

Exam No. \_\_\_\_\_

## NATURAL RESOURCES EXAM

Saturday, December 13, 2008

Professor Houck

### INSTRUCTIONS

1. This is a three-hour examination. The questions are weighted as indicated. The total points are 95; I may add points for an outstanding answer. Allocate your time accordingly.
2. This is a closed book exam. You may use no outside materials of any type. Relevant statutory materials are provided in an appendix attached.
3. In your answers please:
  - Write, type/print on one side of a page only; if writing, legibility matters.
  - Accept the facts as given. No relevant facts are intentionally omitted; if you feel an additional fact is necessary, please state what you are assuming and why.

## NATURAL RESOURCES EXAM

FALL 2008

### I. WHALES

#### 1. SONAR [10 points]

The US Navy has begun to deploy long-range, low frequency sonar to detect the movement of enemy submarines. This sonar may impair the hearing and communication of marine species, principal among them whales. While there is no direct evidence of whale kills, there have been several reports of whales seen fleeing depth charge detonations (not sonar activity) and similar loud noises, and other reports of individual and small groups of whales beached or stranded in near-shore areas immediately following sonar testing in their vicinity. There is no evidence that these stranding deaths affect whale populations or species as a whole.

The Marine Mammal Protection Act (MMPA) prohibits any activity that harms a marine mammal, followed by an exemption for activity permitted by the Secretary of Commerce based on, in essence, an evaluation of impacts and alternatives. After review of the evidence, the Secretary issued such a permit to the Navy, without significant restrictions. The Natural Resources Defense Council (NRDC) and other groups filed suit under, among other laws, the MMPA, claiming injury to their members who enjoyed whale watching at sea and scientific study of whale species and behavior.

The government challenged, among other things, NRDC's standing to sue, arguing that since there was no evidence that whale populations or species were affected the plaintiffs would suffer no injury in fact; there will always be plenty of whales for them to see and study. To allow standing in this case, the government continued, would "in effect eliminate the standing doctrine's requirement of individualized harm."

#### Question 1:

Please prepare NRDC's answer, anticipating government arguments and your response. [Please confine your analysis to these facts and the MMPA claim.]

#### 2. NORTH SLOPE [25 points]

As you know, in North Slope Borough the US Court of Appeals approved an oil lease sale in the Beaufort Sea, where the frozen winters and spring ice breakup make life "nasty, brutish and short," and oil development hazardous, and through which the endangered Bowhead Whale (last count, 118 individuals) migrate seasonally, in pods, between the Canadian Arctic and the Bering Sea. An impact statement on the lease was approved several years ago, as was a subsequent EIS for the development and production stages of a drilling complex in the Sea. Both EIS's asserted that the environmental impacts would be minimal because of the Secretary of Interior's authority, under the Outer Continental Shelf Lands Act (OCSLA), to suspend, modify and even cancel drilling operations should the Secretary find that "continued activity would cause harm to marine life or the environment", and the judicial authority, under the OCSLA, to review "all actions concerning the approval, modification or disapproval" of drilling plans.

Little is known about the impact of oil on Bowhead whales, but scientists fear that oil slicks could coat the baleen "teeth" of these creatures, impair their feeding and contaminate them with toxins. Unfortunately, a series of accidents has plagued development and production of this oil field. Ice floes have sheared off drilling

platforms from their foundations, pipelines have ruptured, well blowouts have been difficult and slow to contain. Three disoriented Bowhead have been seen at sea, one stranded and dying on land. Although an autopsy revealed unusual levels of oil residues in its internal organs, no definitive cause of death was made. There is evidence that the Department of Interior initially suppressed these reports, but they have now reached the press and the environmental group Trustees for Alaska, which has called on the Secretary to cancel or modify the leases. In a press statement, the Secretary has responded that she was "following the situation closely", but on the basis of what she knew now there was "no basis for a hasty or unnecessary response". Several months pass, including another major spill. The Trustees come to you for an assessment of possible legal action.

Question 2:

Please assess possible causes of action, anticipated defenses, and likely outcomes. [Do not consider the MMPA or the issue of standing in this answer].

X X X

II. THE REFORM AGENDA

3. NEPA REFORM [10 points]

1. Consider the following letter written in 1991:

"Michael R. Deland, Chairman  
Executive Office of the President  
Council on Environmental Quality  
Washington, DC 20050

Dear Michael,

With regret . . . I must decline your kind invitation to attend the NEPA workshop next month. But were I able to attend, I'd say this:

NEPA is missing the point. It is producing lots of little statements on highway segments, timber sales, and other foregone conclusions; it isn't even present, much less effective, when the major decisions on a national energy policy and a national transportation policy are made. On the most pivotal development questions of our time, NEPA comes in late in the fourth quarter, in time to help tidy up.

Mike, I have taught, researched and litigated this stuff for twenty years. As I see it, CEQ's challenge is not, per your invitation, to make NEPA a "succinct review for a single project." It is, rather, to make NEPA work for legislative proposals and for programs that all but conclusively determine what the subsequent projects will be.

I hope these thoughts are useful to you.

Sincerely,  
Oliver Houck  
Professor of Law"

Question 3:

What would you suggest to cure the problems identified in the letter? Please consider legal (not political) difficulties your suggestions would face, and resolve.

4. ADAPTIVE MANAGEMENT [10 points]

Several scholars, resource managers and legislators are urging that federal natural resource agencies exercise their responsibilities through “adaptive management”, a process that, rather than making fixed plans, identifies an objective and an initial approach to achieving it, but modifies that approach as necessary to respond to impacts and outcomes.

Question 4:

Please analyze the advantages and disadvantages of such an approach, and how it might best work, and not.

5. CORPS REFORM [10 points]

The court in *Southern Louisiana v. Rush*, asked to review a (bogus) Corps benefit-cost analysis under NEPA, reached the following conclusion:

“Our review is therefore limited to the Corps’ procedural compliance with NEPA in preparing the impact statement. Only if Congress was misled by the inclusion of these erroneous benefits in its consideration of environmental consequences may we remand to the Corps for reconsideration.”

Question 5:

- a. Is there an irony in the court’s test?
- b. Under the Administrative Procedure Act why may courts not review Corps benefit cost-conclusions? Please identify obstacles and responses.

6. FOREST AND RANGE REFORM [10 points]

Question 6:

Reflecting on your study of FLPMA and NFMA, what single shift in the policy or law of each program would be, in your opinion, most effective in bringing about more sustainable practices?

7. MINING REFORM [10 points]

The US Forest Service has just proposed the following regulations for hardrock mining:

- a. Hardrock mining “likely to cause significant surface disturbance [elsewhere defined as involving “mechanized earth moving, explosives, tree clearing and road building”] must have an approved operations plan or reclamation bond before operations begin.”
- b. If an operator has “a history of violations or noncompliance, the Service may require a reclamation bond”.
- c. If “any aspect of locatable mineral operations” causes “irreparable or unnecessary injury to Forest Service surface resources”, the Service may suspend and modify the operating plan, “even if this activity was previously approved by an authorized Service official.”

Question 7:

- a. Please offer at least one criticism and recommendation on behalf of the Earth Justice Legal Defense Fund.
- b. Please offer at least one criticism and recommendation on behalf of the American Mining Congress.
- c. Is performance and reclamation bonding the answer to environmental objections to hardrock mining on public lands?

8. EXTINCTION REFORM [10 points]

Section 7 of the Endangered Species Act, as you know, prohibits federal agencies from causing jeopardy to listed species or the adverse modification of habitat designated by the Secretary to be critical to their survival. Landowners hate the critical habitat provisions, which they view as imposing an “environmental servitude” over the lands. A coalition of landowners has proposed to the President-Elect’s transition team for the Department of Interior that the critical habitat provision of Section 7 be eliminated from the Act as unnecessary and duplicative, given the jeopardy provision.

Question 8:

Please oppose or defend the proposal, anticipating and responding to the other point of view. Hint, examples help.



## **Statutory Supplement**

NEPA

4(f) DOT Act

FLPMA

NFMA

Parks Organic Act

Refuge Act

Endangered Species Act

Wilderness Act

## NATIONAL ENVIRONMENTAL POLICY

### § 4321. [NEPA § 2]

#### Congressional declaration of purpose

The purposes of this chapter are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

(Pub. L. 91-190, §2, Jan. 1, 1970, 83 Stat. 852.)

### § 4331. [NEPA §2]

#### Congressional declaration of national environmental policy

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act [42 USCS §§ 4321 et seq.], it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

- (1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- (2) assure for all Americans safe, healthful, productive, and esthetically

and culturally pleasing surroundings;

- (3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

- (4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

- (5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

- (6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

(Pub. L. 91-190, title I, §101, Jan. 1, 1970, 83 Stat. 852.)

### § 4332. [NEPA §102]

#### Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts

The Congress authorizes and 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 [42 USCS §§ 4321 et seq.], and (2) all agencies of the Federal Government shall—

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act [42 USCS §§ 4341 et seq.], which will insure that presently unquantified environmental amenities and values may be given appropriate

consideration in decision-making along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on--

- (i) the environmental impact of the proposed action,
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) alternatives to the proposed action,
- (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

- (i) the State agency or official has statewide jurisdiction and has the responsibility for such jurisdiction,
- (ii) the responsible Federal official furnishes guidance and

participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and  
(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act [42 USCS §§ 4321 et seq.]; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.[:]

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and



(l) assist the Council on Environmental Quality established by title II of this Act [42 USCS §§ 4341 et seq.].  
(P.L. 91-190, Title I, § 102, 83 Stat. 853; Aug. 9, 1975, P.L. 94-83, 89 Stat. 424.)

**§ 4333. [NEPA § 103]**  
**Conformity of administrative procedures to national environmental policy**

All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act [42 USCS §§ 4321 et seq.] and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act [42 USCS §§ 4321 et seq.].  
(Pub. L. 91-190, title I, §103, Jan. 1, 1970, 83 Stat. 854).

**§ 4334. [NEPA § 104]**  
**Other statutory obligations of agencies**

Nothing in Section 102 or 103 [42 USCS §§ 4332, 4333] shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.  
(Pub. L. 91-190, title I, §104, Jan. 1, 1970, 83 Stat. 854).

**§ 4335. [NEPA § 105]**  
**Efforts supplemental to existing authorizations**

The policies and goals set forth in this Act [42 USCS §§ 4321 et seq.] are supplementary to those set forth in existing authorizations of Federal agencies.  
(Pub. L. 91-190, Title I, § 105, 83 Stat. 854.)

**§ 4341. [NEPA § 201]**  
**Reports to Congress; recommendations for legislation**

The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter

referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban, and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.  
(Pub. L. 91-190, Title II, § 201, 83 Stat. 854.)

**§ 4342. [NEPA § 202]**  
**Establishment; membership; chairman; appointments**

There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act [42 USCS §§ 4331 et seq.]; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

(Pub. L. 91-190, Title II, § 202, Jan 1, 1970, 83 Stat. 854.)

**§ 4343. [NEPA § 203]**

**Employment of personnel, experts and consultants**

(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this chapter. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this chapter, in accordance with section 3109 of title 5 (but without regard to the last sentence thereof).

(b) Notwithstanding section 1342 of title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council (Pub. L. 91-190, title II, § 203, 83 Stat. 855; Pub. L. 94-52, §2, July 3, 1975, 89 Stat. 258.)

**§ 4344. [NEPA § 204]**

**Duties and functions**

It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 201 [42 USCS § 4341];

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act [42 USCS §§ 4331 et seq.], and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act [42 USCS §§ 4331 et seq.] for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect hereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

(Pub.L. 91-190, Title II, § 204, 83 Stat. 855.)

**SECTION 4F**

**TITLE 49. TRANSPORTATION**

**SUBTITLE I. Department of Transportation**

**CHAPTER 3. General Duties and Powers**

**SUBCHAPTER .1. Duties Of The Secretary of Transportation**

49 USCS § 303 (1999)

§ 303. Policy on lands, wildlife and waterfowl refuges, and historic sites

(a) It is the policy of the United States Government that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites.

(b) The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States, in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of lands crossed by transportation activities or facilities.

(c) The Secretary may approve a transportation program or project requiring the use (other than any project for a park road or parkway under section 204 of title 23) of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance, or land of an historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, area, refuge, or site) only if—

# FLPMA

## TITLE I—SHORT TITLE, DECLARATION OF POLICY, AND DEFINITIONS

### SHORT TITLE

43 USC 1701  
note.

SEC. 101. This Act may be cited as the "Federal Land Policy and Management Act of 1976".

### DECLARATION OF POLICY

43 USC 1701.

SEC. 102. (a) The Congress declares that it is the policy of the United States that—

- (1) the public lands be retained in Federal ownership, unless as a result of the land use planning procedure provided for in this Act, it is determined that disposal of a particular parcel will serve the national interest;
- (2) the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other Federal and State planning efforts;
- (3) public lands not previously designated for any specific use and all existing classifications of public lands that were effected by executive action or statute before the date of enactment of this Act be reviewed in accordance with the provisions of this Act;
- (4) the Congress exercise its constitutional authority to withdraw or otherwise designate or dedicate Federal lands for specified purposes and that Congress delineate the extent to which the Executive may withdraw lands without legislative action;
- (5) in administering public land statutes and exercising discretionary authority granted by them, the Secretary be required to establish comprehensive rules and regulations after considering the views of the general public; and to structure adjudication procedures to assure adequate third party participation, objective administrative review of initial decisions, and expeditious decisionmaking;
- (6) judicial review of public land adjudication decisions be provided by law;
- (7) goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law;
- (8) the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use;
- (9) the United States receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute;

- (10) uniform procedures for any disposal of public land, acquisition of non-Federal land for public purposes, and the exchange of such lands be established by statute, requiring each disposal, acquisition, and exchange to be consistent with the prescribed mission of the department or agency involved, and reserving to the Congress review of disposals in excess of a specified acreage;
- (11) regulations and plans for the protection of public land areas of critical environmental concern be promptly developed;
- (12) the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of the Mining and Minerals Policy Act of 1970 (84 Stat. 1876, 30 U.S.C. 21a) as it pertains to the public lands; and
- (13) the Federal Government should, on a basis equitable to both the Federal and local taxpayer, provide for payments to compensate States and local governments for burdens created as a result of the immunity of Federal lands from State and local taxation.

(b) The policies of this Act shall become effective only as specific statutory authority for their implementation is enacted by this Act or by subsequent legislation and shall then be construed as supplemental to and not in derogation of the purposes for which public lands are administered under other provisions of law.

#### DEFINITIONS

Sec. 103. Without altering in any way the meaning of the following terms as used in any other statute, whether or not such statute is referred to in, or amended by, this Act, as used in this Act—

(a) The term "areas of critical environmental concern" means areas within the public lands where special management attention is required (when such areas are developed or used or where no development 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.

(b) The term "holder" means any State or local governmental entity, individual, partnership, corporation, association, or other business entity receiving or using a right-of-way under title V of this Act.

(c) The term "multiple use" means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the

environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

(d) The term "public involvement" means the opportunity for participation by affected citizens in rulemaking, decisionmaking, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to provide public comment in a particular instance.

(e) The term "public lands" means any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except—

(1) lands located on the Outer Continental Shelf; and

(2) lands held for the benefit of Indians, Aleuts, and Eskimos.

(f) The term "right-of-way" includes an easement, lease, permit, or license to occupy, use, or traverse public lands granted for the purpose listed in title V of this Act.

(g) The term "Secretary", unless specifically designated otherwise, means the Secretary of the Interior.

(h) The term "sustained yield" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.

(i) The term "wilderness" as used in section 603 shall have the same meaning as it does in section 2(c) of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1131-1136).

(j) The term "withdrawal" means withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of Federal land, other than "property" governed by the Federal Property and Administrative Services Act, as amended (40 U.S.C. 472) from one department, bureau or agency to another department, bureau or agency.

(k) An "allotment management plan" means a document prepared in consultation with the lessees or permittees involved, which applies to livestock operations on the public lands or on lands within National Forests in the eleven contiguous Western States and which:

(1) prescribes the manner in, and extent to, which livestock operations will be conducted in order to meet the multiple-use, sustained-yield, economic and other needs and objectives as determined for the lands by the Secretary concerned; and

(2) describes the type, location, ownership, and general specifications for the range improvements to be installed and maintained on the lands to meet the livestock grazing and other objectives of land management; and

(3) contains such other provisions relating to livestock grazing and other objectives found by the Secretary concerned to be consistent with the provisions of this Act and other applicable law.

(l) The term "principal or major uses" includes, and is limited to, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production.

(m) The term "department" means a unit of the executive branch of the Federal Government which is headed by a member of the President's Cabinet and the term "agency" means a unit of the executive branch of the Federal Government which is not under the jurisdiction of a head of a department.

(n) The term "Bureau" means the Bureau of Land Management.

(o) The term "eleven contiguous Western States" means the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(p) The term "grazing permit and lease" means any document authorizing use of public lands or lands in National Forests in the eleven contiguous western States for the purpose of grazing domestic livestock.

## TITLE II—LAND USE PLANNING; LAND ACQUISITION AND DISPOSITION

### INVENTORY AND IDENTIFICATION

Sec. 201. (a) The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern. This inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values. The preparation and maintenance of such inventory or the identification of such areas shall not, of itself, change or prevent change of the management or use of public lands.

(b) As funds and manpower are made available, the Secretary shall ascertain the boundaries of the public lands; provide means of public identification thereof including, where appropriate, signs and maps; and provide State and local governments with data from the inventory for the purpose of planning and regulating the uses of non-Federal lands in proximity of such public lands.

### LAND USE PLANNING

Sec. 202. (a) The Secretary shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands. Land use plans shall be developed for the public lands regardless of whether such lands previously have been classified, withdrawn, set aside, or otherwise designated for one or more uses.

(b) In the development and revision of land use plans, the Secretary of Agriculture shall coordinate land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian tribes by, among other things, considering the policies of approved tribal land resource management programs.

(c) In the development and revision of land use plans, the Secretary shall—

- (1) use and observe the principles of multiple use and sustained yield set forth in this and other applicable law;
- (2) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences;
- (3) give priority to the designation and protection of areas of critical environmental concern;
- (4) rely, to the extent it is available, on the inventory of the public lands, their resources, and other values;
- (5) consider present and potential uses of the public lands;
- (6) consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values;
- (7) weigh long-term benefits to the public against short-term benefits;
- (8) provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans; and
- (9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located, including, but not limited to, the statewide outdoor recreation plans developed under the Act of September 3, 1964 (78 Stat. 897), as amended, and of or for Indian tribes by, among other things, considering the policies of approved State and tribal land resource management programs. In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

MANAGEMENT OF USE, OCCUPANCY, AND DEVELOPMENT

SEC. 302. (a) The Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 202 of this Act when they are available, except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.

(b) In managing the public lands, the Secretary shall, subject to this Act and other applicable law and under such terms and conditions as are consistent with such law, regulate, through easements, permits, leases, licenses, published rules, or other instruments as the Secretary deems appropriate, the use, occupancy, and development of the public lands, including, but not limited to, long-term leases to permit individuals to utilize public lands for habitation, cultivation, and the development of small trade or manufacturing concerns: *Provided*, That unless otherwise provided for by law, the Secretary may permit Federal departments and agencies to use, occupy, and develop public lands only through rights-of-way under section 507 of this Act, withdrawals under section 204 of this Act, and, where the proposed use and development are similar or closely related to the programs of the Secretary for the public lands involved, cooperative agreements under subsection (b) of section 307 of this Act: *Provided further*, That nothing in this Act shall be construed as authorizing the Secretary concerned to require Federal permits to hunt and fish on public lands or on lands in the National Forest System and adjacent waters or as enlarging or diminishing the responsibility and authority of the States for management of fish and resident wildlife. However, the Secretary concerned may designate areas of public land and of lands in the National Forest System where, and establish periods when, no hunting or fishing will be permitted for reasons of public safety, administration, or compliance with provisions of applicable law. Except in emergencies, any regulations of the Secretary concerned relating to hunting and fishing pursuant to this section shall be put into effect only after consultation with the appropriate State fish and game department. Nothing in this Act shall modify or change any provision of Federal law relating to migratory birds or to endangered or threatened species. Except as provided in section 314, section 603, and subsection (f) of section 601 of this Act and in the last sentence of this paragraph, no provision of this section or any other section of this Act shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, including, but not limited to, rights of ingress and egress. In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.

(c) The Secretary shall insert in any instrument providing for the use, occupancy, or development of the public lands a provision authorizing revocation or suspension, after notice and hearing, of such instrument upon a final administrative finding of a violation of any term or condition of the instrument, including, but not limited to, terms and conditions requiring compliance with regulations under Acts applica-



ble to the public lands and compliance with applicable State or Federal air or water quality standard or implementation plan: *Provided*, That such violation occurred on public lands covered by such instrument and occurred in connection with the exercise of rights and privileges granted by it: *Provided further*, That the Secretary shall terminate any such suspension no later than the date upon which he determines the cause of said violation has been rectified: *Provided further*, That the Secretary may order an immediate temporary suspension prior to a hearing or final administrative finding if he determines that such a suspension is necessary to protect health or safety or the environment: *Provided further*, That, where other applicable law contains specific provisions for suspension, revocation, or cancellation of a permit, license, or other authorization to use, occupy, or develop the public lands, the specific provisions of such law shall prevail.

## NFMA

### 12. Forest and Rangeland Renewable Resources Amendments

DATA SUPPLIED BY THE U.S. DEPARTMENT OF JUSTICE. (SEE SCOPE)  
Additions and Deletions are not identified in this document.

PL 94-588 (S 3091)  
October 22, 1976

An Act to amend the Forest and Rangeland Renewable Resources Planning Act of 1974, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Forest Management Act of 1976".

#### FINDINGS

SEC. 2. The Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 476; 16 U.S.C. 1601-1610) is amended by redesignating sections 2 through 11 as sections 3 through 12, respectively; and by adding a new section 2 as follows:

"SEC. 2. FINDINGS.—The Congress finds that—

"(1) the management of the Nation's renewable resources is highly complex and the uses, demand for, and supply of the various resources are subject to change over time;

"(2) the public interest is served by the Forest Service, Department of Agriculture, in cooperation with other agencies, assessing the Nation's renewable resources, and developing and preparing a national renewable resource program, which is periodically reviewed and updated;

"(3) to serve the national interest, the renewable resource program must be based on a comprehensive assessment of present and anticipated uses, demand for, and supply of renewable resources from the Nation's public and private forests and rangelands, through analysis of environmental and economic impacts, coordination of multiple use and sustained yield opportunities as provided in the Multiple-Use Sustained-Yield Act of 1960 (74 Stat. 215; 16 U.S.C. 528-531), and public participation in the development of the program;

"(4) the new knowledge derived from coordinated public and private research programs will promote a sound technical and ecological base for effective management, use, and protection of the Nation's renewable resources;

"(5) inasmuch as the majority of the Nation's forests and rangeland is under private, State, and

local governmental management and the Nation's major capacity to produce goods and services is based on these nonfederally managed renewable resources, the Federal Government should be a catalyst to encourage and assist these owners in the efficient long-term use and improvement of these lands and their renewable resources consistent with the principles of sustained yield and multiple use;

"(6) the Forest Service, by virtue of its statutory authority for management of the National Forest System, research and cooperative programs, and its role as an agency in the Department of Agriculture, has both a responsibility and an opportunity to be a leader in assuring that the Nation maintains a natural resource conservation posture that will meet the requirements of our people in perpetuity; and

"(7) recycled timber product materials are as much a part of our renewable forest resources as are the trees from which they originally came, and in order to extend our timber and timber fiber resources and reduce pressures for timber production from Federal lands, the Forest Service should expand its research in the use of recycled and waste timber product materials, develop techniques for the substitution of these secondary materials for primary materials, and promote and encourage the use of recycled timber product materials."

#### NATIONAL FOREST SYSTEM RESOURCE PLANNING

SEC. 6. Section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as redesignated by section 2 of this Act, is amended by adding at the end thereof new subsections (c) through (m) as follows:

"(c) The Secretary shall begin to incorporate the standards and guidelines required by this section in plans for units of the National Forest System as soon as practicable after enactment of this subsection and shall attempt to complete such incorporation for all such units by no later than September 30, 1985. The Secretary shall report to the Congress on the progress of such incorporation in the annual report required by section 8(c) of this Act. Until such time as a unit of the National Forest System is managed under plans developed in accordance with this Act, the management of such unit may continue under existing land and resource management plans.

"(d) The Secretary shall provide for public participation in the development, review, and revision of land management plans including, but not limited to, making the plans or revisions available to the public at convenient locations in the vicinity of the affected unit for a period of at least three months before final adoption, during which period the Secretary shall publicize and hold public meetings or comparable processes at locations that foster public participation in the review of such plans or revisions.

"(e) In developing, maintaining, and revising plans for units of the National Forest System pursuant to this section, the Secretary shall assure that such plans--

"(1) provide for multiple use and sustained yield of the products and services obtained therefrom in accordance with the Multiple-Use Sustained-Yield Act of 1960, and, in particular, include coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness; and

"(2) determine forest management systems, harvesting levels, and procedures in the light of all of the uses set forth in subsection (c)(1), the definition of the terms 'multiple use' and 'sustained

yield' as provided in the Multiple- Use Sustained-Yield Act of 1960, and the availability of lands and their suitability for resource management.

"(f) Plans developed in accordance with this section shall--

"(1) form one integrated plan for each unit of the National Forest System, incorporating in one document or one set of documents, available to the public at convenient locations, all of the features required by this section:

"(2) be embodied in appropriate written material, including maps and other descriptive documents, reflecting proposed and possible actions, including the planned timber sale program and the proportion of probable methods of timber harvest within the unit necessary to fulfill the plan:

"(3) be prepared by an interdisciplinary team. -Each team shall prepare its plan based on inventories of the applicable resources of the forest:

"(4) be amended in any manner whatsoever after final adoption after public notice, and, if such amendment would result in a significant change in such plan, in accordance with the provisions of subsections (e) and (f) of this section and public involvement comparable to that required by subsection (d) of this section; and

"(5) be revised (A) from time to time when the Secretary finds conditions in a unit have significantly changed, but at least every fifteen years, and (B) in accordance with the provisions of subsections (e) and (f) of this section and public involvement comparable to that required by subsection (d) of this section.

"(g) As soon as practicable, but not later than two years after enactment of this subsection, the Secretary shall in accordance with the procedures set forth in section 553 of title 5, United States Code, promulgate regulations, under the principles of the Multiple-Use Sustained-Yield Act of 1960, that set out the process for the development and revision of the land management plans, and the guidelines and standards prescribed by this subsection. The regulations shall include, but not be limited to--

"(1) specifying procedures to insure that land management plans are prepared in accordance with the National Environmental Policy Act of 1969, including, but not limited to, direction on when and for what plans an environmental impact statement required under section 102(2)(C) of that Act shall be prepared;

"(2) specifying guidelines which--

"(A) require the identification of the suitability of lands for resource management;

"(B) provide for obtaining inventory data on the various renewable resources, and soil and water, including pertinent maps, graphic material, and explanatory aids; and

"(C) provide for methods to identify special conditions or situations involving hazards to the various resources and their relationship to alternative activities;

"(3) specifying guidelines for land management plans developed to achieve the goals of the

Program which--

"(A) insure consideration of the economic and environmental aspects of various systems of renewable resource management, including the related systems of silviculture and protection of forest resources, to provide for outdoor recreation (including wilderness), range, timber, watershed, wildlife, and fish;

"(B) provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives, and within the multiple-use objectives of a land management plan adopted pursuant to this section, provide, where appropriate, to the degree practicable, for steps to be taken to preserve the diversity of tree species similar to that existing in the region controlled by the plan;

"(C) insure research on and (based on continuous monitoring and assessment in the field) evaluation of the effects of each management system to the end that it will not produce substantial and permanent impairment of the productivity of the land;

"(D) permit increases in harvest levels based on intensified management practices, such as reforestation, thinning, and tree improvement if (i) such practices justify increasing the harvests in accordance with the Multiple-Use Sustained-Yield Act of 1960, and (ii) such harvest levels are decreased at the end of each planning period if such practices cannot be successfully implemented or funds are not received to permit such practices to continue substantially as planned;

"(E) insure that timber will be harvested from National Forest System lands only where--

"(i) soil, slope, or other watershed conditions will not be irreversibly damaged;

"(ii) there is assurance that such lands can be adequately restocked within five years after harvest;

"(iii) protection is provided for streams, streambanks, shorelines, lakes, wetlands, and other bodies of water from detrimental changes in water temperatures, blockages of water courses, and deposits of sediment, where harvests are likely to seriously and adversely affect water conditions or fish habitat; and

"(iv) the harvesting system to be used is not selected primarily because it will give the greatest dollar return or the greatest unit output of timber; and

"(F) insure that clearcutting, seed tree cutting, shelterwood cutting, and other cuts designed to regenerate an evenaged stand of timber will be used as a cutting method on National Forest System lands only where--

"(i) for clearcutting, it is determined to be the optimum method, and for other such cuts it is determined to be appropriate, to meet the objectives and requirements of the relevant land management plan;

"(ii) the interdisciplinary review as determined by the Secretary has been completed and the potential environmental, biological, esthetic, engineering, and economic impacts on each advertised sale area have been assessed, as well as the consistency of the sale with the multiple

use of the general area;

"(iii) cut blocks, patches, or strips are shaped and blended to the extent practicable with the natural terrain;

"(iv) there are established according to geographic areas, forest types, or other suitable classifications the maximum size limits for areas to be cut in one harvest operation, including provision to exceed the established limits after appropriate public notice and review by the responsible Forest Service officer one level above the Forest Service officer who normally would approve the harvest proposal: Provided, That such limits shall not apply to the size of areas harvested as a result of natural catastrophic conditions such as fire, insect and disease attack, or windstorm; and

"(v) such cuts are carried out in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation, and esthetic resources, and the regeneration of the timber resource.

"(h)(1) In carrying out the purposes of subsection (g) of this section, the Secretary of Agriculture shall appoint a committee of scientists who are not officers or employees of the Forest Service. The committee shall provide scientific and technical advice and counsel on proposed guidelines and procedures to assure that an effective inter-disciplinary approach is proposed and adopted. The committee shall terminate upon promulgation of the regulations, but the Secretary may, from time to time, appoint similar committees when considering revisions of the regulations. The views of the committees shall be included in the public information supplied when the regulations are proposed for adoption.

"(2) Clerical and technical assistance, as may be necessary to discharge the duties of the committee, shall be provided from the personnel of the Department of Agriculture.

"(3) While attending meetings of the committee, the members shall be entitled to receive compensation at a rate of \$100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(i) Resource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans. Those resource plans and permits, contracts, and other such instruments currently in existence shall be revised as soon as practicable to be made consistent with such plans. When land management plans are revised, resource plans and permits, contracts, and other instruments when necessary, shall be revised as soon as practicable. Any revision in present or future permits, contracts, and other instruments made pursuant to this section shall be subject to valid existing rights.

"(j) Land management plans and revisions shall become effective thirty days after completion of public participation and publication of notification by the Secretary as required under section 6(d) of this Act.

"(k) In developing land management plans pursuant to this Act, the Secretary shall identify lands within the management area which are not suited for timber production, considering physical, economic, and other pertinent factors to the extent feasible, as determined by the Secretary, and shall assure that, except for salvage sales or sales necessitated to protect other multiple-use

values, no timber harvesting shall occur on such lands for a period of 10 years. Lands once identified as unsuitable for timber production shall continue to be treated for reforestation purposes, particularly with regard to the protection of other multiple-use values. The Secretary shall review his decision to classify these lands as not suited for timber production at least every 10 years and shall return these lands to timber production whenever he determines that conditions have changed so that they have become suitable for timber production.

**LIMITATIONS ON TIMBER REMOVAL; PUBLIC PARTICIPATION AND ADVISORY BOARDS;  
REGULATIONS; SEVERABILITY**

SEC. 11. The Forest and Rangeland Renewable Resources Planning Act of 1974 is amended by adding at the end thereof new sections 13 through 16 as follows:

"SEC. 13. LIMITATIONS ON TIMBER REMOVAL.—(a) The Secretary of Agriculture shall limit the sale of timber from each national forest to a quantity equal to or less than a quantity which can be removed from such forest annually in perpetuity on a sustained-yield basis: Provided, That, in order to meet overall multiple-use objectives, the Secretary may establish an allowable sale quantity for any decade which departs from the projected long-term average sale quantity that would otherwise be established: Provided further, That any such planned departure must be consistent with the multiple-use management objectives of the land management plan. Plans for variations in the allowable sale quantity must be made with public participation as required by section 6(d) of this Act. In addition, within any decade, the Secretary may sell a quantity in excess of the annual allowable sale quantity established pursuant to this section in the case of any national forest so long as the average sale quantities of timber from such national forest over the decade covered by the plan do not exceed such quantity limitation. In those cases where a forest has less than two hundred thousand acres of commercial forest land, the Secretary may use two or more forests for purposes of determining the sustained yield.

"(b) Nothing in subsection (a) of this section shall prohibit the Secretary from salvage or sanitation harvesting of timber stands which are substantially damaged by fire, windthrow, or other catastrophe, or which are in imminent danger from insect or disease attack. The Secretary may either substitute such timber for timber that would otherwise be sold under the plan or, if not feasible, sell such timber over and above the plan volume.

## NATIONAL PARKS ORGANIC ACT

### §1. Service created; director; other employees

There is created in the Department of the Interior a Service to be called the National Park Service, which shall be under the charge of a director. The Secretary of the Interior shall appoint the director, and there shall also be in said service such subordinate officers, clerks, and employees as may be appropriated for by Congress. The service thus established shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified, except such as are under the jurisdiction of the Secretary of the Army, as provided by law, by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

(Aug. 25, 1916, c. 408, § 1, 39 Stat. 535; Ex. Ord. No. 6166, § 2, June 10, 1933; Mar. 2, 1934, c. 38, §1, 48 Stat. 389.)

## SUBCHAPTER IV - CONCESSIONS AND ACCOMMODATIONS, FACILITIES, AND SERVICES IN AREAS ADMINISTERED BY NATIONAL PARK SERVICE

### Cross References

Indian reservations, property, excluded, see 16 USCA §241g. National park system; provisions applicable to all areas within system, see 16 USCA §1c. Transportation services and facilities, see 16 USCA 2302.

### § 20. Congressional findings and statement of purpose

In furtherance of sections 1 and 2 to 4 of this title, as amended, which direct the Secretary of the Interior to administer national park system areas in accordance with the fundamental purpose of conserving their scenery, wildlife, natural and historic objects, and providing for their enjoyment in a manner that will leave them unimpaired for the enjoyment of future generations, the Congress

hereby finds that the preservation of park values requires that such public accommodations, facilities, and services as have to be provided within those areas should be provided only under carefully controlled safeguards against unregulated and indiscriminate use, so that the heavy visitation will not unduly impair these values and so that development of such facilities can best be limited to locations where the least damage to park values will be caused. It is the policy of the Congress that such development shall be limited to those that are necessary and appropriate for public use and enjoyment of the national park area in which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the areas.

(Pub. L. 89-249, §1, Oct. 9, 1965, 79 Stat. 969.)

### § 20a. Authority of Secretary of the Interior to encourage concessioners.

Subject to the findings and policy stated in section 20 of this title, the Secretary of the Interior shall take such action as may be appropriate to encourage and enable private persons and corporations (hereinafter referred to as "concessioners") to provide and operate facilities and services which he deems desirable for the accommodation of visitors in areas administered by the National Park Service.

(Pub. L. 89-249, § 2, Oct. 9, 1965, 79 Stat. 969.)



**The Antiquities Act of 1906, § 2, 16 U.S.C. § 431:**

"The President of the United States is authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected."

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PL 105-57, 1997 HR 1420  
PL 105-57, October 9, 1997, 111 Stat 1252  
(Cite as: 111 Stat 1252)

UNITED STATES PUBLIC LAWS  
105th Congress - First Session  
Convening January 7, 1997  
Copr. (C) West Group 1997. No Claim to Orig. U.S. Govt. Works

Additions and Deletions are not identified in this document.

PL 105-57 (HR 1420)  
October 9, 1997

**NATIONAL WILDLIFE REFUGE SYSTEM IMPROVEMENT ACT OF 1997**

AN ACT to amend the National Wildlife Refuge System Administration Act of 1966 to improve the management of the National Wildlife Refuge System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1

**SECTION 1. SHORT TITLE; REFERENCES.**

Sec. 1(a)

<< 16 USCA s 668dd NOTE >>

(a) **SHORT TITLE.**--This Act may be cited as the "National Wildlife Refuge System Improvement Act of 1997".

(b) **REFERENCES.**--Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or provision of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.).

Sec. 2

<< 16 USCA s 668dd NOTE >>

**SEC. 2. FINDINGS.**

The Congress finds the following:

(1) The National Wildlife Refuge System is comprised of over 92,000,000 acres of Federal lands that have been incorporated within 509 individual units located in all 50 States and the territories of the United States.

(2) The System was created to conserve fish, wildlife, and plants and their habitats and this conservation mission has been facilitated by providing Americans opportunities to participate in compatible wildlife-dependent recreation, including fishing and hunting, on System lands and to better appreciate the value of and need for fish and wildlife conservation.

(3) The System serves a pivotal role in the conservation of migratory birds, anadromous and interjurisdictional fish, marine mammals, endangered and threatened species, and the habitats on which these species depend.

(4) The System assists in the fulfillment of important international treaty obligations of the United States with regard to fish, wildlife, and plants and their habitats.

(5) The System includes lands purchased not only through the use of tax dollars but also through the proceeds from sales of Duck Stamps and national wildlife refuge entrance fees. It is a System that is financially supported by those benefiting from and utilizing it.

(6) When managed in accordance with principles of sound fish and wildlife management and administration, fishing, hunting, wildlife observation, and environmental education in national wildlife refuges have been and are expected to continue to be generally compatible uses.

\*1253 (7) On March 25, 1996, the President issued Executive Order 12996, which recognized "compatible wildlife-dependent recreational uses involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation as priority public uses of the Refuge System".

(8) Executive Order 12996 is a positive step and serves as the foundation for the permanent statutory changes made by this Act.

### SEC. 3. DEFINITIONS.

#### Sec. 3(a)

<< 16 USCA s 668ee >>

(a) IN GENERAL.—Section 5 (16 U.S.C. 668ee) is amended to read as follows:

#### "SEC. 5. DEFINITIONS.

"For purposes of this Act:

"(1) The term 'compatible use' means a wildlife-dependent recreational use or any other use of a refuge that, in the sound professional judgment of the Director, will not materially interfere with or detract from the fulfillment of the mission of the System or the purposes of the refuge.

"(2) The terms 'wildlife-dependent recreation' and 'wildlife-dependent recreational use' means a use of a refuge involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation.

"(3) The term 'sound professional judgment' means a finding, determination, or decision that is consistent with principles of sound fish and wildlife management and administration, available science and resources, and adherence to the requirements of this Act and other applicable laws.

"(4) The terms 'conserving', 'conservation', 'manage', 'managing', and 'management', mean to sustain and, where appropriate, restore and enhance, healthy populations of fish, wildlife, and plants utilizing, in accordance with applicable Federal and State laws, methods and procedures associated with modern scientific resource programs. Such methods and procedures include, consistent with the provisions of this Act, protection, research, census, law enforcement, habitat management, propagation, live trapping and transplantation, and regulated taking.

"(5) The term 'Coordination Area' means a wildlife management area that is made available to a State—

"(A) by cooperative agreement between the United States Fish and Wildlife Service and a State agency having control over wildlife resources pursuant to section 4 of the Fish and Wildlife Coordination Act (16 U.S.C. 664); or

"(B) by long-term leases or agreements pursuant to title III of the Bankhead-Jones Farm Tenant Act (50 Stat. 525; 7 U.S.C. 1010 et seq.).

"(6) The term 'Director' means the Director of the United States Fish and Wildlife Service or a designee of that Director.

"(7) The terms 'fish', 'wildlife', and 'fish and wildlife' mean any wild member of the animal kingdom whether alive or dead, and regardless of whether the member was bred, hatched, or born in captivity, including a part, product, egg, or offspring of the member.

"(8) The term 'person' means any individual, partnership, corporation, or association.

\*1254 "(9) The term 'plant' means any member of the plant kingdom in a wild, unconfined state, including any plant community, seed, root, or other part of a plant.

"(10) The terms 'purposes of the refuge' and 'purposes of each refuge' mean the purposes specified in or derived from the law, proclamation, executive order, agreement,

public land order, donation document, or administrative memorandum establishing, authorizing, or expanding a refuge, refuge unit, or refuge subunit.

"(11) The term 'refuge' means a designated area of land, water, or an interest in land or water within the System, but does not include Coordination Areas.

"(12) The term 'Secretary' means the Secretary of the Interior.

"(13) The terms 'State' and 'United States' mean the several States of the United States, Puerto Rico, American Samoa, the Virgin Islands, Guam, and the territories and possessions of the United States.

"(14) The term 'System' means the National Wildlife Refuge System designated under section 4(a)(1).

"(15) The terms 'take', 'taking', and 'taken' mean to pursue, hunt, shoot, capture, collect, or kill, or to attempt to pursue, hunt, shoot, capture, collect, or kill." Sec. 3(b)

<< 16 USCA s 668dd >>

(b) CONFORMING AMENDMENT.—Section 4 (16 U.S.C. 668dd) is amended by striking "Secretary of the Interior" each place it appears and inserting "Secretary".

<< 16 USCA s 668dd >>

#### SEC. 4. MISSION OF THE SYSTEM.

Section 4(a) (16 U.S.C. 668dd(a)) is amended—  
Sec. 4(1)

(1) by redesignating paragraphs (2) and (3) as paragraphs (5) and (6), respectively;  
Sec.4(2)

(2) in clause (i) of paragraph (6) (as so redesignated), by striking "paragraph (2)" and inserting "paragraph (5)"; and Sec. 4(3)

(3) by inserting after paragraph (1) the following new paragraph:

"(2) 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."

Sec. 5

<< 16 USCA s 668dd >>

**SEC. 5. ADMINISTRATION OF THE SYSTEM.**

**Sec. 5(a)**

**(a) ADMINISTRATION GENERALLY.**—Section 4(a) (16 U.S.C. 668dd(a)), as amended by section 4 of this Act, is further amended by inserting after new paragraph (2) the following new paragraphs:

**"(3) With respect to the System, it is the policy of the United States that—**

**"(A) each refuge shall be managed to fulfill the mission of the System, as well as the specific purposes for which that refuge was established;**

**"(B) compatible wildlife-dependent recreation is a legitimate and appropriate general public use of the System, directly related to the mission of the System and the purposes of many refuges, and which generally fosters refuge management and through which the American public can develop an appreciation for fish and wildlife;**

**\*1255 "(C) compatible wildlife-dependent recreational uses are the priority general public uses of the System and shall receive priority consideration in refuge planning and management; and**

**"(D) when the Secretary determines that a proposed wildlife-dependent recreational use is a compatible use within a refuge, that activity should be facilitated, subject to such restrictions or regulations as may be necessary, reasonable, and appropriate.**

**"(4) In administering the System, the Secretary shall—**

**"(A) provide for the conservation of fish, wildlife, and plants, and their habitats within the System;**

**"(B) ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans;**

**"(C) plan and direct the continued growth of the System in a manner that is best designed to accomplish the mission of the System, to contribute to the conservation of the ecosystems of the United States, to complement efforts of States and other Federal agencies to conserve fish and wildlife and their habitats, and to increase support for the System and participation from conservation partners and the public;**

**"(D) ensure that the mission of the System described in paragraph (2) and the purposes of each refuge are carried out, except that if a conflict exists between the purposes of a refuge and the mission of the System, the conflict shall be resolved in a manner that first protects the purposes of the refuge, and, to the extent practicable, that also achieves the mission of the System;**

"(E) ensure effective coordination, interaction, and cooperation with owners of land adjoining refuges and the fish and wildlife agency of the States in which the units of the System are located;

"(F) assist in the maintenance of adequate water quantity and water quality to fulfill the mission of the System and the purposes of each refuge;

"(G) acquire, under State law, water rights that are needed for refuge purposes;

"(H) recognize compatible wildlife-dependent recreational uses as the priority general public uses of the System through which the American public can develop an appreciation for fish and wildlife;

"(I) ensure that opportunities are provided within the System for compatible wildlife-dependent recreational uses;

"(J) ensure that priority general public uses of the System receive enhanced consideration over other general public uses in planning and management within the System;

"(K) provide increased opportunities for families to experience compatible wildlife-dependent recreation, particularly opportunities for parents and their children to safely engage in traditional outdoor activities, such as fishing and hunting;

"(L) continue, consistent with existing laws and interagency agreements, authorized or permitted uses of units of the System by other Federal agencies, including those necessary to facilitate military preparedness;

"(M) ensure timely and effective cooperation and collaboration with Federal agencies and State fish and wildlife agencies during the course of acquiring and managing refuges; and

\*1256 "(N) monitor the status and trends of fish, wildlife, and plants in each refuge."

Sec. 5(b)

(b) POWERS.—Section 4(b) (16 U.S.C. 668dd(b)) is amended—

(1) in the matter preceding paragraph (1) by striking "authorized—" and inserting "authorized to take the following actions:";

(2) in paragraph (1) by striking "to enter" and inserting "Enter";

(3) in paragraph (2)—

(A) by striking "to accept" and inserting "Accept"; and

(B) by striking ", and" and inserting a period;

(4) in paragraph (3) by striking "to acquire" and inserting "Acquire"; and

(5) by adding at the end the following new paragraphs:

"(4) Subject to standards established by and the overall management oversight of the Director, and consistent with standards established by this Act, to enter into cooperative agreements with State fish and wildlife agencies for the management of programs on a refuge.

"(5) Issue regulations to carry out this Act."

<< 16 USCA s 668dd >>

## SEC. 6. COMPATIBILITY STANDARDS AND PROCEDURES.

Section 4(d) (16 U.S.C. 668dd(d)) is amended by adding at the end the following new paragraphs:

"(3)(A)(i) Except as provided in clause (iv), the Secretary shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the Secretary has determined that the use is a compatible use and that the use is not inconsistent with public safety. The Secretary may make the determinations referred to in this paragraph for a refuge concurrently with development of a conservation plan under subsection (e).

"(ii) On lands added to the System after March 25, 1996, the Secretary shall identify, prior to acquisition, withdrawal, transfer, reclassification, or donation of any such lands, existing compatible wildlife-dependent recreational uses that the Secretary determines shall be permitted to continue on an interim basis pending completion of the comprehensive conservation plan for the refuge.

"(iii) Wildlife-dependent recreational uses may be authorized on a refuge when they are compatible and not inconsistent with public safety. Except for consideration of consistency with State laws and regulations as provided for in subsection (m), no other determinations or findings are required to be made by the refuge official under this Act or the Refuge Recreation Act for wildlife-dependent recreation to occur.

"(iv) Compatibility determinations in existence on the date of enactment of the National Wildlife Refuge System Improvement Act of 1997 shall remain in effect until and unless modified.

"(B) Not later than 24 months after the date of the enactment of the National Wildlife Refuge System Improvement Act of 1997, the Secretary shall issue final regulations establishing the process for determining under subparagraph (A) whether a use of a refuge is a compatible use. These regulations shall—



"(i) designate the refuge official responsible for making initial compatibility determinations;

"(ii) require an estimate of the timeframe, location, manner, and purpose of each use;

\*1257 "(iii) identify the effects of each use on refuge resources and purposes of each refuge;

"(iv) require that compatibility determinations be made in writing;

"(v) provide for the expedited consideration of uses that will likely have no detrimental effect on the fulfillment of the purposes of a refuge or the mission of the System;

"(vi) provide for the elimination or modification of any use as expeditiously as practicable after a determination is made that the use is not a compatible use;

"(vii) require, after an opportunity for public comment, reevaluation of each existing use, other than those uses specified in clause (viii), if conditions under which the use is permitted change significantly or if there is significant new information regarding the effects of the use, but not less frequently than once every 10 years, to ensure that the use remains a compatible use, except that, in the case of any use authorized for a period longer than 10 years (such as an electric utility right-of-way), the reevaluation required by this clause shall examine compliance with the terms and conditions of the authorization, not examine the authorization itself;

"(viii) require, after an opportunity for public comment, reevaluation of each compatible wildlife-dependent recreational use when conditions under which the use is permitted change significantly or if there is significant new information regarding the effects of the use, but not less frequently than in conjunction with each preparation or revision of a conservation plan under subsection (e) or at least every 15 years, whichever is earlier, and

"(ix) provide an opportunity for public review and comment on each evaluation of a use, unless an opportunity for public review and comment on the evaluation of the use has already been provided during the development or revision of a conservation plan for the refuge under subsection (e) or has otherwise been provided during routine, periodic determinations of compatibility for wildlife-dependent recreational uses.

"(4) The provisions of this Act relating to determinations of the compatibility of a use shall not apply to—

"(A) overflights above a refuge; and

"(B) activities authorized, funded, or conducted by a Federal agency (other than the United States Fish and Wildlife Service) which has primary jurisdiction over a refuge or a portion of a refuge, if the management of those activities is in accordance with a

memorandum of understanding between the Secretary or the Director and the head of the Federal agency with primary jurisdiction over the refuge governing the use of the refuge."

<< 16 USCA s 668dd >>

**SEC. 7. REFUGE CONSERVATION PLANNING PROGRAM.**

Sec. 7(a)

(a) IN GENERAL.—Section 4 (16 U.S.C. 668dd) is amended—

(1) by redesignating subsections (e) through (i) as subsections (f) through (j), respectively; and

(2) by inserting after subsection (d) the following new subsection:

"(e)(1)(A) Except with respect to refuge lands in Alaska (which shall be governed by the refuge planning provisions of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.)), the Secretary shall—

\*1258 "(i) propose a comprehensive conservation plan for each refuge or related complex of refuges (referred to in this subsection as a 'planning unit') in the System;

"(ii) publish a notice of opportunity for public comment in the Federal Register on each proposed conservation plan;

"(iii) issue a final conservation plan for each planning unit consistent with the provisions of this Act and, to the extent practicable, consistent with fish and wildlife conservation plans of the State in which the refuge is located; and

"(iv) not less frequently than 15 years after the date of issuance of a conservation plan under clause (iii) and every 15 years thereafter, revise the conservation plan as may be necessary.

"(B) The Secretary shall prepare a comprehensive conservation plan under this subsection for each refuge within 15 years after the date of enactment of the National Wildlife Refuge System Improvement Act of 1997.

"(C) The Secretary shall manage each refuge or planning unit under plans in effect on the date of enactment of the National Wildlife Refuge System Improvement Act of 1997, to the extent such plans are consistent with this Act, until such plans are revised or superseded by new comprehensive conservation plans issued under this subsection.

"(D) Uses or activities consistent with this Act may occur on any refuge or planning unit before existing plans are revised or new comprehensive conservation plans are issued under this subsection.

"(E) Upon completion of a comprehensive conservation plan under this subsection for a refuge or planning unit, the Secretary shall manage the refuge or planning unit in a manner consistent with the plan and shall revise the plan at any time if the Secretary determines that conditions that affect the refuge or planning unit have changed significantly.

"(2) In developing each comprehensive conservation plan under this subsection for a planning unit, the Secretary, acting through the Director, shall identify and describe—

"(A) the purposes of each refuge comprising the planning unit;

"(B) the distribution, migration patterns, and abundance of fish, wildlife, and plant populations and related habitats within the planning unit;

"(C) the archaeological and cultural values of the planning unit;

"(D) such areas within the planning unit that are suitable for use as administrative sites or visitor facilities;

"(E) significant problems that may adversely affect the populations and habitats of fish, wildlife, and plants within the planning unit and the actions necessary to correct or mitigate such problems; and

"(F) opportunities for compatible wildlife-dependent recreational uses.

"(3) In preparing each comprehensive conservation plan under this subsection, and any revision to such a plan, the Secretary, acting through the Director, shall, to the maximum extent practicable and consistent with this Act—

"(A) consult with adjoining Federal, State, local, and private landowners and affected State conservation agencies; and

\*1259 "(B) coordinate the development of the conservation plan or revision with relevant State conservation plans for fish and wildlife and their habitats.

"(4)(A) In accordance with subparagraph (B), the Secretary shall develop and implement a process to ensure an opportunity for active public involvement in the preparation and revision of comprehensive conservation plans under this subsection. At a minimum, the Secretary shall require that publication of any final plan shall include a summary of the comments made by States, owners of adjacent or potentially affected land, local governments, and any other affected persons, and a statement of the disposition of concerns expressed in those comments.

"(B) Prior to the adoption of each comprehensive conservation plan under this subsection, the Secretary shall issue public notice of the draft proposed plan, make copies

of the plan available at the affected field and regional offices of the United States Fish and Wildlife Service, and provide opportunity for public comment."

<< 16 USCA s 668dd >>

**SEC. 8. EMERGENCY POWER; STATE AUTHORITY; WATER RIGHTS; COORDINATION.**

Sec. 8(a)

(a) **IN GENERAL.**—Section 4 (16 U.S.C. 668dd) is further amended by adding at the end the following new subsections:

"(k) Notwithstanding any other provision of this Act, the Secretary may temporarily suspend, allow, or initiate any activity in a refuge in the System if the Secretary determines it is necessary to protect the health and safety of the public or any fish or wildlife population.

"(l) Nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of fish and resident wildlife on lands or waters that are not within the System.

"(m) Nothing in this Act shall be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate fish and resident wildlife under State law or regulations in any area within the System. Regulations permitting hunting or fishing of fish and resident wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws, regulations, and management plans.

"(n)(1) Nothing in this Act shall—

"(A) create a reserved water right, express or implied, in the United States for any purpose;

"(B) affect any water right in existence on the date of enactment of the National Wildlife Refuge System Improvement Act of 1997;

or

"(C) affect any Federal or State law in existence on the date of the enactment of the National Wildlife Refuge System Improvement Act of 1997 regarding water quality or water quantity.

"(2) Nothing in this Act shall diminish or affect the ability to join the United States in the adjudication of rights to the use of water pursuant to the McCarran Act (43 U.S.C. 686).

# ENDANGERED SPECIES ACT, SECTION 7

16 U.S.C.A. § 1536

United States Code Annotated Currentness  
Title 16. Conservation  
Chapter 35. Endangered Species (Refs & Annos)

## § 1536. Interagency cooperation

### (a) Federal agency actions and consultations

(2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available....

### (b) Opinion of Secretary...

(3)(A) Promptly after conclusion of consultation under paragraph (2) or (3) of subsection (a) of this section, the Secretary shall provide to the Federal agency and the applicant, if any, a written statement setting forth the Secretary's opinion, and a summary of the information on which the opinion is based, detailing how the agency action affects the species or its critical habitat. If jeopardy or adverse modification is found, the Secretary shall suggest those reasonable and prudent alternatives which, he believes would not violate subsection (a) (2) of this section and can be taken by the Federal agency or applicant in implementing the agency action.

### (c) Biological assessment

(1) To facilitate compliance with the requirements of subsection (a) (2) of this section, each Federal agency shall, with respect to any agency action of such agency for which no contract for construction has been entered into

and for which no construction has begun on November 10, 1978, request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action. If the Secretary advises, based on the best scientific and commercial data available, that such species may be present, such agency shall conduct a biological assessment for the purpose of identifying any endangered species or threatened species which is likely to be affected by such action. Such assessment shall be completed within 180 days after the date on which initiated (or within such other period as is mutually agreed to by the Secretary and such agency, except that if a permit or license applicant is involved, the 180-day period may not be extended unless such agency provides the applicant, before the close of such period, with a written statement setting forth the estimated length of the proposed extension and the reasons therefor) and, before any contract for construction is entered into and before construction is begun with respect to such action. Such assessment may be undertaken as part of a Federal agency's compliance with the requirements of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332)..

### (d) Limitation on commitment of resources

After initiation of consultation required under subsection (a) (2) of this section, the Federal agency and the permit or license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection (a) (2) of this section.

### (e) Endangered Species Committee

(1) There is established a committee to be known as the Endangered Species committee (hereinafter in this section referred to as the "Committee."

(2) The Committee shall review any application submitted to it pursuant to this section and determine in accordance with subsection (h)

of this section, whether or not to grant an exemption from the requirements of subsection (a)(2) of this section for the action set forth in such application.

- (3) The Committee shall be composed of seven members as follows:
- (A) The Secretary of Agriculture.
  - (B) The Secretary Of the Army.
  - (C) The Chairman of the Council of Economic Advisory.
  - (D) The Administrator of the Environmental Protection Agency.
  - (E) The Secretary of the Interior.
  - (F) The Administrator of the National Oceanic and Atmospheric Administration
  - (G) The President, after consideration of any recommendations received pursuant to subsection (g)(2)(B) of this section shall appoint one individual from each affected State, as determined by the Secretary, to be a member of the Committee for the consideration of the application for exemption for an agency action with respect to which such recommendations are made, not later than 30 days after an application is submitted pursuant to this section.

**(h) Grant of exemption**

(1) The Committee shall make a final determination whether or not to grant an exemption within 30 days after receiving the report of the Secretary pursuant to subsection (g)(5) of this section. The Committee shall grant

an exemption from the requirements of subsection (a)(2) of this section for an agency action if, by a vote of not less than five of its members voting in person--

- (A) it determines on the record, based on the report, of the Secretary, the record of the hearing held under subsection (g)(4) of this section and on such other testimony or evidence as it may receive, that --
- (i) there are no reasonable and prudent alternatives to the agency action;
  - (ii) the benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest;
  - (iii) the action is of regional or national significance; and
  - (iv) neither the Federal agency concerned nor the exemption applicant made any irreversible or irretrievable commitment of resources prohibited by subsection (d) of this section; and
- (B) It establishes such reasonable mitigation and enhancement measures, including but not limited to, live propagation, transplantation, and habitat acquisition and improvement, as are necessary and appropriate to minimize the adverse effects of the agency action upon the endangered species, threatened species, or critical habitat concerned.

# WILDERNESS ACT

## TITLE 16. CONSERVATION CHAPTER 23--NATIONAL WILDERNESS PRESERVATION SYSTEM

Current through P.L. 105-394, approved 11-13-1998

### § 1131. National Wilderness Preservation System

(a) Establishment; Congressional declaration of policy; wilderness areas; administration for public use and enjoyment, protection, preservation, and gathering and dissemination of information; provisions for designation as wilderness areas

In order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition, it is hereby declared to be the policy of the Congress to secure for the American people of present and future generations the benefits of an enduring resource of wilderness. For this purpose there is hereby established a National Wilderness Preservation System to be composed of federally owned areas designated by Congress as "wilderness areas", and these shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness; and no Federal lands shall be designated as "wilderness areas" except as provided for in this chapter or by a subsequent Act.

(b) Management of area included in System; appropriations

The inclusion of an area in the National Wilderness Preservation System notwithstanding, the area shall continue to be managed by the Department and agency having jurisdiction thereover immediately before its inclusion in the National Wilderness Preservation System unless otherwise provided by Act of Congress. No appropriation shall be available for the payment of expenses or salaries for the administration of the National Wilderness Preservation System as a separate unit nor shall any appropriations be available for additional personnel stated as being required solely for the purpose of managing or administering areas solely because they are included within the National Wilderness Preservation System.

(c) "Wilderness" defined

A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.