

Appendix A

Relevant Legal Mandates and Land Acquisition Legislation

Emergency Wetland Resources Act of 1986

This Act authorized the purchase of wetlands from Land and Water Conservation Fund moneys, removing a prior prohibition on such acquisitions. The Act also requires the Secretary to establish a National Wetlands Priority Conservation Plan, requires the States to include wetlands in their Comprehensive Outdoor Recreation Plans, and transfers to the Migratory Bird Conservation Fund amount equal to import duties on arms and ammunition.

Endangered Species Act of 1973 (16 U.S.C. 1531-1544, 87 Stat. 884), as amended

Public Law 93-205, approved December 28, 1973, repealed the Endangered Species Conservation Act of December 5, 1969 (P.L. 91-135, 83 Stat. 275). The 1969 act had amended the Endangered Species Preservation Act of October 15, 1966 (P.L. 89-669, 80 Stat. 926). The 1973 Endangered Species Act provided for the conservation of ecosystems upon which threatened and endangered species of fish, wildlife, and plants depend, both through Federal action and by encouraging the establishment of State programs. The Act:

- Authorizes the determination and listing of species as endangered and threatened;
- Prohibits unauthorized taking, possession, sale, and transport of endangered species;
- Provides authority to acquire land for the conservation of listed species, using land and water conservation funds;
- Authorizes establishment of cooperative agreements and grants-in-aid to States that establish and maintain active and adequate programs for endangered and threatened wildlife and plants;
- Authorizes the assessment of civil and criminal penalties for violating the Act or regulations;
- Authorizes the payment of rewards to anyone furnishing information leading to arrest and conviction for any violation of the Act or any regulation issued thereunder.

Environmental Education Act of 1990 (20 U.S.C. 5501-5510; 104 Stat. 3325)

Public Law 101-619, signed November 16, 1990, established the Office of Environmental Education within the Environmental Protection Agency to develop and administer a Federal environmental education program.

Responsibilities of the Office include developing and supporting programs to improve understanding of the natural and developed environment, and the relationships between humans and their environment; supporting the dissemination of educational materials; developing and supporting training programs and environmental education seminars; managing a Federal grant program; and administering an environmental internship and fellowship program. The Office is required to develop and support environmental programs in consultation with other Federal natural resource management agencies, including the Fish and Wildlife Service.

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 occupancy and modification of floodplains” and the “direct or indirect support of floodplain development.” In the course of fulfilling their respective authorities, 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.

Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 7421, 92 Stat. 3110)

This act was passed to improve the administration of fish and wildlife programs and amends several earlier laws, including the Refuge Recreation Act, the National Wildlife Refuge Administration Act, and the Fish and Wildlife Act of 1956. It authorizes the Secretary to accept gifts and bequests of real and personal property on behalf of the United States. It also authorizes the use of volunteers on Service projects and appropriations to carry out volunteer programs.

Historic Preservation Acts

There are various laws for the preservation of historic sites and objects.

Antiquities Act (16 U.S.C. 431 - 433): The Act of June 8, 1906, (34 Stat. 225) authorizes the President to designate as National Monuments objects or areas of historic or scientific interest on lands owned or controlled by the United States. The Act required that a permit be obtained for examination of ruins, excavation of archaeological sites and the gathering of objects of antiquity on lands under the jurisdiction of the Secretaries of Interior, Agriculture, and Army, and provided penalties for violations.

Archaeological Resources Protection Act (16 U.S.C. 470aa - 470ll): Public Law 96-95, approved October 31, 1979, (93 Stat. 721) largely supplanted the resource protection provisions of the Antiquities Act for archaeological items.

This Act established detailed requirements for 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 any trafficking in such resources removed from Federal or Indian land in violation of any provision of Federal law; and for interstate and foreign commerce in such resources acquired, transported or received in violation of any State or local law.

Public Law 100-588, approved November 3, 1988, (102 Stat. 2983) lowered the threshold value of artifacts triggering the felony provisions of the Act from \$5,000 to \$500, made attempting to commit an action prohibited by the Act a violation, and required the land managing agencies to establish public awareness programs regarding the value of archaeological resources to the Nation.

Archeological and Historic Preservation Act (16 U.S.C. 469-469c): Public Law 86-523, approved June 27, 1960, (74 Stat. 220) as amended by Public Law 93-291, approved May 24, 1974, (88 Stat. 174) to carry out the policy established by the Historic Sites Act (see below), directed Federal agencies to notify the Secretary of the Interior whenever they find a Federal or Federally assisted, licensed or permitted project may cause loss or destruction of significant scientific, prehistoric or archaeological data. The Act authorized use of appropriated, donated and/or transferred funds for the recovery, protection and preservation of such data.

Historic Sites, Buildings and Antiquities Act (16 U.S.C. 461-462, 464-467): The Act of August 21, 1935, (49 Stat. 666) popularly known as the Historic Sites Act, as amended by Public Law 89-249, approved October 9, 1965, (79 Stat. 971) declared it a national policy to preserve historic sites and objects of national significance,

including those located on refuges. It provided procedures for designation, acquisition, administration and protection of such sites. Among other things, National Historic and Natural Landmarks are designated under authority of this Act. As of January, 1989, 31 national wildlife refuges contained such sites.

National Historic Preservation Act of 1966 (16 U.S.C. 470-470b, 470c-470n): Public Law 89-665, approved October 15, 1966, (80 Stat. 915) and repeatedly amended, provided for preservation of significant historical features (buildings, objects and sites) through a grant-in-aid program to the States. It established a National Register of Historic Places and a program of matching grants under the existing National Trust for Historic Preservation (16 U.S.C. 468-468d).

The Act established an Advisory Council on Historic Preservation, which was made a permanent independent agency in Public Law 94-422, approved September 28, 1976 (90 Stat. 1319). That Act also created the Historic Preservation Fund. Federal agencies are directed to take into account the effects of their actions on items or sites listed or eligible for listing in the National Register.

As of January, 1989, 91 historic sites on national wildlife refuges have been placed on the National Register.

Land and Water Conservation Fund Act of 1964

Public Law 88-578, approved September 3, 1964 (78 Stat. 897), provides funding through receipts from the sale of surplus federal land, appropriations from oil and gas receipts from the outer continental shelf, and other sources of for land acquisition under several authorities. Appropriations from the fund may be used for matching grants to states for outdoor recreation projects and for land acquisition by various federal agencies, including the Fish and Wildlife Service.

Migratory Bird Conservation Act of 1929 (16 U.S.C. 715-715d, 715e, 715f-715r)

This Act established the Migratory Bird Conservation Commission which consists of the Secretaries of the Interior (chairman), Agriculture, and Transportation, two members from the House of Representatives, and an ex-officio member from the state in which a project is located. The Commission approves acquisition of land and water, or interests therein, and sets the priorities for acquisition of lands by the Secretary for sanctuaries or for other management purposes. Under this Act, to acquire lands, or interests therein, the state concerned must consent to such acquisition by legislation. Such legislation has been enacted by most states.

Migratory Bird Hunting and Conservation Stamp Act (16 U.S.C. 718-718j, 48 Stat. 452), as amended

The "Duck Stamp Act," as this March 16, 1934, authority is commonly called, requires each waterfowl hunter 16 years of age or older to possess a valid Federal hunting stamp. Receipts from the sale of the stamp are deposited in a special Treasury account known as the Migratory Bird Conservation Fund and are not subject to appropriations.

National and Community Service Act of 1990 (42 U.S.C. 12401; 104 Stat. 3127)

Public Law 101-610, signed November 16, 1990, authorizes several programs to engage citizens of the U.S. in full- and/or part-time projects designed to combat illiteracy and poverty, provide job skills, enhance educational skills, and fulfill environmental needs. Several provisions are of particular interest to the U.S. Fish and Wildlife Service.

American Conservation and Youth Service Corps – As a Federal grant program established under Subtitle C of the law, the Corps offers an opportunity for young adults between the ages of 16-25, or in the

case of summer programs, 15-21, to engage in approved human and natural resources projects which benefit the public or are carried out on Federal or Indian lands.

To be eligible for assistance, natural resources programs will focus on improvement of wildlife habitat and recreational areas, fish culture, fishery assistance, erosion, wetlands protection, pollution control and similar projects. A stipend of not more than 100 percent of the poverty level will be paid to participants. A Commission established to administer the Youth Service Corps will make grants to States, the Secretaries of Agriculture and Interior and the Director of ACTION to carry out these responsibilities.

National and Community Service Act – Will make grants to States for the creation of full-time and/or part-time programs for citizens over 17 years of age. Programs must be designed to fill unmet educational, human, environmental, and public safety needs. Initially, participants will receive post-employment benefits of up to \$1000 per year for part-time and \$2500 for full-time participants.

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.

National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee) as amended

This Act defines the National Wildlife Refuge System as including wildlife refuges, areas for protection and conservation of fish and wildlife which are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas. The Secretary is authorized to permit any use of an area provided such use is compatible with the major purposes for which such area was established. The purchase consideration for rights-of-way go into the Migratory Bird Conservation Fund for the acquisition of lands. By regulation, up to 40% of an area acquired for a migratory bird sanctuary may be opened to migratory bird hunting unless the Secretary finds that the taking of any species of migratory game birds in more than 40% of such area would be beneficial to the species. The Act requires an Act of Congress for the divestiture of lands in the system, except (1) lands acquired with Migratory Bird Conservation Commission funds, and (2) lands can be removed from the system by land exchange, or if brought into the system by a cooperative agreement, then pursuant to the terms of the agreement.

National Wildlife Refuge System Improvement Act of 1997

Public Law 105-57, amends the National Wildlife System Act of 1966 (16 U.S.C. 668dd-ee), providing guidance for management and public use of the Refuge System. The Act mandates that the Refuge System

be consistently directed and managed as a national system of lands and waters devoted to wildlife conservation and management.

The Act establishes priorities for recreational uses of the Refuge System. Six wildlife-dependent uses are specifically named in the Act: hunting, fishing, wildlife observation and photography, and environmental education and interpretation. These activities are to be promoted on the Refuge System, while all non-wildlife dependant uses are subject to compatibility determinations. A compatible use is one which, in the sound professional judgement of the Refuge Manger, will not materially interfere with or detract from fulfillment of the Refuge System Mission or refuge purpose(s).

As stated in the Act, “The mission of the System is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.”

The Act also requires development of a comprehensive conservation plan for each refuge and management of each refuge consistent with the plan. When writing CCP, planning for expanded or new refuges, and when making management decisions, the Act requires effective coordination with other Federal agencies, state fish and wildlife or conservation agencies, and refuge neighbors. A refuge must also provide opportunities for public involvement when making a compatibility determination or developing a CCP.

North American Wetlands Conservation Act (103 Stat. 1968; 16 U.S.C. 4401-4412)

Public Law 101-233, enacted December 13, 1989, provides funding and administrative direction for implementation of the North American Waterfowl Management Plan and the Tripartite Agreement on wetlands between Canada, U.S. and Mexico. The Act converts the Pittman-Robertson account into a trust fund, with the interest available without appropriation through the year 2006 to carry out the programs authorized by the Act, along with an authorization for annual appropriation of \$15 million plus an amount equal to the fines and forfeitures collected under the Migratory Bird Treaty Act.

Available funds may be expended, upon approval of the Migratory Bird Conservation Commission, for payment not to exceed 50 percent of the United States share of the cost of wetlands conservation projects in Canada, Mexico, or the United States (or 100 percent of the cost of projects on Federal lands). At least 50 percent and no more than 70 percent of the funds received are to go to Canada and Mexico each year.

Public Law 98-293 - approved May 22, 1984 (98. Stat. 207)

Renamed the Brigantine National Wildlife Refuge and Barnegat National Wildlife Refuge, collectively, as the Edwin B. Forsythe National Wildlife Refuge, in memory of the late Congressman Forsythe of New jersey, ranking member of the House Merchant Marine and Fisheries Committee for many years.

Refuge Recreation Act of 1962 (16 U.S.C. 460K-4; 76 Stat. 653)

This Act authorizes the Secretary of the Interior to administer refuges, hatcheries, and other conservation areas for recreational use, when such uses do not interfere with the area’s primary purposes. It authorizes construction and maintenance of recreational facilities and the acquisition of land for incidental fish and wildlife oriented recreational development or protection of natural resources. It also authorizes the charging of fees for public uses.

Refuge Revenue Sharing Act (16 U.S.C. 715s)

Section 401 of the Act of June 15, 1935, (49 Stat. 383) provided for payments to counties in lieu of taxes, using revenues derived from the sale of products from refuges.

Public Law 88-523, approved August 30, 1964, (78 Stat. 701) made major revisions by requiring that all revenues received from refuge products, such as animals, timber and minerals, or from leases or other privileges, be deposited in a special Treasury account and net receipts distributed to counties for public schools and roads.

Public Law 93-509, approved December 3, 1974, (88 Stat. 1603) required that moneys remaining in the fund after payments be transferred to the Migratory Bird Conservation Fund for land acquisition under provisions of the Migratory Bird Conservation Act.

Public Law 95-469, approved October 17, 1978, (92 Stat. 1319) expanded the revenue sharing system to include National Fish Hatcheries and Service research stations. It also included in the Refuge Revenue Sharing Fund receipts from the sale of salmonid carcasses. Payments to counties were established as:

- 1) on acquired land, the greatest amount calculated on the basis of 75 cents per acre, three-fourths of one percent of the appraised value, or 25 percent of the net receipts produced from the land; and
- 2) on land withdrawn from the public domain, 25 percent of net receipts and basic payments under Public Law 94-565 (31 U.S.C. 1601-1607, 90 Stat. 2662), payment in lieu of taxes on public lands.

This amendment also authorized appropriations to make up any difference between the amount in the Fund and the amount scheduled for payment in any year. The stipulation that payments be used for schools and roads was removed, but counties were required to pass payments along to other units of local government within the county which suffer losses in revenues due to the establishment of Service areas.

Rehabilitation Act of 1973 (29 U.S.C. 794)as amended

Title 5 of P.L. 93-112 (87 Stat. 355), signed October 1, 1973, prohibits discrimination on the basis of handicap under any program or activity receiving Federal financial assistance.

Transfer of Certain Real Property for Wildlife Conservation purposes Act of 1948

This Act provides that upon determination by the Administrator of the General Services Administration, real property no longer needed by a Federal agency can be transferred, without reimbursement, to the Secretary of the Interior if the land has particular value for migratory birds, or to a State agency for other wildlife conservation purposes.

Wilderness Act of 1964 (16 U.S.C. 1131-1136, 78 Stat. 890)

Public Law 88-577, approved September 3, 1964, directed the Secretary of the Interior, within 10 years, to review every roadless area of 5,000 or more acres and every roadless island (regardless of size) within National Wildlife Refuge and National Park Systems for inclusion in the National Wilderness Preservation System.