

APPENDIX B: APPLICABLE LAWS

| | |
|---|----------|
| APPENDIX B: APPLICABLE LAWS..... | 1 |
|---|----------|

APPENDIX B: APPLICABLE LAWS

FEDERAL LAWS

Antiquities Act of 1906 (34 Stat. 225). Provides for protection of artifacts and historical objects and their recovery by accredited institutions.

Migratory Bird Treaty Act of 1918, as amended, (16 D.S.C. 703-711; 40 Stat. 755). Implements treaties with Great Britain (for Canada), Mexico, Japan, and Soviet Union for protection of migratory birds whose welfare is a Federal responsibility; provides for regulations to control taking, possessing, selling, transporting, and importing of migratory birds and provides penalties for violations:

Migratory Bird Conservation Act of 1929, as amended, (16 D.S.C. 715-715r; 45 Stat. 1222). Authorizes acquisition, development, and maintenance of migratory bird refuges; cooperation with other agencies in conservation; and investigations and publications on North American Birds.

Migratory Bird Hunting and Conservation Stamp Act of 1934, as amended, (16 D.S.C. 718718h; 48 Stat. 451). Requires that all waterfowl hunters, sixteen (16) years of age or older possess a valid duck stamp; requires use of duck stamp net revenue to acquire migratory bird refuges and waterfowl production areas.

Fish and Wildlife Coordination Act of 1934, as amended, (16 D.S.C. 661-667e; 48 Stat. 401). The Act authorized the preparation of plans to protect wildlife resources, the completion of wildlife surveys on public lands, and the acceptance by federal agencies of funds or lands for related purposes provided that land donations received the consent of the State in which they are located.

Refuge Revenue Sharing Act of 1935, as amended, (16 D.S.C. 715s; 92 Stat. 1319). Makes refuge revenue sharing payments applicable to all lands solely or primarily administered by the USFWS. The new law makes payments available for any governmental purpose, whereas the old law restricted the use of payments to roads and schools. For fee (acquired) lands, the new law provides a payment of 75 cents per acre, three-fourths of 1 percent of fair market value, or 25 percent of net receipts, whichever is greater, whereas the old law provided a payment of three-fourths of one percent' adjusted cost or 25 percent of net receipts, whichever was greater. For reserve (public domain) lands, the law provides for a payment of 25 percent of net receipts. The new law authorizes appropriations to make up any shortfall in net receipts to make payments in the full amount for which counties are eligible.

Fish and Wildlife Act of 1956, as amended, (16 V.S.C. 742a-742j; 70 Stat. 1119). Approved August 8, 1956, the Act established a comprehensive fish and wildlife policy and directed the Secretary to provide continuing research, extension and information services; and directed development, management, and conservation of fish and wildlife resources.

Refuge Recreation Act of 1962, as amended, (16 V.S.C. 460k-460k-4; 76 Stat. 653). Authorizes appropriate, incidental, or secondary recreational use on a conservation area administered by the Secretary of the Interior for fish and wildlife purposes.

Wilderness Act of 1964 (16 V.S.C. 1131; 78 Stat. 890). Establishes the wilderness system in the United States. Supplements to the purposes for which units of the National Wildlife Refuge System are established.

Land and Water Conservation Fund Act of 1965, as amended, (16 V.S.C. 4601-11). This Act provides financial assistance to the States for outdoor recreation, primarily in (1) planning; (2) acquisition of land, water, or interests in land or waters; or (3) development. In addition to assistance to the States, the Land

and Water Conservation Fund Act provides that not less than 40 percent of the annual appropriation shall be available for Federal purposes. Funds appropriated for Federal purposes shall be made available for the acquisition of land, waters, or interests in land or waters for the (1) National Park System, (2) National Forest System, (3) National Wildlife Refuge System, and (4) Bureau of Land Management.

The appropriations provided by Land and Water Conservation Fund Act are derived from Outer Continental Shelf leases, tax on motorboat fuels, and sale of certain surplus Federal lands. The Act also increased Land and Water Conservation Fund authorization for FY 1978 and the following years through FY 1989.

The U.S. Fish and Wildlife Service utilizes four basic acquisition authorities which are allowed through the funding authority of Land and Water Conservation Fund Act to purchase land and water, including (1) Endangered Species Act of 1973; (2) Refuge Recreation Act of 1962; (3) Fish and Wildlife Act of 1956, except for migratory waterfowl areas; (4) Emergency Wetlands Resources Act of 1986 and (5) any areas authorized as additions to the National Wildlife Refuge System by specific Congressional Acts.

National Historic Preservation Act of 1966 , as amended, (16 V.S.C. 470, et seq.; 80 Stat. 915). The Act provides for the preservation of significant historical features (buildings, objects, etc.) through a grant-in-aid program to the States and establishes a National Register of Historic Places. Federal Agencies are required to consider the effects of their actions on buildings, etc., included or eligible for inclusion in the National Register.

National Wildlife Refuge System Administration Act of 1966, as amended, (16 U.S.C. 668dd, 668ee; 80 Stat. 927). Consolidates the authorities for the various categories of areas previously established that are administered by the Secretary of the Interior for the conservation of fish and wildlife, including species that are threatened with extinction. All lands, waters, and interests therein administered by the Secretary as wildlife refuges, etc., are hereby designated as the National Wildlife Refuge System. Provides, according to the Act, that the Secretary may authorize hunting and fishing to the extent practicable and consistent with State fish and wildlife laws and regulations.

National Environmental Policy Act of 1969 (NEPA), as amended, (42 V.S.C. 4321, et seq.; 83 Stat. 852). Declares the national policy to encourage a productive and enjoyable harmony between man and his environment. Section 102 of that Act directs that "to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall ". . . insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision making along with economic and technical considerations. . . "

Section 102 (2)c of the National Environmental Policy Act requires all Federal Agencies, with respect to major Federal actions significantly affecting the quality of the human environment, prepare a detailed statement on:

- The environmental impact of the proposed action
- Any adverse environmental effect which cannot be avoided should the proposal be implemented
- Alternatives to the proposed action
- The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity
- Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Federal Water Pollution Control Act (Clean Water Act) of 1948, as amended, (33 U.S.C. 1251-1376; P.L. 845, June 30, 1948; 62 Stat.1155). The original statute (PL. 845) authorized the Surgeon General, in cooperation with other federal, state and local entities, to prepare comprehensive programs for eliminating or reducing pollution of interstate waters and tributaries by improving the sanitary condition of surface and underground waters. Since 1948, the original statute has been amended extensively either to authorize additional water quality programs, standards and procedures to govern allowable discharges, or funding for construction grants or general program funding.

Endangered Species Act of 1973, as amended, (16 U.S.C. 1531, et seq.; 87 Stat. 884). This Act provides for the conservation of threatened and endangered species of fish, wildlife, and plants by Federal action and by encouraging State programs. Specific provisions include: (1) authorizes the listing and determination of critical habitat of endangered or threatened species and requires consultation with the USFWS on any federally funded or licensed project that could affect any of these species or their habitat; (2) prohibits unauthorized taking, possession, sale, transport, etc. of endangered species; (3) authorizes an expanded program of habitat acquisition; (4) authorizes the establishment of cooperative agreements and grant-in-aid to States, which establish and maintain an active, adequate program for endangered and threatened species; and (5) authorizes the assessment of civil and criminal penalties for violating the Act or regulations.

Archaeological Resources Protection Act of 1979 (16 D.S.C. 470aa-47011; 93 Stat. 721). This Act largely supplanted the resource protection provisions of the Antiquities Act for archaeological items. It established detailed requirements for the issuance of permits for any excavation for or removal of archaeological resources from Federal or Indian lands. It also established civil and criminal penalties for the unauthorized excavation, removal, or damage of any such resources; for trafficking in such resources; and for interstate and foreign commerce in such resources acquired, transported, or received in violation of any State or local law.

Food Security Act (Farm Bill) of 1985, as amended (Title XII, P.L. 99-198; 99 Stat. 1354). The Farm Bill provides nearly 20 agricultural conservation programs, many with potential to affect fish and wildlife habitat. The 1990 and 1996 Farm Bill amendments made the goals of the U.S. Department of Agriculture farm and conservation programs more consistent. The conservation reserve, conservation compliance, sodbuster and swampbuster provisions of the bill encourage reduction of soil erosion, retention of wetlands, protection, enhancement and restoration of wildlife habitat and reduces protection of surplus commodities.

Emergency Wetland Resources Act of 1986. (P.L. 99-645; 100 Stat. 3582) Provides for 1) an extension of Wetlands Loan Act until September 30, 1988; 2) sale of admission permits at certain National Wildlife Refuges; 3) increasing the price of the Migratory Bird Hunting and Conservation Stamp to \$10.00 in hunting years 1987 and 1988, \$12.50 for hunting years 1989 and 1990, and \$15.00 for each hunting year thereafter; 4) transfers import duties collected on arms and ammunition to Migratory Bird Conservation Fund; 5) establishment of National Wetlands Priority Conservation Plan; 6) use of Land and Water Conservation Fund monies for acquisition of wetlands for migratory birds; 7) inclusion of wetlands in statewide outdoor recreation plans; 8) acquisition of wetlands; 9) certain restrictions on use of eminent domain in wetland acquisition; and 10) continuation of National Wetlands Inventory Project.

North American Wetlands Conservation Act of 1989 (16 U.S.C. 4401-4412; 103 Stat. 1968). Encourages partnership among public agencies and other interests to: (1) protect, restore, and manage an appropriate distribution and diversity of wetland ecosystems and other habitats for migratory birds and other fish and wildlife; (2) maintain current or improved distribution of migratory bird populations; and (3) sustain an abundance of waterfowl and other migratory birds consistent with the goals of the North American Waterfowl Management Plan.

Funding provided by the North American Wetlands Conservation Act are derived from Federal Aid in Wildlife Restoration Act (Pittman-Robertson) funds, proceeds from migratory bird fines, penalties, and forfeitures under the Migratory Bird Treaty Act. Appropriations are not to exceed \$20 million for FY 1995 and FY 1996, and \$30 million for Fiscal Year 1997 and 1998. Allocation of funding from the Act provides at least 50 percent, but not more than 70 percent of available funds for projects in Canada and Mexico. At least 30 percent, but not more than 50 percent of available funds will be appropriated for projects in the United States.

National Wildlife Refuge System Improvement Act of 1997, (HR 1420), signed October 9,

1997. The purpose of this Act was to amend the National Wildlife Refuge System Administration Act of 1966 to improve the management and administration of the National Wildlife Refuge System. Its main components include identifying and unifying the mission for the Refuge System, identifying guidelines for administration of the Refuge System, providing a new process for determining compatible uses of refuges and a requirement for preparation of Comprehensive Management Plans for each unit of the Refuge System within 15 years. The Act also provides guidelines for emergency situations and conflicts with other existing legislation. First and foremost, the Act states that the mission of the Refuge System will be singularly focused on wildlife conservation.

National Wildlife Refuge Regulations for the most recent fiscal year (50 CFR Subchapter C; 43 CFR 3101.3-3). Provides regulations for administration and management of wildlife refuges.

Coastal Zone Management Act of 1972 as amended, (16 V.S.C. 1451-1464, Chapter 33; 86 Stat 1280), established a volunteer national program within the Department of Commerce to encourage coastal states to develop and implement coastal zone management plans. Funds were authorized for cost-sharing grants to states to develop their programs. Subsequent to federal approval of their plans, grants would be awarded for implementation purposes. Grants are available for coastal management and projects, access improvements, hazard management, planning, growth and development management, and demonstration projects.

The 1972 amendments to the Act established a system of criteria and standards for requiring that federal action be conducted in a manner consistent within the federally approved plan for implementation of the CZMA. The standard for consistency varies depending on whether the federal action involved a permit, license, financial assistance or other federally authorized activity.

Comprehensive Environmental Response, Compensation , and Liability Act of 1980, (CERCLA), (PL 96-510; 42 USC 9601, et seq.) Regulates releases of hazardous materials; provides mechanism for hazardous waste clean-up; and, defines liable parties for hazardous waste clean-up.

EXECUTIVE ORDERS

Executive Order 12372. Review and Coordination of Federally Assisted Programs and Projects.

This Executive Order mandates federal policy governing review and coordination with State and local officials regarding federal government actions affecting their jurisdictions, including the award of federal grants. It was also intended to provide a flexible State administered system of intergovernmental coordination rather than a uniform one directed by the federal government. Under the Executive Order federal agencies are required to: 1) use the State designed consultation procedure to obtain the views of State and local government officials, communicate with these officials as early as possible in the decision-making process, and accommodate the views of State and local officials or explain why those views cannot be accommodated; 2) permit States to simplify or consolidate plans required by federal agencies or substitute plans developed to meet State requirements; and 3) issue and maintain regulations to implement the Executive Order and have the rules approved by the Office of Management and Budget.

Executive Order 11988. Floodplain Management. The purpose of this Executive Order, signed May 24, 1977, is to prevent Federal agencies from contributing to the "adverse impacts associated with the occupancy and modification of floodplains" and the "direct or indirect support of floodplain development." Before proposing, conducting, supporting or allowing an action in a floodplain, each agency is to determine if planned activities will affect the floodplain and evaluate potential effect of the intended actions on its functions. Agencies shall avoid siting a development project in a floodplain "to avoid adverse effects and incompatible development in floodplains," unless all other alternatives have been determined impractical. Federal agencies "shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains. "

Executive Order 11990. Protection of Wetlands. The purpose of this Executive Order, signed May 24, 1977, is to direct Federal agencies to do whatever they can to "avoid short and long term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands where there are other practical alternatives." In carrying out their respective responsibilities, Federal agencies shall act "to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural benefits of wetlands." This Executive Order only applies to Federal projects.

Executive Order 12996. Management and General Public Use of the National Wildlife Refuge System. In this Executive Order the President of the United States declared that "the mission of the National Wildlife Refuge System is to preserve a national network of lands and waters for the conservation and management of fish, wildlife, and plant resources of the United States for the benefit of present and future generations." Furthermore, the President identified four guiding principles and issued ten directives to the Secretary of Interior on how the System should be managed in the future. The Executive Order also identified opportunities for compatible wildlife dependent recreation, habitat protection, partnerships and public involvement as guiding principles of the Refuge System. In particular, the President identified "compatible wildlife dependent recreational activities as hunting, fishing, wildlife observation, photography, and environmental education and interpretation as priority public uses of the Refuge System."

Executive Order 13112. Invasive Species. A February 3, 1999 order directing Federal Agencies to prevent the introduction of invasive species, monitor and control populations of invasive species, restore native species in ecosystems that have been invaded, conduct research and develop technologies to prevent introduction and provide for environmentally sound control of invasive species, and promote public education on invasive species.

The order also established the Invasive Species Council and called for a National Invasive Species Management Plan to detail and recommend performance-oriented goals and objectives and specific measures of success for Federal agency efforts concerning invasive species.

Executive Order 13186, Responsibilities of Federal Agencies to Protect Migratory Birds. An order signed January 10, 2001, instructing Federal agencies to conserve migratory birds by several means, including incorporation of strategies and recommendations found in Partners In Flight Bird Conservation Plans, the North American Waterfowl Plan, and the United States Shorebird Conservation Plan, into agency management plans and guidance documents.

Executive Order 12898, Environmental Justice, February 11, 1994. Requires Federal agencies to consider the effects of projects and policies on minority and lower income populations.

Executive Order 11593, Protection and Enhancement of the Cultural Environment. States that Federal agencies proposing any development activities that may affect archaeological or historical sites will consult with State Historic Preservation Officers to comply with Section 106 of the National Historic Preservation Act of 1966, as amended.