from appropriation under the mining laws. All non-federal lands acquired through exchange must be automatically segregated from appropriation under the public land law for 90 days. §§ 1716.

No tract of land may be disposed of under this Act to a person who is not a citizen of the U.S. or a corporation not subject to state or federal laws. §§ 1717.

The Act requires the Secretary to issue patents or other documents of conveyance for disposed lands or interests, and to include terms and restrictions to insure proper land use and protection of the public interest. §§ 1718.

Mineral Interests. Conveyances of title issued by the Secretary, except for exchanges under §§ 1716, must reserve to the U.S. all minerals in the lands unless the Secretary finds that there are no known mineral rights in the land, or the reservation is interfering with or precluding a more beneficial nonmineral development of the land. §§ 1719.

Coordination with State and Local Governments. At least 60 days prior to offering for sale or otherwise conveying public lands under this Act, the Secretary must notify the governor of the state within which the lands are located, and the head of the governing body of any political subdivision with zoning or other land use regulatory jurisdiction in the geographical area, in order to afford the opportunity to zone, regulate, or change or amend existing zoning or other regulations. §§ 1720.

Conveyances to States. The Secretary may convey to states unsurveyed islands and other public lands erroneously or fraudulently omitted from original surveys. The conveyance must be consistent with land use plans within that state and may not be used to determine the baseline between federal and state ownership or state boundaries. This provision does not apply to lands within the National Forest System, the National Park System, the National Wildlife Refuge System, and the National Wild and Scenic Rivers System. §§ 1721.

Land Management Provisions. The President, with Senate approval, must appoint a Director of the Bureau, who will perform duties with respect to the management of lands under this Act as prescribed by the Secretary. The Act requires the Secretary to manage the use, occupancy and development of public lands under principles of multiple use and sustained yield, except when lands have been dedicated to specific uses. The Secretary must issue regulations to implement the Act's public land management and protection provisions, with civil and criminal penalties for violation. The Secretary also may contract with local law enforcement authorities in enforcing federal laws and regulations on public lands. §§§§ 1731-1733.

The Act establishes a working capital fund for managing public lands, with $3,000,000 authorized to be appropriated as initial capital. A fund is also established for planning and preparing salvage timber disposal. §§§§ 1736-1736a.

Implementation Provisions. The Secretary may conduct investigations, studies and experiments involving managing, protecting, developing, acquiring and conveying public lands. The Secretary may enter into contracts and cooperative agreements for these purposes and may recruit volunteers. Congress authorized $250,000 to be appropriated annually for these activities. §§ 1737.

The Secretary may contract for airborne cadastral surveys and resource protection operations of the Bureau. The Secretary is required to establish citizen advisory councils to advise on land use planning, classification, retention, management and disposal of public lands. Councils must meet at least annually. §§§§ 1738-1739.

The Secretary must promulgate regulations to carry out the Act with respect to public lands, and the Secretary of Agriculture must do likewise with respect to lands within the National Forest System. The Act requires the Secretary to report annually to Congress to aid Congress in overseeing public lands programs. §§§§ 1740-1741.

Search, Rescue and Protection Forces. The Secretary is authorized in cases of emergencies to incur expenses to: search for and rescue persons lost on public lands; protect or rescue persons or animals endangered by an act of God; transport seriously ill or deceased persons. §§ 1742.

Grazing Fees. The Secretaries of the Interior and Agriculture must jointly conduct a study to determine the fee value of domestic livestock grazing on the public lands in the western states, taking into consideration the costs of production, differences in forage values and other factors, and report to Congress by October 1977 their recommendations for a grazing fee schedule.

Congress found that a substantial amount of federal range lands is deteriorating in quality, and that installation of additional range improvements could arrest much of the continuing deterioration and lead to substantial betterment of forage conditions with resulting benefits to wildlife, watershed production and livestock production. Due to this need, 50 percent or $10,000,000 annually, whichever is greater, of all grazing fees received by the U.S. from the 16 contiguous western states must be credited to a separate Treasury account and used as follows: one-half in the district, region or national forest from which the fees were derived for on the ground range rehabilitation, protection and improvements; one-half for these same purposes as the Secretary concerned directs. These uses must include all forms of range land betterment, including fish and wildlife habitat enhancement. §§ 1751.

Grazing Leases and Permits. Permits and leases for domestic livestock

grazing on public lands must be for a term of ten years, subject to terms and conditions the Secretary concerned considers appropriate and consistent with governing law. The Secretary concerned may issue a permit or lease for a shorter duration if: the land will be devoted to a public purpose prior to the end of ten years; it is in the best interest of sound management to specify a shorter term. The holder of an expiring permit or lease must be given first priority for a new permit or lease, if the lands remain available for grazing, the holder is in compliance with regulations and the terms of the lease or permit, and the holder accepts any new terms and conditions. All permits or leases for domestic livestock may incorporate an allotment management plan developed by the Secretary concerned. Permits and leases may be canceled upon two years notice in order to devote the land to another public purpose, with reasonable compensation on an adjusted basis for permanent improvements made on the land. §§ 1752.

Grazing Advisory Boards. The Act required the Secretary and the Secretary of Agriculture to establish at least one 15-member grazing advisory board for each Bureau district office and National Forest headquarters in the 16 contiguous western states, upon request from holders of permits and leases in the jurisdiction. The function of the boards was to offer advice and recommendations concerning development of allotment management plans and the utilization of range-betterment funds. Boards consisted of livestock representatives who are holders of leases or permits, elected by holders in the area. The provisions of this section expired December 31, 1985. §§ 1753.

Rights-of-Way and Roads. The Secretary and the Secretary of Agriculture are authorized to grant or renew rights-of-way over, upon or through public lands for necessary transportation or other specified purposes which are in the public interest. The use of rights-of-way in common is required to the extent practical to minimize environmental impacts. Each right-of-way must be limited to its necessary use and must contain terms and conditions which will carry out the purposes of the Act, including minimization of damage to aesthetic values and fish and wildlife habitat. §§§§ 1761 and 1763-1765.

The Secretary is authorized to provide for the acquisition, construction and maintenance of roads within or near public lands in locations and according to specifications that permit maximum economy in harvesting timber while also meeting requirements for protection, development and management of the lands for utilization of their other resources. §§ 1762.

California Desert Conservation Area. Congress found that the California desert: contains historical, scenic, archaeological, environmental, biological, cultural, scientific, educational, recreational and economic resources that are uniquely located adjacent to an area of large population; is a total ecosystem that is extremely fragile, easily scarred and slowly healed; faces serious threats to its resources, including certain rare and endangered species of wildlife, plants and fish; should be subject to a comprehensive planning and management process. The purpose of this section is to provide for the immediate and future protection and

administration of the public lands in the California desert conservation area. The Act directs the Secretary to prepare and implement by September 1980 a comprehensive, long-range plan for the management, use, development and protection of these lands, taking into account principles of multiple use and sustained yield. The Secretary also is required to establish an advisory committee to advise on the plan's preparation and implementation. §§ 1781.

Bureau of Land Management Wilderness Study. By October 1991, the Secretary is required to review roadless areas of 5,000 acres or more and roadless islands of public lands, identified during the §§ 1711 inventory as having wilderness characteristics, and report to the President on the suitability of each area for preservation as wilderness. §§ 1782.

Appropriations Authorized. Congress authorized to be appropriated sums necessary to carry out this Act, with the exception of Bureau activities. The Secretary must submit to Congress every four years a request for authorization of appropriations for the Bureau. §§ 1748.

Digest of Federal Resource Laws of Interest to the U.S. Fish and Wildlife Service

Federal Power Act

This Act, (16 U.S.C. 791-828c; Chapter 285, June 10, 1920; 41 Stat. 1063) as amended by

Chapter 129, March 3, 1921; 41 Stat. 1353.

Chapter 572, June 23, 1930; 46 Stat. 799

Chapter 687, August 26, 1935; 49 Stat. 803.

Chapter 782, October 28, 1949; 63 Stat. 954

P.L. 247, October 31, 1951; 65 Stat. 701.

P.L. 87-647, September 7, 1962; 76 Stat. 447.

P.L. 95-617, November 9, 1978; 92 Stat. 3117.

P.L. 96-294, June 30, 1980; 94 Stat. 611.

P.L. 97-375, December 21, 1982; 96 Stat. 1819.

P.L. 99-495, October 16, 1986; 100 Stat. 1243.

These public laws appear in Chapter 12 of the U.S. Code, Federal Regulation and Development of Power, Subchapter I, Regulation of the Development of Water Power and Resources. The original statute was enacted in 1920. Many of the subsequent amendments have not involved resource issues; however, the 1935 and 1986 amendments added new requirements to incorporate fish and wildlife concerns in licensing, relicensing, and exemption procedures.

The original Federal Power Act provides for cooperation between the Federal Energy Regulatory Commission (Commission) and other Federal agencies, including resource agencies, in licensing and relicensing power projects. The President is required to appoint the five commissioners with the advice and consent of the Senate (16 U.S.C. 792). The President is also authorized, at the request of the Commission, to detail engineers from the Departments of Agriculture or Interior for field work (16 U.S.C. 793).

"Navigable waters" (for which the Commission has jurisdiction under the Commerce Clause) are defined to include "streams or other bodies of water over which Congress has jurisdiction to regulate commerce among foreign nations and among the States" (16 U.S.C. 796). The Commission is authorized to issue licenses to construct, operate and maintain dams, water conduits, reservoirs, and transmission lines to improve navigation and to develop power from any streams or other bodies of water over which it has jurisdiction (16 U.S.C. 797(e)).

The term "reservation" lands is defined to include national forests, Indian lands, and any other lands "acquired and held for public purposes" not including national monuments or national parks (16 U.S.C. 796(2)). This definition, accordingly, includes national wildlife refuge lands as a "reservation." Any license application for a project within a "reservation" requires an affirmative finding by the Commission that the project will not be inconsistent with the purpose for which the land was acquired or created. In addition, the license is to contain conditions deemed necessary by the Federal department which has jurisdiction to protect the resources (16 U.S.C. 797(e)). Section 797(a) further prohibits any permit, license, lease or dam authorization within a national park or

national monument without the specific authority of Congress.

In deciding whether to issue a license, the Commission is required to give "equal consideration" to the following purposes: power and development; energy conservation; protection, mitigation of damage to, and enhancement of, fish and wildlife (including spawning grounds and habitat); protection of recreational opportunities, and preservation of other aspects of environmental quality (16 U.S.C. 797(f)).

The time frame for licenses can not exceed 50 years (16 U.S.C. 799). The Commission is authorized to grant preference to applications by States or municipalities when issuing preliminary permits or original licenses (16 U.S.C. 800). The project selected must be the project which is best adapted to a comprehensive plan for improving or developing a waterway for several public benefits, including benefits for the "adequate protection, mitigation and enhancement of fish and wildlife" (16 U.S.C. 803(a)). In making this determination, the Commission is required to consider the recommendations from various sources, including fish and wildlife recommendations of affected Indian tribes (16 U.S.C. 803(a)(2)(B)).

The 1986 amendments to the Federal Power Act, entitled the Electric Consumers Protection Act, mandated several fish and wildlife provisions. Each license is to include conditions to protect, mitigate and enhance fish and wildlife affected by the project. These conditions are to be based on recommendations received pursuant to the Fish and Wildlife Coordination Act from the Fish and Wildlife Service, the National Marine Fisheries Service, and State fish and wildlife agencies (16 U.S.C. 803(j)(1)). The Commission is empowered to resolve any instances in which such recommendations are viewed as inconsistent while according "due weight to the recommendations, expertise, and statutory responsibilities" of the resource agencies.

In addition, the Commission is mandated to make two findings if the recommendations are not adopted in whole or in part (16 U.S.C. 803(j)(2)). These include: (1) a finding that adoption of the recommendations would be inconsistent with the purposes and requirements of this subchapter (16 U.S.C. 803(j)(2)(A)); and (2) a finding that the conditions selected by the Commission satisfy the requirement to adequately and equitably protect, mitigate damages to, and enhance fish and wildlife (16 U.S.C. 803(j)(2)(B)).

As part of the relicensing process, the Commission is required to issue a public notice indicating whether the existing licensee intends to file a new license. Notification is also required for the Fish and Wildlife Service, the National Marine Fisheries Service, and the appropriate State fish and wildlife agency (16 U.S.C. 808(b)(3)). Each application for a new license must be filed with the Commission 24 months in advance of the expiration of the existing license. In addition, each applicant is required to consult with the fish and wildlife agencies and conduct appropriate studies with such agencies (16 U.S.C. 808(c)(1)).

The Commission is also required to mandate the construction, maintenance, and operation of fish passage facilities as are prescribed by the Secretary of Commerce or the Secretary of the Interior (16 U.S.C. 811).

The Commission is authorized to grant exemptions from licensing to any project for which the capacity does not exceed 15 megawatts provided that the project is located on non-Federal lands and it uses a manmade conduit. In conjunction with issuing this exemption, the Commission is required to incorporate terms and conditions recommended by the resource agencies to prevent loss of, or damages to, the resources. In addition, the Commission is to establish fees for the licensing exemption which reimburse the resource agencies for the "reasonable costs" of conducting studies. Monies are to be transferred to the agencies and are to remain available until expended for the studies (16 U.S.C. 823). Lastly, the Commission is required to monitor and investigate compliance with each license, permit or exemption (16 U.S.C. 823(b)).

Digest of Federal Resource Laws of Interest to the U.S. Fish and Wildlife Service

Fish and Wildlife Coordination Act

Fish and Wildlife Coordination Act (16 U.S.C. 661-667e; the Act of March 10, 1934; Ch. 55; 48 Stat. 401), as amended by the Act of June 24, 1936, Ch. 764, 49 Stat. 913; the Act of August 14, 1946, Ch. 965, 60 Stat. 1080; the Act of August 5, 1947, Ch. 489, 61 Stat. 770; the Act of May 19, 1948, Ch. 310, 62 Stat. 240; P.L. 325, October 6, 1949, 63 Stat. 708; P.L. 85-624, August 12, 1958, 72 Stat. 563; and P.L. 89-72, 79 Stat. 216, July 9, 1965.

The Act of March 10, 1934, authorizes the Secretaries of Agriculture and Commerce to provide assistance to and cooperate with Federal and State agencies to protect, rear, stock, and increase the supply of game and fur-bearing animals, as well as to study the effects of domestic sewage, trade wastes, and other polluting substances on wildlife.

The Act also directs the Bureau of Fisheries to use impounded waters for fish-culture stations and migratory-bird resting and nesting areas and requires consultation with the Bureau of Fisheries prior to the construction of any new dams to provide for fish migration. In addition, this Act authorizes the preparation of plans to protect wildlife resources, the completion of wildlife surveys on public lands, and the acceptance by the Federal agencies of funds or lands for related purposes provided that land donations received the consent of the State in which they are located.

The amendments enacted in 1946 require consultation with the Fish and Wildlife Service and the fish and wildlife agencies of States where the "waters of any stream or other body of water are proposed or authorized, permitted or licensed to be impounded, diverted . . . or otherwise controlled or modified" by any agency under a Federal permit or license. Consultation is to be undertaken for the purpose of "preventing loss of and damage to wildlife resources."

The amendments authorize the transfer of funds to the Fish and Wildlife Service to conduct related investigations. Land made available to the Secretary of Interior for wildlife protection purposes is to be managed directly by or under cooperative agreements with the Secretary of Interior. General plans may also include the transfer of project lands to a State for management. The amendments authorized appropriations for related purposes and specifically exempted the Tennessee Valley Authority from its provisions.

Miscellaneous amendments in 1936, 1947, 1948, and 1949 authorized the following provisions respectively: 1) purchase of lands in Idaho for use as a game management supply depot and laboratory, 2) transfer of lands in connection with the Crab Orchard Creek Project to the Secretary of Interior, 3) use of surplus Federal property for wildlife conservation purposes, and 4) exchange of lands within the Skagit National Wildlife Refuge.

The 1958 amendments added provisions to recognize the vital contribution of wildlife resources to the Nation and to require equal consideration and coordination of wildlife conservation with other water resources development programs, and authorized the Secretary of Interior to provide public fishing areas and accept donations of lands and funds.

The amendments also titled the law as the Fish and Wildlife Coordination Act and expanded the instances in which diversions or modifications to water bodies would require consultation with the Fish and Wildlife Service. These amendments permitted lands valuable to the National Bird Management Program to be made available to the State agency exercising control over wildlife resources.

Digest of Federal Resource Laws of Interest to the U.S. Fish and Wildlife Service

Migratory Bird Treaty Act of 1918

Migratory Bird Treaty Act of 1918 (16 U.S.C. 703-712; Ch. 128; July 13, 1918; 40 Stat. 755) as amended by:

Chapter 634; June 20, 1936; 49 Stat. 1556 P.L. 86-732; September 8, 1960; 74 Stat. 866 P.L. 90-578; October 17, 1968; 82 Stat. 1118 P.L. 91-135; December 5, 1969; 83 Stat. 282 P.L. 93-300; June 1, 1974; 88 Stat. 190 P.L. 95-616; November 8, 1978; 92 Stat. 3111. P.L. 99-645; November 10, 1986; 100 Stat. 3590.

The original 1918 statute implemented the 1916 Convention between the U.S. and Great Britain (for Canada) for the protection of migratory birds. Specific provisions in the statute included:

o Establishment of a Federal prohibition, unless permitted by regulations, to "pursue, hunt, take, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, purchase, deliver for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be transported, carry, or cause to be carried by any means whatever, receive for shipment, transportation or carriage, or export, at any time, or in any manner, any migratory bird, included in the terms of this Convention . . . for the protection of migratory birds . . . or any part, nest, or egg of any such bird." (16 U.S.C. 703)

This prohibition applies to birds included in the respective international conventions between the U.S. and Great Britain, the U.S. and Mexico, the U.S. and Japan, and the U.S. and the Soviet Union.

o Authority for the Secretary of the Interior to determine, periodically, when, consistent with the Conventions, "hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any . . . bird, or any part, nest or egg" could be undertaken and to adopt regulations for this purpose. These determinations are to be made based on "due regard to the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times of migratory flight." (16 U.S.C. 704)

o A decree that domestic interstate and international transportation of migratory birds which are taken in violation of this law is unlawful, as well as importation of any migratory birds which are taken in violation of Canadian laws. (16 U.S.C. 705)

o Authority for Interior officials to enforce the provisions of this law, including seizure of birds illegally taken which can be forfeited to the U.S. and disposed of as directed by the courts. (16 U.S.C. 706)

o Establishment of fines for violation of this law, including misdemeanor charges. (16 U.S.C. 707)

o Authority for States to enact and implement laws or regulations to allow for greater protection of migratory birds, provided that such laws are consistent with the respective Conventions and that open seasons do not extend beyond those established at the national level. (16 U.S.C. 708)

o Authority to take migratory birds exclusively for scientific or propagation purposes, pending the development of Federal regulations, provided that the take does not violate State or local laws. (16 U.S.C. 709)

o A repeal of all laws inconsistent with the provisions of this Act.

o Authority for the continued breeding and sale of migratory game birds on farms and preserves for the purpose of increasing the food supply. (16 U.S.C. 711)

The 1936 statute implemented the Convention between the U.S. and Mexico for the Protection of Migratory Birds and Game Mammals. Migratory bird import and export restrictions between Mexico and the U.S. were also authorized, and in issuing any regulations to implement this section, the Secretary of Agriculture was required to consider U.S. laws forbidding importation of certain mammals injurious to agricultural and horticultural interests. Monies for the Secretary of Agriculture to implement these provisions were also authorized.

The 1960 statute (P.L. 86-732) amended the MBTA by altering earlier penalty provisions. The new provisions stipulated that violations of this Act would constitute a misdemeanor and conviction would result in a fine of not more than $500 or imprisonment of not more than six months. Activities aimed at selling migratory birds in violation of this law would be subject to fine of not more than $2000 and imprisonment could not exceed two years. Guilty offenses would constitute a felony. Equipment used for sale purchases was authorized to be seized and held, by the Secretary of the Interior, pending prosecution, and, upon conviction, be treated as a penalty.

Section 10 of the 1969 amendments to the Lacey Act (P.L. 91-135) repealed the provisions of the MBTA prohibiting the shipment of wild game mammals or parts to and from the U.S. or Mexico unless permitted by the Secretary of the Interior. The definition of "wildlife" under these amendments does not include migratory birds, however, which are protected under the MBTA.

The 1974 statute (P.L. 93-300) amended the MBTA to include the provisions of the 1972 Convention between the U.S. and Japan for the Protection of Migratory Birds and Birds in Danger of Extinction. This law also amended the title of the MBTA to read: "An Act to give effect to the conventions between the U.S. and other nations for the protection of migratory birds, birds in danger of extinction, game mammals, and their environment."

Section 3(h) of the Fish and Wildlife Improvement Act of 1978 (P.L. 95-616) amended the MBTA to authorize forfeiture to the U.S. of birds and their parts illegally taken, for disposal by the Secretary of the Interior as he deems appropriate. These amendments also authorized the Secretary to issue regulations to permit Alaskan natives to take migratory birds for their subsistence needs during established seasons. The Secretary was required to consider the related migratory bird conventions with Great Britain, Mexico, Japan, and the Soviet Union in establishing these regulations and to establish seasons to provide for the preservation and maintenance of migratory bird stocks.

Public Law 95-616 also ratified a treaty with the Soviet Union specifying that both nations will take measures to protect identified ecosystems of special importance to migratory birds against pollution, detrimental alterations, and other environmental degradations. (See entry for the Convention Between the United States of America and the Union of Soviet Socialist Republics Concerning the Conservation of Migratory Birds and Their Environment; T.I.A.S. 9073; signed on November 19, 1976, and approved by the Senate on July 12, 1978; 92 Stat. 3110.)

The most recent amendment was part of the 1986 Emergency Wetlands Resources Act (P.L. 99-645), and amended the Act to require that felony violations under the MBTA must be "knowingly" committed.

Digest of Federal Resource Laws of Interest to the U.S. Fish and Wildlife Service

National Environmental Policy Act of 1969

National Environmental Policy Act of 1969 (P.L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, 83 Stat. 852) as amended by P.L. 94-52, July 3, 1975, 89 Stat. 258, and P.L. 94-83, August 9, 1975, 89 Stat. 424).

Title I of the 1969 National Environmental Policy Act (NEPA) requires that all Federal agencies prepare detailed environmental impact statements for "every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment."

The 1969 statute stipulated the factors to be considered in environmental impact statements, and required that Federal agencies employ an interdisciplinary approach in related decision-making and develop means to ensure that unquantified environmental values are given appropriate consideration, along with economic and technical considerations.

Title II of this statute requires annual reports on environmental quality from the President to the Congress, and established a Council on Environmental Quality in the Executive Office of the President with specific duties and functions.

Amendments enacted in 1975 authorized additional appropriations for the Council on Environmental Quality (P.L. 94-52) and contained various administrative provisions.

Public Law 94-83 clarified the application of NEPA to the preparation of impact statements for projects implemented by States under a system of Federal grants.

NATIONAL PARK SERVICE ACT

16 U.S.C. §§§1 - 18f-1, August 25, 1916, as amended 1920, 1921, 1924, 1926, 1928, 1930, 1931, 1933, 1935, 1936, 1939-1941, 1946, 1948-1953, 1955, 1956, 1958, 1960, 1964, 1966, 1967, 1970, 1973, 1975, 1976, 1978, 1980, 1981, 1983, 1984, 1990-1994 and 1996.

Overview. This Act creates the National Park Service within the Department of the Interior to administer the national parks, monuments and reservations. The Act sets out the details of the administration of the National Park System.

Findings/Policy. Congress declared that: the National Park System (System), which began with establishment of Yellowstone National Park in 1872, has grown to include superlative natural, historic and recreation areas in every major region of the U.S., its territories and island possessions; these distinctive areas are united through their interrelated purposes and resources into one national park system as cumulative expressions of a single national heritage; individually and collectively, these areas derive increased national dignity and recognition of their superb environmental quality through their inclusion in one national park system, preserved and managed for the benefit and inspiration of all the people of the U.S. The purpose of the Act is to include all of these areas in the System and to clarify the authorities applicable to the System. Congress further directs that the promotion and regulation of the National Park System must be consistent with its purposes for the common benefit of all the people. The protection, management and administration of these areas must be conducted in accordance with the high public value and integrity of the National Park System unless Congress specifically provides otherwise. §§ 1a-1.

Selected Definitions. National Park System: includes any area of land and water now or hereafter administered by the Secretary of the Interior through the National Park Service for park, monument, historic, parkway, recreational or other purposes. §§ 1c.

Service Created. The Act creates in the Department of the Interior the National Park Service (Service) under the charge of a director appointed by the Secretary of the Interior (Secretary). The Service is required to promote and regulate the use of the national parks, monuments and reservations in a manner that conforms to their fundamental purpose, which is to conserve their scenery, natural and historic objects, and the wildlife, and to provide for their enjoyment in a way that leaves them unimpaired for the enjoyment of future generations. §§ 1.

Authorization of Activities. The Act authorizes the Secretary to carry out the following activities for the administration of the System: provide transportation, recreation facilities, equipment and services for employees and their families located at isolated areas of the System; establish and appoint advisory committees for the Service; purchase field and special purpose equipment required by employees; contract for the sale or lease of services, resources or water within an area of the System, without jeopardizing or unduly interfering with the primary natural or historic resource of the area; promulgate and enforce regulations concerning

boating and other activities on waters within the System; enter into contracts for living exhibits and interpretive demonstrations; provide employee meals and lodging as appropriate. The Secretary also is authorized to aid the states, through the Service, in planning coordinated and adequate public park, parkway and recreational facilities. §§§§ 1a-2 and 17*l*.

The Secretary may relinquish, to a state or U.S. commonwealth, territory or possession, part of the federal jurisdiction over System lands or interests, after submitting proposed agreements to Congress. The Secretary is required to pursue this arrangement wherever a System unit is located, with the goal of the U.S. exercising concurrent jurisdiction whenever practical. §§ 1a-3.

Additional Areas for the National Park System. The Act directs the Secretary to investigate, study and monitor the welfare of areas whose resources exhibit qualities of national significance and which may have potential for inclusion in the System. At the beginning of each fiscal year, the Secretary must transmit to Congress: comprehensive reports on each of the studied areas; a list of at least 12 specific areas in order of merit for inclusion in the System; a synopsis of current and changed conditions of the resource integrity of an area and other relevant factors; a list of areas on the Registry of Natural Landmarks and the National Register of Historic Places that exhibit known or anticipated threats to the integrity of their resources. Congress authorized to be appropriated $1,000,000 annually for studying potential new System units and $1,500,000 annually for monitoring the welfare and integrity of national landmarks.

The Act also requires the Secretary to submit to Congress by September 1981 a comprehensive National Park System Plan, to serve as a professional guide for the identification of natural and historic themes of the U.S., and from which candidate areas can be identified and selected to constitute units of the System. This plan must be revised and updated annually. §§ 1a-5.

National Park System Management. The Director of the Service, under the direction of the Secretary, is responsible for supervision, management and control of the national parks, monuments and reservations. In the supervision, management and control of national monuments contiguous to national forests, the Secretary of Agriculture may cooperate with the Service to the extent requested by the Secretary. §§ 2.

The Secretary is authorized to designate Department of the Interior employees to maintain law and order within areas of the System, and may designate other federal and state law enforcement personnel to act as special System police. Congress authorized to be appropriated $10,000,000 from the Violent Crime Reduction Trust Fund for the Secretary to use in reducing violent crime in the System. §§§§ 1a-6 and 1a-7a.

The Act requires the Secretary to transmit to Congress annually a detailed program for the development of facilities, structures or buildings for each unit of the System. The Director of the Service must prepare general management plans for the preservation and use of each unit, including:

measures for preservation of the area's resources; indications of types and general intensities of development for public enjoyment and use of the area; identification and implementation of visitor capacities for all areas of the unit. The Service is required to implement a maintenance management system into the maintenance and operations programs of the System, and annually to report to Congress on the status of implementation efforts. §§§§1a-7 and 1a-8.

Review and Report on the National Park System. The Act requires the Secretary every three years to conduct a systematic and comprehensive review of certain aspects of the System and to report to Congress. The report must include: a comprehensive listing of all authorized but unacquired lands within the exterior boundaries of each unit of the System as of November 28, 1990; a priority listing of all unacquired parcels by individual park unit and for the System as a whole; an analysis and evaluation of the current and future needs of each System unit for resource management, interpretation, construction, operation and maintenance, personnel, and housing, together with estimated costs; any recommendations the Secretary determines necessary. By December 1991, the Secretary must develop criteria to evaluate any proposed changes to the existing boundaries of individual park units. §§§§ 1a-9, 1a-11 and 1a-12.

Regulation and Use of Lands. The Secretary must adopt rules and regulations as necessary for the use and management of the parks, monuments and reservations under the jurisdiction of the Service. Violation of these rules and regulations is punishable by a fine, imprisonment for six months, or both.

The Secretary may: sell or dispose of timber where cutting is required to control attacks of insects or diseases, or otherwise to conserve the scenery or the natural or historic objects in a park, monument or reservation; provide for the destruction of animals and plant life that are detrimental to the use of a park, monument or reservation; grant 30-year privileges, leases and permits for the use of land for the accommodation of visitors in the parks, monuments and reservations, provided that no natural curiosities, wonders or objects of interests can be leased, rented or granted on terms that interfere with public access; grant livestock grazing privileges within a national park, monument or reservation (except Yellowstone National Park), when this use is not detrimental to the primary purpose for which the park, monument or reservation was created. §§ 3.

The head of the department with appropriate jurisdiction is authorized to grant 50-year easements for rights of way on the public lands and reservations, to the extent not incompatible with the public interest, for: electrical poles and lines; poles and lines for communication purposes; radio, television, and other forms of communication transmitting, relay, and receiving structures and facilities. §§ 5.

The Act authorizes the Secretary to acquire, establish, construct, improve, maintain, operate, regulate and protect airports in the continental U.S. in, or in close proximity to, national parks, monuments and recreation areas,

when necessary to the proper performance of the functions of the Department of Interior. The Secretary also is authorized to construct, reconstruct, and improve roads and trails, inclusive of bridges, in the national parks and monuments under the jurisdiction of the Department of the Interior. §§§§ 7a and 8.

Appropriations Authorized. Various appropriations are authorized for specified activities throughout the Act.

Editor's Note. The Mining in the Parks Act, addressing mining operations on National Park System lands, is separately summarized in the Handbook.

National Reclamation Act of 1902

This act authorizes the Secretary of the Interior to develop irrigation and hydropower projects in 17 Western States. Provides that ". . . the right to the use of water acquired under the provision of this act shall be appurtenant to the land irrigated and beneficial use shall be the basis, the measure, and the limit of the right."

WILD AND SCENIC RIVERS ACT

16 U.S.C. §§§§ 1271-1287, October 2, 1968, as amended 1972, 1974-1976, 1978-1980, 1984, 1986-1994 and 1996.

Overview. This Act establishes a National Wild and Scenic Rivers System for the protection of rivers with important scenic, recreational, fish and wildlife, and other values. Rivers are classified as wild, scenic or recreational. The Act designates specific rivers for inclusion in the System and prescribes the methods and standards by which additional rivers may be added. The Act contains procedures and limitations for control of lands in federally administered components of the System and for disposition of lands and minerals under federal ownership. Hunting and fishing are permitted in components of the System under applicable federal and state laws.

Findings/Policy. It is the policy of the U.S. that: selected national rivers and their immediate environments which possess outstanding scenic, recreational, geologic, fish and wildlife, historic, cultural or other similar values are to be preserved in free-flowing condition; these rivers and their immediate environments are to be protected for the benefit and enjoyment of present and future generations; the national policy of dam and other construction on U.S. rivers should be complemented by a policy that preserves other selected rivers in their free-flowing condition to protect water quality and fulfill other vital national conservation purposes. The purpose of the Act is to institute a national wild and scenic rivers system by designating the initial components of that system and by prescribing the methods and standards applicable to adding components to the system. §§§§ 1271 and 1272.

Selected Definitions. Free-flowing: a river or section of a river, existing or flowing in natural conditions without impoundment, diversion, straightening, rip-rapping or other modification of the waterway. River: a flowing body of water or estuary, or a section, portion or tributary thereof, including rivers, streams, creeks, runs, kills, rills and small lakes. §§ 1286.

National Wild and Scenic Rivers System. The National Wild and Scenic Rivers System (System) is comprised of rivers that Congress authorizes for inclusion or that are designated as wild, scenic or recreational rivers by the legislatures of the states through which they flow. Rivers that are designated by a state must be administered permanently as wild, scenic or recreational rivers by an agency or political subdivision of the state concerned, determined by the Secretary of the Interior as meeting the criteria established in the Act, and approved by the Secretary for inclusion in the System. States or political subdivisions must administer state-designated rivers without expense to the U.S., other than for administration and management of federally owned lands.

To be included in the System, a wild, scenic or recreational river area must be a free-flowing stream and the related adjacent land area must possess scenic, recreational, geologic, fish and wildlife, historic, cultural or other similar values. Every wild, scenic or recreational river in its free-flowing condition must be considered eligible for inclusion in the System and, if included, must be classified, designated and administered as a wild, scenic or a recreational river area. Wild river areas are rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America. Scenic river areas are rivers or sections of rivers that are free of impoundments, with shorelines or watersheds still largely

primitive and shorelines largely undeveloped, but accessible in places by roads. Recreational river areas are rivers or sections of rivers readily accessible by road or railroad, may have some shoreline development, and may have undergone some impoundment or diversion in the past. §§ 1273.

Component Rivers and Adjacent Lands. The Act designates over 130 rivers, with adjacent land, as components of the System. Administration of these is assigned either to the Secretary of the Interior or the Secretary of Agriculture.

Within one year from the date of designation, the agency charged with administration of each of these components must establish detailed boundaries and determine which of the three categories best fits the river or its various segments. For rivers designated after January 1, 1986, the federal agency charged with administration must prepare within three years a comprehensive management plan for each river segment to protect the river values. The plan must be prepared with public input and address resource protection, development of land and facilities, user capacities and other necessary management practices. For rivers designated before January 1, 1986, all boundaries, classifications and plans must be reviewed for conformity with the Act within ten years through regular agency planning processes. §§ 1274.

Additions to the System. The Act requires the Secretary of the Interior, or the Secretary of Agriculture where national forest lands are involved, or the two Secretaries jointly, to study and submit to the President reports on the suitability for additions to the System of rivers which are designated by the Congress as potential additions. The President must make recommendations and proposals to Congress. §§ 1275.

The Act designates over 130 rivers for potential addition to the System and provides deadlines for when studies for specific rivers must be completed. These studies must: be made in close cooperation with appropriate agencies of the affected state and its political subdivisions; be carried on jointly with these agencies if requested by the state; include a determination of the degree to which the state or its political subdivisions might participate in the preservation and administration of the river should it be proposed for inclusion in the System. Federal agencies must give consideration to potential national wild, scenic and recreational river areas in planning for use and development of water and related land resources. All river basin and project plan reports submitted to Congress must include a discussion of System potential additions. §§ 1276.

Land Acquisition. The Secretary of the Interior and the Secretary of Agriculture are authorized to acquire lands and interests in land within the boundaries of System components they administer, but they may not acquire fee title to an average of more than 100 acres per mile on both sides of the river, with special provisions for Alaska. Lands owned by a state may be acquired only by donation or exchange. Lands owned by an Indian tribe or a political subdivision of a state may not be acquired without consent of the appropriate governing body. The Act contains additional specifications on land acquisition, including restrictions on condemnation. §§§§ 1277 and 1285b.

Restrictions on Water Resources Projects. The Act prohibits the Federal Energy Regulatory Commission (FERC) from licensing construction of a dam, water conduit, reservoir, powerhouse, transmission line or other project works under the Federal Power Act on or directly

affecting a river designated as an actual or potential System component.

No U.S. department or agency may assist by loan, grant, license or otherwise in the construction of a water resources project that would have a direct and adverse effect on the values for which a river is designated as an actual or potential System component. This does not preclude licensing or assistance to developments below or above an actual or potential wild, scenic or recreational river area or on a stream tributary which will not invade the area or diminish the scenic, recreational and fish and wildlife values of the area. §§ 1278.

Withdrawal of Public Lands. All public lands within the authorized boundaries of System components, or areas designated as potential additions to the System, are withdrawn from entry, sale or other disposition under U.S. public land laws. §§ 1279.

Federal Mining and Mineral Leasing Laws. The Act does not affect the applicability of federal mining and mineral leasing laws within components of the System, except that: prospecting, mining operations and other activities on mining claims which have not been perfected, and mining operations under a mineral lease, license or permit, are subject to regulations to effectuate the Act's purposes; mining claims affecting lands within the System must convey a right only to the mineral deposits; minerals in the bed or bank, or within one-quarter mile of the bank, of an actual or potential component river are withdrawn from all forms of appropriation under the mining laws and from operation of the mineral leasing laws. §§ 1280.

Administration. Each System component must be administered to protect and enhance the values which caused it to be included in the System. Primary emphasis must be given to protecting its aesthetic, scenic, historic, archaeologic and scientific features.

A portion of a System component that is within the national wilderness preservation system as established by the Wilderness Act is subject to the provisions of both Acts. A System component administered through the National Park Service must become part of the national park system, and a System component administered through the U.S. Fish and Wildlife Service must become part of the national wildlife refuge system. All the laws applicable to the various systems must be followed, with the more restrictive provisions applying in the case of a conflict. §§ 1281.

The Secretary of the Interior, the Secretary of Agriculture, and the heads of other federal departments or agencies with jurisdiction over lands within the System, or under consideration for inclusion, must take action through management policies, regulations, contracts and plans to protect the areas in accordance with the purposes of the Act. The Secretary of the Interior may lease federally owned land which is within the boundaries of a System component and which has been acquired by the Secretary under the Act. Leases are subject to restrictive covenants as necessary to carry out the purposes of the Act. §§ 1283 and 1285a.

Assistance to State and Local Projects. The Act requires the Secretary of the Interior to assist states in considering opportunities for establishing wild, scenic and recreational areas, when formulating and carrying out comprehensive outdoor recreation plans and proposals for financing submitted pursuant to the Land and Water Conservation Fund Act of 1965. The Secretaries of the Interior and Agriculture, or the heads of other federal agencies, must assist states, political subdivisions, landowners, private organizations and individuals to plan, protect and manage river

resources. For these purposes, the federal government may make federal facilities available to volunteers. §§ 1282.

State Jurisdiction and Responsibilities. The Act does not affect the jurisdiction or responsibilities of states with respect to fish and wildlife. Hunting and fishing must be permitted under applicable state and federal laws and regulations on lands and waters administered as parts of the System, unless, in the case of hunting, those lands are within a national park or monument. The jurisdiction of the U.S. and states over stream waters in a System component must be determined by established law. A taking by the U.S. of a water right entitles the owner to just compensation. The Act does not alter interstate compacts which contain a portion of the System. §§ 1284.

Appropriations Authorized. Congress authorized to be appropriated specific sums for land acquisition and development of rivers designated for inclusion in the System. §§§§ 1274 and 1287.