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### AMERICAN WILDLIFE ENHANCEMENT ACT OF 2001

DECEMBER 13, 2001.—Ordered to be printed

Mr. JEFFORDS, from the Committee on Environment and Public Works, submitted the following

### REPORT

[to accompany S. 990]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 990) to amend the Pittman-Robertson Wildlife Restoration Act to improve the provisions relating to wildlife conservation and restoration programs, and for other purposes, having considered the same reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

#### GENERAL STATEMENT AND BACKGROUND

The American Wildlife Enhancement Act is intended to meet the wildlife and habitat conservation funding needs across the country. This would be accomplished through a combination of State-led conservation efforts, landowner incentives and cooperative conservation agreements.

#### *“Non-Game” Wildlife Conservation and Restoration*

A century of wildlife conservation has sustained a legacy of wild animals throughout our nation that contributes immeasurably to the wealth of our country and the pleasure and well-being of its citizens. Yet, as we step into the 21st century, we confront greater conservation challenges than ever before as growing demands on land and resources threaten to edge out America’s wildlife. Although successful in securing a place for many game animals and bringing some endangered species back from the brink of extinction, we are now encountering new losses among songbirds, am-

phibians, reptiles, fish, and other species that drew little notice or concern until recently. Also, additional efforts need to be taken to help ensure the survival of the endangered and threatened species that inhabit public and private land throughout the country.

It has long been desired by the State fish and wildlife agencies and the conservation community to provide funding to allow the States to meet the needs of the so-called “nongame” fish and wildlife species. Game and sportfish species have long been funded through the use of a Federal excise tax on sporting arms and ammunition, fishing tackle and equipment, and gasoline taxes for outboard motor fuels, but there was no similar mechanism to fund the non-hunted, non-fished, or non-endangered species that needed conservation attention.

A proposed excise tax on other outdoor-recreation equipment (“Teaming with Wildlife”) was unsuccessful because of the lack of support for any additional tax or user fee. The Wildlife Conservation and Restoration Program became allied with funding coastal impact and restoration assistance and the Land and Water Conservation Fund. Originally, the Program would have been funded by Outer Continental Shelf revenues in what became the Conservation and Reinvestment Act. The Wildlife Conservation and Restoration Program was originally funded in the fiscal year 2001 Commerce-Justice-State Appropriations law.

#### *Endangered Species Conservation*

There has also been a desire to take steps to make the Endangered Species Act more effective in recovering endangered and threatened species by creating programs with a more collaborative approach to species conservation. Endangered and threatened species are found on Federal and private land throughout the country. According to a study published by The Nature Conservancy and the Association for Biodiversity Information in 2000, Federal lands support at least one example of about 59 percent of species listed under the U.S. Endangered Species Act, and private lands are habitat to at least one population of more than two-thirds of species listed under the U.S. Endangered Species Act. Given this distribution, one of the keys to the successful recovery of our endangered and threatened species is the increased participation of private landowners. This is best achieved through a collaborative, not combative, process that provides landowners with an incentive to participate.

However, it is equally important to provide incentives for the conservation of endangered and threatened species that inhabit our public lands. This is especially true in the western portion of our country, where a majority of the land is publicly owned. The Endangered Species Act provides for the conservation of species through several mechanisms, including protections for species on private lands. The Act also provides that our Federal agencies shall use their authority to further the conservation of species, including cooperating with State and local agencies to resolve water resource issues associated with endangered species conservation (16 U.S.C. § 1531(c)(1)-(2)). S. 990 recognizes the role the conservation of species on public lands may have in the accomplishment of the purposes of the Endangered Species Act. In the West, for example, up-

land game species which are in decline, such as the sage grouse, occupy habitat on both public and private lands.

#### *Flexible Funding*

Since the health of habitat has a direct relationship to the health of both game and non-game species, habitat conservation needs throughout our country must coincide with species conservation needs. Habitat conservation needs can be partially addressed through the creation of a program that provides flexible funding to States for assistance in the recovery of areas that are of regional or national significance. However, in striving to protect these lands, a balance must be achieved between land conservation for purely ecological and habitat reasons, and land conservation for economic and productive reasons as well.

Given their knowledge of the habitat that falls within their borders, States should be given the flexibility to conserve the areas they deem to be in the most need of protection. Without a source of flexible Federal funds such as this, States and local communities alone will be unable to protect some of the nation's most important natural areas. These areas include the Northern Forest that spans the States of New Hampshire, Maine, Vermont and New York; the Central Appalachian Highlands; and the Mississippi Delta. This flexible funding will allow States and communities to protect vital natural, cultural and recreational areas without creating or expanding Federal land.

#### OBJECTIVES OF THE LEGISLATION

S. 990, the American Wildlife Enhancement Act, is intended to meet the wildlife and habitat conservation needs across the country through a combination of State-led conservation efforts, landowner incentives and cooperative conservation agreements. This legislation will help to increase conservation efforts throughout our country by promoting local control and State partnerships through flexible, incentive driven conservation programs and increased partnerships with local landowners, as well as promoting conservation efforts on our public lands. This will be done through four different conservation initiatives. Title I authorizes additional funds for the popular Pittman-Robertson program to go to States for the conservation of non-game species.

Title II authorizes the Secretary of the Interior (Secretary) to provide financial assistance to small private landowners and conservation groups who would like to conserve the habitats of endangered and threatened species that are found on their land and on public lands. Providing for the conservation of species on public lands in this manner is intended to effect the purposes of the Endangered Species Act, to help ensure that the Federal government effectively protects species on its own land, and to help reduce conservation pressures on private land.

Title III establishes a new competitive grant fund that would allow one or several States to apply for a grant to protect an area of regional or national significance. Title IV establishes a program for the conservation and restoration of shrub and grass land. S. 990 recognizes the importance of fostering conservation activities for species on public lands by specifying that funds provided under

title II and title IV may be used, in cooperation with Federal agencies, to provide grants and incentive payments to non-profit organizations such as conservation organizations and sportsmen's groups to restore wildlife habitat on public lands.

## SECTION-BY-SECTION ANALYSIS

### SECTION 1. SHORT TITLE AND TABLE OF CONTENTS

The Act will be cited as the "American Wildlife Enhancement Act of 2001".

#### TITLE I - PITTMAN-ROBERTSON WILDLIFE CONSERVATION AND RESTORATION PROGRAMS IMPROVEMENT

##### *Section 101. Short Title*

This title may be cited as the "Pittman-Robertson Wildlife Conservation and Restoration Programs Improvement Act".

##### *Section 102. Definitions*

#### SUMMARY

Subsection (a) of section 102 defines the following terms for purposes of this title: account; conservation; fund; Indian tribe; Secretary; State fish and game department; territory; wildlife; wildlife-associated recreation project; wildlife conservation and restoration program; wildlife conservation education project; and wildlife restoration project.

Subsection (b) makes necessary conforming amendments to the Pittman-Robertson Act resulting from this section.

#### DISCUSSION

"Account" means the Wildlife Conservation and Restoration Account established by this title. Because the definitions provided in this section apply to the Pittman-Robertson Wildlife Restoration Act as a whole, this definition makes clear the distinction between the "account" and the "fund". The Wildlife Conservation and Restoration Account is a separate account that falls within the Federal Aid to Wildlife Restoration Fund, also known as the Pittman-Robertson Wildlife Restoration Fund. Money in the Account would be provided by Congressional appropriations, while the Fund is funded by excise taxes paid on hunting equipment. The provisions in this legislation, unless stated otherwise, pertain to the establishment and implementation of the Wildlife Conservation and Restoration Account.

"Conservation" means the use of a method or procedure necessary or desirable to sustain healthy populations of wildlife or to restore declining populations of wildlife. Conservation includes any activity associated with scientific resources management.

"Fund" means the Federal Aid to Wildlife Restoration Fund within which the Wildlife Conservation and Restoration Account is established by this title.

For purposes of this title, "Indian tribes" means the same as the term is defined in section 4 of the Indian Self-Determination and Education Act.

“Secretary” means the Secretary of the Interior.

“State fish and game department” means any department or division of a department of another name, commission, or 1 or more officials, of a State, the District of Columbia, a territory, or an Indian tribe empowered to exercise the functions ordinarily exercised by a State fish and game department or a State fish and wildlife department.

“Territory” mean Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands.

“Wildlife” means any species of wild, free-ranging fauna (excluding fish), and any species of fauna (excluding fish) in a captive breeding program for reintroducing individuals of a depleted native species into the previously occupied range of the species. For purposes of each wildlife conservation and restoration program, wildlife includes fish and native plants. However, each wildlife and restoration program developed by the States does not have to include fish and native plants. The separation within the definition was made because the definitions listed in this section apply to the Pittman-Robertson Wildlife Restoration Act, which does not cover fish and native plants. Sport fish restoration is covered in the Dingell-Johnson Sport Fish Restoration Act.

“Wildlife-associated recreation project” means a project intended to meet the demand for and outdoor activity associated with wildlife, a project such as construction or restoration of a wildlife viewing area, observation tower, blind, platform, land or water trail, water access route, area for field trailing, or trail heard and a project to provide access to these kinds of projects.

“Wildlife conservation and restoration program” means a program developed by a State fish and game department and approved by the Secretary under section 12.

“Wildlife conservation education project” means a project that is intended to foster responsible natural resource stewardship, including public outreach.

“Wildlife-restoration project” means a project consisting of the selection, restoration, rehabilitation, or improvement of an area of land or water that is adaptable as a feeding, resting, or breeding place for wildlife. A project may include acquisition of an area of land or water suitable for capable of being suitable for feeding, resting, or breeding by wildlife; restoration or rehabilitation of an area of land or water; construction in an area of such works as are necessary to make the area available for feeding, resting or breeding by wildlife; such research into any problem of wildlife management as is necessary for efficient administration of wildlife resources; and preliminary or incidental expenses incurred with respect to these activities.

### *Section 103. Wildlife Conservation and Restoration Account*

#### SUMMARY

Subsection (a) establishes the Wildlife Conservation and Restoration Account within the Pittman-Robertson Wildlife Restoration Fund and authorizes \$50 million for fiscal year 2001 and \$350 million in each of fiscal years 2002 through 2006.

Subsection (b) makes necessary conforming amendments to sections 3(a)(1), 4, 6, 8A, 9, 10, and 11(a)(1) of the Pittman-Robertson Wildlife Restoration Act resulting from this section.

#### DISCUSSION

This section extends and increases the authorization for the Wildlife Conservation and Restoration Program (WCRP) Account created under the Pittman-Robertson Act through the enactment of the fiscal year 2001 Commerce, Justice, State (CJS) Appropriations law. Expenditures for this Account were authorized only for fiscal year 2001, for which \$50 million was appropriated. This section increases the authorization amount to \$350 million for each of the fiscal years 2002–2006, thus allowing for the appropriation of additional funds to this Account.

The authorization level for this bill is based on the results of a needs survey conducted by the International Association of Fish and Wildlife Agencies (IAFWA). The 1998 IAFWA survey asked State fish and wildlife agencies to determine their annual funding needs for their unmet wildlife conservation and related recreation and education programs. The survey asked how much annual funding is needed to stabilize and make progress to recover fish and wildlife species and their habitats to “safety net” population levels; reintroduce extirpated fish and wildlife species where practical and desirable; meet the annual existing demand and provide for projected needs for fish and wildlife related recreation activities in each State; and meet the current demand and provide for projected needs for fish and wildlife related education facilities, networks, and programs. The response to this survey found that the need totals over \$1 billion.

State fish and wildlife agency revenues are based mainly on traditional revenue sources, including State hunting and fishing licenses fees, Federal excises taxes on hunting and fishing equipment, and motor boat fuel taxes. The majority of these user-fee funds are focused on approximately 100 game and sportfish under a user-pay user-benefit philosophy. Other sources of revenue include income tax check-offs, general funds, State lotteries, sales taxes, vehicle license plates, trust funds, or matching grants from Federal programs, foundations, non-profit organizations, and corporations. The 1998 IAFWA survey put funding from these sources at approximately \$134 million, about one-tenth of the estimated need of \$1 billion. This provision recognizes the need for greater Federal investment and will contribute \$350 million in key funding to assist States in meeting their expanded funding goals. This provision will broaden our investments to mitigate accumulating losses, sustain healthy wildlife communities for all species, and prevent problems before they occur.

This section also proposes some clarifying and structural improvements to the WCRP Account to ensure its consistency and conformity with the underlying Pittman-Robertson statute, and to ensure that the terms and conditions of the Account apply only to the Account. It also applies certain provisions of the underlying Pittman-Robertson statute to the Account.

*Section 104. Apportionment of Amounts in the Account*

SUMMARY

This section establishes the apportionment for the Account established in section 103. Not more than 3 percent of the available funds may be used by the Secretary for administrative expenses. The section provides that  $\frac{1}{2}$  of 1 percent shall go to each of the District of Columbia and Puerto Rico and not more than  $\frac{1}{4}$  of 1 percent to each of Guam, American Samoa, the Commonwealth of the Northern Mariana Islands and the Virgin Islands.  $2\frac{1}{4}$  percent of the remaining funds shall go to Indian tribes, of which  $\frac{1}{3}$  shall be apportioned among tribes based on the ratio of the trust lands area of each tribe bears to the total trust land areas of all tribes and  $\frac{2}{3}$  shall be apportioned among tribes based on the ratio that the population of each tribe bears to the total population of tribes, with no tribe receiving more than 5 percent of the  $2\frac{1}{4}$  percent for tribes.

The States receive their apportionment after the allocations are made. A State's apportionment from the Account would be based on  $\frac{1}{3}$  of the ratio that the area of the State bears to the total area of all States and  $\frac{2}{3}$  based on the ratio that the population of the State bears to the total population of all States. No State will receive less than 1 percent of the amount available for States and no State will receive more than 5 percent of that amount.

The funds provided by the Account shall be in addition to funds from the Pittman-Robertson Fund or the Sport Fish Restoration Account and shall be used to address the unmet needs for wildlife and habitats on which they depend and for projects that are part of a wildlife conservation and restoration program. A recipient may not receive funds from the Account if the Secretary determines that the recipient diverts funds from other conservation funding sources. Funds from the Account shall remain available until the end of the second following fiscal year.

DISCUSSION

The allocation formula to each State is  $\frac{1}{3}$  based on the ratio that the area of the State bears to the total area of all States and  $\frac{2}{3}$  based on the ratio that the population of each State bears to the total population of all States, with a minimum apportionment of 1 percent and a maximum apportionment of 5 percent. This distribution formula is the result of an agreement between all 50 State fish and wildlife agencies that reflects the collective thinking of how to best address nationally the needs of fish and wildlife conservation and the associated wildlife education and recreation needs of our citizens. It recognizes that there are needs in every State from the western "public land" States to the more eastern urbanized States where pressures on habitat are intense. This allocation represents the best professional thinking of the State fish and wildlife agencies for a formula that is as equitable nationally as possible.

The allocation of  $2\frac{1}{4}$  percent of the funds in the Wildlife Conservation and Restoration Account to Federally recognized Indian tribes is equivalent to the percentage of tribal trust land to total acreage of the continental United States. Currently, tribes are not eligible to share in Federal Aid in Wildlife Restoration Account

funds even though tribal members pay excise taxes on fishing and hunting equipment. This legislation does not change this limitation in the underlying law. However, by allowing Indian tribes to share in this new funding source, S. 990 helps to address the funding shortfalls that tribes experience in managing fish and wildlife populations on their lands. Indian tribes, just like the States, would have to submit, and have approved by the Secretary, a wildlife conservation and restoration program and a wildlife conservation strategy. The States and Territories are not to use the funds from the Wildlife Conservation and Restoration Account to replace existing Federal Aid funds available to them. The funds may only be used for new Wildlife Conservation and Restoration Programs and associated projects.

*Section 105. Wildlife Conservation and Restoration Programs*

SUMMARY

Section 105 establishes a new section 12 of the Pittman-Robertson Wildlife Restoration Act.

Subsection (a) of the new section 12 defines State.

Subsection (b) establishes the Wildlife and Conservation Program (WCRP). Under the program, a State, acting through the State fish and game department, may apply for approval of a wildlife conservation and restoration program in order to receive funds from the new Account. An application must provide documentation that the State's wildlife and conservation program provides overall responsibility and accountability to the State fish and wildlife department, identify which species in the State are in greatest need of conservation, and provide for the development, implementation, and maintenance of wildlife conservation projects, wildlife-associated recreation projects and wildlife conservation education projects under the program. The public must have the opportunity to participate in the development and implementation of the program.

If the Secretary approves a wildlife conservation and recreation program, the Secretary may use the States apportionment to pay the Federal share of the cost of implementation of the program and the cost of development, implementation, and maintenance of each project in the program. The Federal share shall not exceed 75 percent. The Secretary shall make payments to States during the course of a project and may advance funds to pay the Federal share of implementing the program.

Not more than 10 percent of a State's apportionment may be used for law enforcement activities and not more than 10 percent may be used for wildlife-associated recreation projects. An exception to this limitation is provided if the State demonstrates to the satisfaction of the Secretary that the law enforcement activities or the wildlife-associated recreation projects have a significant impact on high priority conservation activities.

In order to implement projects in the program, a State may make a grant or enter into a contract with any Federal, State, or local agency, Indian tribe, wildlife conservation organization, sportsmen's organization, land trust, or other nonprofit organization, out-



door recreation or conservation education entity and any other method the State determines to be appropriate.

Subsection (c) requires that, in order to continue to receive assistance from the Account, a State must develop and implement a wildlife conservation strategy based on best available and appropriate science not later than 5 years after receiving their initial apportionment. The strategy shall use information on the distribution and abundance of species of wildlife as is indicative of the diversity and health of wildlife of the State; identify the extent and condition of wildlife habitats and community types essential to conservation of the species of wildlife of the State; identify the problems that may adversely affect the species and habitat of the species and provide high priority research and survey to identify factors that may assist in restoration and more effective conservation of species and habitat; describe which actions should be taken to conserve species and habitats and establish priorities for implementing those actions; and provide for periodic monitoring of the species and habitats and the effectiveness of the actions and adaptations as are appropriate.

The development and implementation of the strategy must provide opportunity for public participation. A State shall review and, if necessary, revise the strategy not less often than every 7 years. The development, implementation, review and revision of the strategy shall be coordinated between the State fish and game department and Federal, State, and local agencies and Indian tribes that manage areas of land or water or administer programs affecting conservation. If a State fails to develop, implement, review or revise a wildlife conservation strategy, the State's apportionment shall be reapportioned to other States for that fiscal year. If the State subsequently carries out the requirements of this section, the State can receive its apportionment in the subsequent fiscal year.

Subsection (d) allows money from the Account to be used to carry out new programs and projects and enhance existing programs and projects.

Subsection (e) establishes the priority for using the funds from the Account for species that are in the greatest need of conservation or are identified in the wildlife conservation strategy.

Subsection (f) prohibits the use of funds from the Account on activities that promote or encourage opposition to the regulated hunting or trapping of wildlife.

#### DISCUSSION

Modeled after the very successful Pittman-Robertson Wildlife Restoration Programs, the WCRP Account apportions matching Federal funds to the State fish and wildlife agencies on a 75 Federal: 25 State match, to be used for wildlife conservation, wildlife conservation education and wildlife-associated recreation.

The WCRP relies on State-based decision making to establish priority spending for the wildlife species of greatest conservation need. The State fish and wildlife agencies have constitutional and statutory responsibilities for fish and wildlife within their borders. However, the WCRP gives the States explicit and specific guidance and direction through the Wildlife Conservation Strategy (WCS) on how priority spending decisions for species of the greatest conserva-

tion need are to be made. If States want to continue to receive funds from the Account, within 5 years after the date of initial apportionment a State shall develop and begin implementation of a wildlife conservation strategy that is based on the best available and appropriate scientific information. States will no longer receive funds if they have not completed the wildlife conservation strategy within 5 years after the enactment of this act, or fail to implement or revise the strategy.

When developing a wildlife conservation strategy, S. 990 directs the State fish and wildlife agency to use information relating to the distribution, abundance and population status of fish and wildlife; habitat availability and status; pressures on species and habitats; and collection of additional information about these factors as the agency makes its conservation needs priority decisions. States are directed to use such information on the distribution and abundance of species of wildlife, including low population and declining species that the State deems appropriate, that are indicative of the health and diversity of wildlife of the State. Such information should also identify habitat and community types necessary for the wildlife determined by the State as indicative; identify problems for those species or habitats, and to provide for priority research to fill information gaps; determine actions necessary for conservation; provide for mandatory and adaptive management; and provide appropriate coordination with other governmental or tribal agencies. The Wildlife Conservation Strategy describes an iterative decision-making process that the State fish and wildlife agency shall go through in order to establish its highest conservation needs and thus priorities for spending WCRP funds.

The Wildlife Conservation and Restoration Program contains two program elements not found in the underlying Pittman-Robertson Wildlife Restoration Act. These are “wildlife-associated recreation” and “wildlife conservation education”. Wildlife-associated recreation projects are intended to meet the demand for outdoor recreation activities, like hunting, fishing, wildlife observation and photography. These kind of projects would include, but are not limited to, the construction or restoration of a wildlife viewing area, observation tower, blind or platform. Wildlife conservation education projects are intended to foster responsible natural resource stewardship.

Wildlife-associated recreation projects and wildlife conservation education projects are important to the conservation of both game and non-game species. Effective wildlife stewardship can only be accomplished when individuals and groups are educated about the benefits gained from the presence of the wildlife. Recreation and education oriented projects are intended to demonstrate to the public the recreational, economic and aesthetic values of healthy wildlife populations.

#### *Section 106. Nonapplicability of Federal Advisory Committee Act*

Subsection (a) amends the Pittman-Robertson Wildlife Restoration Act by adding section 14, which exempts the coordination required by this title from the Federal Advisory Committee Act.

Subsection (b) amends the Dingell-Johnson Sport Fish Restoration Act by inserting a new section 15, which exempts the coordina-

tion required by this title from the Federal Advisory Committee Act.

*Section 107. Technical Amendments*

This section amends sections 1, 5, 6, 7, 8, 8A, and 12 of the Pittman-Robertson Wildlife restoration Act to make technical and conforming changes necessary as a result of this title.

*Section 108. Effective Date*

This section authorizes that this title take effect on October 1, 2001.

TITLE II: ENDANGERED AND THREATENED SPECIES RECOVERY

*Section 201: Purpose*

The purpose of title II is to promote the involvement of non-Federal entities in the recovery of endangered species, threatened species, and species that may become endangered or threatened if conservation actions are not taken. This title also aims to recover the habitats on which they depend.

*Section 202: Endangered and Threatened Species Recovery Assistance*

SUMMARY

Section 202(a) amends section 13 of the Endangered Species Act of 1973 to allow the Secretary to provide financial assistance to any person who wishes to develop and implement an endangered and threatened species recovery agreement.

*Section 13(a): Definitions*

The new section 13(a) provides definitions to apply only to this section of the Act. A “conservation entity” is defined as a nonprofit entity that engages in activities to conserve or protect fish, wildlife or plants or their habitat. These entities include, but are not limited to, a sportsmen’s organization, an environmental organization, or a land trust.

A “small landowner” is an individual who owns not more than 160 acres of land. However, if the small landowner owns land that is used as a farm or ranch, the landowner would be considered a small landowner if he/she owns no more than 50-percent of the average acreage of a farm or ranch in the State or 160 acres, whichever is greater. For the purposes of this program, a “farm or ranch” is an activity in which not less than \$1,000 in income is derived from agricultural production within a census year. The Secretary is to use the most recent data provided by the U.S. Department of Agriculture in the U.S. Census of Agriculture to determine the average farm or ranch in each State.

The term “species at risk” applies to species that may become endangered or threatened if conservation actions are not taken to conserve and protect the population.

A “species recovery agreement” is an endangered and threatened species recovery agreement that is entered into according to the provisions under section 13(c).

## DISCUSSION

The definitions provided in this section explain who is eligible for this program. Allowing both conservation entities and small landowners to take part in the program helps to ensure that a wide spectrum of species recovery agreements are developed. The definition of small landowner recognizes that a small landowner in the eastern half of the country is different than a small landowner in the western half of the country. This is illustrated by the fact that the average farm or ranch in Nevada is about 2,220 acres, while the average farm or ranch in New Hampshire is 141 acres. To address this difference, the bill allows a small landowner to vary from State to State based on the size of a farm or ranch in a State. A small landowner is one that owns less than 50 percent of the average farm or ranch in the State, or 160 acres, whichever is greater. This allows for more individuals who live in the West to qualify for the program without disadvantaging the small landowners in the East.

Defining “species at risk” as species that may become endangered or threatened if conservation efforts are not taken, is a step toward being more pro-active in the recovery of endangered and threatened species. An important component in the recovery of flora and fauna is engaging in conservation efforts before species decline so far as to warrant protection provided under the Endangered Species Act.

*Section 13(b): Endangered and Threatened Species Recovery Assistance*

## SUMMARY

Section 13(b) authorizes the Secretary to provide financial assistance to any person for the development and implementation of an endangered and threatened species recovery agreement, and outlines the terms under which a person may or may not receive financial assistance. According to section 13(b)(2), the Secretary should give priority to agreements that: implement actions identified under recovery plans that have been developed for listed species; have the greatest potential for contributing to the recovery of an endangered or threatened species, or a species at risk; benefit multiple species; carry out activities that are specified in State or local conservation plans; or are proposed by small landowners.

Section 13(b)(3) prohibits the Secretary from providing financial assistance for any activity that is already required by an incidental take permit, an incidental taking statement provided under section 7 consultation of the Endangered Species Act (ESA), or under any other provision of the ESA, any other Federal law or any State law.

Section 13(b)(4) provides that the financial assistance under this program shall not affect the payments a person may receive under the Conservation Reserve Program, the Wetlands Reserve Program, the Environmental Quality Incentives Program, or the Wildlife Habitat Incentive Program. However, a person cannot receive financial assistance under this program to carry out an activity that is already required under one of the above stated programs, and for which the person is already receiving payment, unless the species recovery agreement imposes an additional financial or management obligation.

## DISCUSSION

The purpose of the priorities listed in section 13(b)(2) is to ensure that the Secretary provides funding to the species recovery agreements that will have the greatest possible impact on endangered and threatened species conservation. Under the ESA, recovery plans are to be developed for listed species. These plans should include actions that need to be taken to recover a listed species. By giving priority to agreements that implement these identified actions, the Secretary can be assured, based on the Department's own analysis, that the agreements will help to recover the species covered in the agreement.

The bill also affords funding priority to species recovery agreements which would implement State and local conservation plans. In recent years, State and local governments have placed increasing focus on pro-active species conservation planning, particularly moving to craft statewide or multi-state ecosystem based conservation plans which target the conservation of not only threatened and endangered species, but also species which are in decline but not yet listed. These efforts, which are ongoing in several States, reflect a recognition that broad ecosystem restoration work targeting multiple species which also provide for the conservation of declining species can often best achieve the purposes of the underlying ESA. The State of Nevada, for example, is currently working to craft a broad conservation plan targeting a variety of declining sagebrush dependent species like the sage grouse.

Affording priority to species recovery agreements which implement such State or local plans recognizes the importance of identifying funding mechanisms for such plans if they are to accomplish one of their main purposes. That is, many States target the conservation of declining species in such plans in order to avoid the need to list those species in the future. The ESA specifically provides that the existence of effective State or local conservation plans may justify the Secretary's determination not to list a species. 16 U.S.C. § 1533(b)(1)(A) provides that the Secretary must take "into account those efforts, if any, being made by any State . . . or political subdivision of a State . . . to protect such species . . ." when determining whether a species should be listed. In order for the Secretary to rely upon such State or local plans as a reason not to list a species, however, courts have held that, among other things, those plans must identify a funding mechanism for the conservation actions called for in the plan. E.g., *Oregon Natural Resources Council v. State of Oregon*, 6 F. Supp. 1139 (1998). Targeting funding under this title to implement State or local conservation plans recognizes the importance of State and local efforts to effectuate the broad purposes of the ESA.

The Secretary should also give priority to agreements that benefit multiple species. As stated earlier, in areas throughout the country, especially in the West, more than one species in an ecosystem can be listed as endangered or threatened. By giving a priority to agreements that encompass multiple species, the Secretary will be looking at species conservation on an ecosystem level, as opposed to an individual species level. An ecosystem-based species re-

covery agreement can prove to be more efficient in areas where there are multiple species in need of conservation.

The priority given to small landowners is to help conserve the number of species that occur on private lands. Currently, any effort that a private landowner undertakes to conserve an endangered species is paid for out-of-pocket. Since approximately 90 percent of the listed endangered and threatened species inhabit non-federal lands, one of the keys to the successful recovery of our endangered and threatened species is the increased participation of private landowners. This is best achieved through a collaborative, not combative, process that provides landowners with an incentive to participate. This priority helps to achieve that.

The prohibitions listed under section 13(b)(3) are provided to ensure that those who enter into species recovery agreements with the Secretary are not receiving money to implement actions that are already required by Federal or State law. However, funding may be used for actions required under any incidental taking statement issued as part of conservation activities of the species recovery agreement itself. The money appropriated under this new section of the ESA is meant to compensate landowners and conservation entities that go beyond what is required by law.

*Section 13(c): Endangered and Threatened Species Recovery Agreements*

SUMMARY

Section 13(c) allows the Secretary to enter into endangered and threatened species recovery agreements. Section 13(c)(2) states what elements should be included in each agreement. These elements are: provisions that require the person to carry out activities on his/her property that are not required by other Federal or State law that contribute to the recovery of a listed species, or refrain from activities that would inhibit the recovery of listed species. These activities can include actions that, consistent with applicable State water laws and regulations, directly reduce the availability of water for species.

The species recovery agreements shall also include provisions that specify species recovery goals and activities for attaining those goals; require the person to make demonstrable progress in accomplishing the species recovery goals and a schedule for the implementation of the agreement; specify actions to be taken by the Secretary or the person to monitor the effectiveness of the agreement; require the person to notify the Secretary if any right or obligation of the person under the agreement is assigned to another person; and require the person to notify the Secretary if any term of the agreement is breached.

In addition, the species recovery agreement should include a schedule for the disbursement of financial assistance during the period that the agreement is in effect based on the required schedule for implementation. The Secretary shall terminate the species recovery agreement if the person fails to carry out the species recovery agreement. Section 13(c)(3) provides for the review and approval of proposed species recovery agreements by the Secretary. The Secretary must review the proposed agreement to determine if

the agreement complies with section 13(c) and will contribute to the recovery of each of the species that is the subject of the proposed species recovery agreement. If necessary, the Secretary shall propose to the person any additional provisions that are necessary for the species recovery agreement to comply with section 13(c). The Secretary may enter into the species recovery agreement if it is determined that the agreement complies with section 13(c).

Under section 13(c)(4), the Secretary must periodically monitor the implementation of each species recovery agreement. Based on the information obtained from the monitoring, the Secretary shall disburse financial assistance to implement the agreement as the Secretary deems to be appropriate under the agreement. If the Secretary determines that the person is not making demonstrable progress in accomplishing the species recovery goals specified in the agreement, the Secretary shall propose one or more modifications to the agreement that are necessary to accomplish the goal or terminate the agreement.

According to section 13(c)(5), if the Secretary enters into a species recovery agreement with a person with respect to Federal or State land, the United States or the State, respectively, must be a party to the agreement.

#### DISCUSSION

The funding allocation established by this section is designed to ensure that financial benefits are equally distributed as best as possible to those proposing species recovery agreements. It also recognizes that collaborative efforts with private landowners must be undertaken in order to adequately conserve both endangered and threatened species and the rights of private property owners. Because only 10 percent of the species listed as endangered or threatened under the ESA occur solely on Federal land (GAO/RCED-95-16), small landowners should be guaranteed a certain amount of funding for these agreements. Another factor in guaranteeing funding for small landowners is that agreements proposed by conservation entities will tend to be larger in scope, encompassing multiple-species over a larger ecosystem. While conservation agreements proposed by conservation entities are very important to overall endangered and threatened species conservation efforts, these agreements will inherently require more Federal funds for development and implementation, leaving fewer funds for agreements proposed by small landowners.

It is not the intention of the committee to state that conservation agreements on private lands are more important than conservation agreements on public lands. Conservation must be addressed on all types of land in order for the conservation of endangered and threatened species to be effective. Allocating one-third of the funding for species recovery agreements that occur on public lands is intended to help achieve the goal of overall endangered species conservation throughout the country.

#### *Section 13(e): Limitation on Administrative Expenses*

Under this subsection, the Secretary may not use more than 3 percent of the funds appropriated in each fiscal year to pay administrative expenses incurred in providing financial assistance for the

development and implementation of endangered and threatened species recovery agreements.

*Section 202(b): Authorization of Appropriations*

Section 202(b) amends section 15 of the Endangered Species Act of 1973 to authorize the appropriation of \$150,000,000 to carry out section 13 for each of fiscal years 2002 through 2006.

*Section 202(c): Conforming Amendment*

Section 202(c) amends the table of contents of the Endangered Species Act of 1973 by striking the item related to section 13 and inserting, “Sec. 13. Endangered and threatened species recovery assistance.”

TITLE III:NON-FEDERAL LAND CONSERVATION GRANT PROGRAM

*Section 301: Non-Federal Land Conservation Grant Program*

*Subsection (a). In General*

SUMMARY

Section 301(a) amends the Partnerships for Wildlife Act by adding a new section 7106, authorizing the Secretary to establish a competitive grant program to be known as the “Non-Federal Land Conservation Grant Program.” The purpose of this program is to make grants to States or groups of States for the conservation of non-Federal land or water of regional or national significance.

Subsection (b) establishes ranking criteria that must be used when the Secretary is selecting among applications. The Secretary shall rank the projects based on the extent to which each project would protect watersheds and important scenic, cultural, recreational, fish, wildlife and other ecological resources. Preference would then be given to proposed projects that seek to protect ecosystems, are developed in collaboration with other States, have been open to public participation, are supported by local communities and individuals, and are considered a priority by the respective State(s).

Applications, submitted according to a deadline that is noticed in the Federal Register, shall include a detailed description of the project, a detailed analysis of all associated project costs (including planning, administration and property acquisition and management), a statement describing how the project is of regional or national significance and a plan for stewardship of any land or water, or interest therein, to be acquired under the project.

The Secretary, not later than 90 days after receipt of applications, shall review the applications and notify each State of its decision. The Secretary is required to submit an annual report to the Senate Environment and Public Works Committee and the House Resources Committee describing the grants made under this section.

The Federal share of the cost of a project under this program shall be not more than 70 percent in the case of a conservation easement, 75 percent in the case of a project that involves three or more States, and 50 percent for the purchase of any interest other than a permanent conservation easement. To cover the Federal



share, this section authorizes \$50 million for each of fiscal years 2002 through 2006. There is also authorized an additional \$9 million for the Federal share of the purchase of a conservation easement that covers the 171,000 acres of land that International Paper is selling in northern New Hampshire. The cost-share requirement and application process are not waived with respect to these funds.

#### DISCUSSION

The funding authorized in this title would allow the Federal government to assist States in protecting areas that they and local communities deem to be of regional or national significance. By requiring public participation and the support of local communities and individuals, these important conservation lands will be protected by those who are closest to the land.

Several features of this grant program are notable. First, the grant program will not create any additional Federal land. These funds would go to States for conservation efforts they deem important, and the management plan required to be included in the application will ensure proper management for the future by either the State or local government, or the conservation entity they prefer.

Second, the various Federal cost-share amounts were chosen to encourage collaboration between States and the use of permanent conservation easements. However, it is not meant to discourage full-fee acquisition. Conservation easements have become a favored means of land conservation because the property remains in private ownership and continues to contribute to the local tax base. Also, easements can be written to meet the particular needs of a landowner and the unique character of the land to be protected.

Collaboration between States is also an important component of land conservation. Natural ecosystems do not follow State boundaries; therefore, conservation efforts are more effective if all States covered by a particular ecosystem are involved in the efforts. For example, the Northern Forest, the largest remaining wild forest in the East, extends for 26 million acres through Maine, New Hampshire, Vermont and New York. When the resources of these States are pulled together, the outcome of any conservation project would be more substantial and more effective than if the States acted separately.

Third, the ranking criteria provided in Sec. 7106(b) seeks to ensure that the projects selected by the Secretary for funding protect multiple resources and are supported by those in the area surrounding the project. Public participation and local support are required to ensure that the project is representative of all the resources in the area that are to be protected. It is also important that the ecosystems and its resources are protected in balance with productive economic uses of the land. The final criterion states that the Secretary should give preference to proposed projects that the State considers to be a priority. This criterion enables the Secretary to select one project over another if a State submits more than one project that equally meets the other criteria.

Finally, there are features in this title that provide accountability to both the States and the Secretary of the Interior. Sec.

7106(c)(2)(B) requires that the State or group of States include within their applications a detailed analysis of all costs associated with the project, including the future management of any property involved in the project. Along with the cost of property management, the State(s) must also include a plan for maintaining any land or water that is acquired, either through full-fee acquisition or the purchase of a conservation easement, for the project. These requirements help to ensure that the lands and water involved in the projects selected are managed in such a way that they continue to be protected beyond the completion of the project.

There are two provisions in the bill that act as a check on the Secretary of the Interior in order to help prevent the Secretary from awarding grants without justification. These provisions are Sec. 7106(c)(3)(B)(ii) and Sec. 7106(d). The first provision requires the Secretary to explain to the State or group of States why the application in question was denied. The second provision requires the Secretary to submit a report to Congress at the end of each fiscal year detailing the grants that were awarded and how the funded projects met the ranking criteria set out in Sec. 7106(b). Requiring the Secretary to explain why projects were not awarded a grant and to submit an annual report to Congress explaining how the funded projects meet the criteria provides Congress with an assurance that the funds are being awarded to the most deserving projects that fulfill the intentions of this program.

#### TITLE IV: CONSERVATION AND RESTORATION OF SHRUBLAND AND GRASSLAND

##### *Sec. 401. Conservation and Restoration of Shrubland and Grassland*

###### SUMMARY

Section 401 amends the Partnerships for Wildlife Act by adding a new section 7107, authorizing the Secretary to establish a Conservation and Restoration of Shrubland Grassland Grant Program. The section authorizes the Secretary to expend \$50 million annually from 2002 through 2006 for grants to fund conservation agreements entered into between the Secretary and specified eligible entities to engage in specified conservation activities on covered lands.

Subsection (a) defines two groups of individuals and entities who are eligible to receive grants under this program. The first are conservation entities defined as nonprofit entities that engage in activities to protect or conserve fish, wildlife or plants, or the habitat for fish, wildlife or plants. The subsection provides an illustrative non-inclusive list of conservation entities covered by this definition. The second are permit holders defined as individuals who hold a grazing permit on covered land. In addition, subsection (a) defines such covered land as public or private natural grassland or shrubland that serves as habitat for endangered species, threatened species or species at risk, as determined by the Secretary. Threatened and endangered species are defined by reference to the Endangered Species Act. Species at risk are defined as those species which may become threatened or endangered if conservation actions are not taken to conserve and protect that species. Such

species may include, but are not limited to, species identified by the Secretary as candidates for listing under the Endangered Species Act. The subsection further defines covered land as land located in an area that has been historically dominated by natural grassland and shrubland.

Subsection (b) establishes a grant program to be carried out by Secretary.

Subsection (c) authorizes the Secretary to enter into conservation agreements with a conservation entity or permit holder to engage in conservation activities on covered land. Such agreements shall provide for the grant award and may allow certain specified activities on such land so long as those activities contribute to maintaining or improving the viability of the covered land. The subsection specifies an exclusive list of such activities, providing that grants may be used on a project or activity to reduce erosion, engage in a prescribed burn, restore riparian habitat, control or eliminate invasive or exotic species, reestablish native grasses, or any other project or activity that restores or enhances habitat for endangered species, threatened species or species at risk.

Subsection (d) provides that such agreements and grants made pursuant to them may not be made or given to comply with existing law, and may not be made or given to engage in conservation activities for which the eligible entity is already receiving a Federal payment under the Conservation Reserve Program, the Environmental Quality Incentives Program or the Wildlife Habitat Incentives Program.

#### DISCUSSION

On April 10, 2001, in Reno, NV, the committee held a hearing to consider the needs of State and local groups and other entities involved in the conservation of both game and non-game species, particularly in the West. Testimony was received from the Nevada officials representing the U.S. Bureau of Land Management, the U.S. Department of Agriculture, the Nevada Department of Wildlife, as well as sportsmen, local conservationists and environmental groups. The Conservation and Restoration of Shrubland and Grassland Program is intended to meet some of the needs identified in that hearing. In particular, those needs included the need to assist in the restoration of the vast shrubland and grasslands of the West, particularly the Great Basin, and to boost the efforts of non-profit entities such as sportsmen's groups and other conservationists to restore those lands. The Conservation and Restoration of Shrubland and Grassland Program will provide funding for non-profit participation in such activities. Conservation concerns in the West and the Great Basin include significant invasive species problems like cheatgrass and tamarisk. Cheatgrass, for example, has taken over large areas of the Great Basin, out competing native vegetation and degrading habitat for sage dependent species such as the sage grouse, a game bird which is of conservation concern in the region. Cheatgrass is also a significant fire fuel, contributing to the breadth and intensity of fires in the region, particularly in Nevada since 1999.

Landownership in this region often complicates restoration efforts. Nevada, for example, is 87 percent in Federal land owner-

ship, largely in lands owned and managed by the Bureau of Land Management. The management of these lands are increasingly important with respect to protecting both non-game and game species in decline and additional resources to address these problems - in terms of manpower and funding - is critical to ensuring the accomplishment of the purposes of the Endangered Species Act. Hearing testimony was taken with respect to these challenges, and particularly noted the importance of the work of sportsmen's organizations and other conservationists to help manage such land to provide good habitat for such species on public lands.

The Conservation and Restoration of Shrubland and Grassland Program will bolster the work of nonprofit organizations and other groups engaged in conservation activities in the West and the Great Basin by authorizing funds to engage in a specified list of authorized conservation activities. These activities include activities to reduce erosion; perform prescribed burn; restore riparian habitat; control or eliminate invasive or exotic species; reestablish native grasses; or any other project or activity that restores or enhances habitat for endangered species, threatened species or species at risk.

#### LEGISLATIVE HISTORY

During the 106th Congress, the committee held a hearing on May 24, 2000, on the wildlife provisions of S. 25, S. 2123, and S. 2181.

On June 6, 2001, Senator Smith introduced S. 990, the American Wildlife Enhancements Act of 2001. On November 8, 2001 the committee reported S. 990 with an amendment in the nature of a substitute offered by Senators Smith, Jeffords, Crapo and Reid, with a second degree amendment offered by Senator Reid and agreed to the bill as amended by a voice vote.

#### HEARINGS

On April 10, 2001, the committee held a hearing in Reno, NV, to receive testimony on State and local wildlife conservation needs to inform the drafting of a bill to address those needs. Witnesses were: Don Henley, Caddo Lake Institute; Leta Collord, Northeastern Nevada Stewardship Group; Larry Johnson, President, Nevada Bighorns Unlimited; Elsie Dupree, President, Nevada Wildlife Federation; Terry Crawforth, Administrator, Nevada Division of Wildlife; Gary Graham, Division Director, Texas Parks and Wildlife Service; Bob Abbey, Director, Nevada Bureau of Land Management; Robert Williams, Field Supervisor, Nevada Fish and Wildlife Office; Dennis Murphy, Biodiversity Initiative, University of Nevada at Reno; Karen Denio, United States Department of Agriculture (USDA), Farm Services Agency; and Nick Pearson, State Conservationist, USDA, Natural Resources Conservation Service.

#### ROLLCALL VOTES

The Committee on Environment and Public Works met to consider S. 990 on November 8, 2001. The committee agreed to an amendment in the nature of a substitute offered by Senator Smith. Senator Reid offered a second degree amendment to the substitute.

All amendments were agreed to by voice vote and the bill as amended was approved by voice vote.

#### REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee finds that S.990 does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

#### MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the committee finds that S.990 would impose no unfunded mandates on State, local, or tribal governments.

#### COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, December 3, 2001.*

Hon. JAMES JEFFORDS, *Chairman,*  
*Committee on Environment and Public Works,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 990, the American Wildlife Enhancement Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis, who can be reached at 226-2860.

Sincerely,

DAN L. CRIPPEN

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*S. 990, American Wildlife Enhancement Act of 2001, as ordered reported by the Senate Committee on Environment and Public Works on November 8, 2001*

#### SUMMARY

S. 990 would establish within the U.S. Fish and Wildlife Service (USFWS) four new grant programs to finance projects that conserve or restore fish and wildlife species and their habitats. The financial assistance authorized by the new programs would enhance or expand existing USFWS grant programs by broadening eligibility requirements to include new participants, focusing on new conservation strategies, and providing a new emphasis on certain types of species and habitats.

The bill would authorize \$600 million annually for fiscal years 2002 through 2006 for the new grant programs. In addition, the bill would authorize \$9 million for a one-time grant to New Hampshire.

Finally, the bill would increase authorizations of appropriations for endangered species conservation grants, North American wetlands conservation grants, and wildlife grants by a total of \$162 million over the 2002–2006 period.

Assuming appropriation of the necessary amounts, CBO estimates that implementing S. 990 would cost \$109 million in fiscal year 2002 and about \$2.2 billion over the 2002–2006 period. S. 990 would have no effect on direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

S. 990 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on State, local, or tribal governments. A great deal of the funds authorized by this legislation would go to State, local, and tribal governments. Any costs incurred by these governments to meet the conditions of this assistance would be voluntary.

#### ESTIMATED COST TO THE FEDERAL GOVERNMENT

CBO estimates that S. 990 would authorize appropriations of \$627 million for fiscal year 2002 and a total of \$3.2 billion over the 2002–2006 period for USFWS grants. The estimated budgetary impact of S. 990 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

By Fiscal Year, in Millions of Dollars					
	2002	2003	2004	2005	2006
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Authorization Levels Specified by S. 990.					
Authorization Level .....	609	600	600	600	600
Estimated Outlays .....	105	306	504	564	600
Indefinite Authorizations.					
Estimated Authorization Level .....	18	25	36	41	42
Estimated Outlays .....	4	12	24	35	39
Total.					
Estimated Authorization Level .....	627	625	636	641	642
Estimated Outlays .....	109	318	528	599	639

#### BASIS OF ESTIMATE

For this estimate, CBO assumes that S. 990 will be enacted in fiscal year 2002 and that the specified and estimated authorization amounts will be appropriated each year. We further assume that such appropriations will supplement existing appropriations for USFWS grants. (For fiscal year 2002 to date, the agency has received funding of nearly \$920 million for its grant programs—\$276 million in appropriations acts and about \$644 million from permanent indefinite authority.) Outlays are estimated on the basis of historic spending patterns for USFWS conservation grant programs.

### *Specified Authorization Levels*

The bill specifies authorization levels for the four new USFWS grant programs that would be established by the bill, including:

- *Wildlife conservation and restoration grants.* Title I would authorize appropriations of \$350 million annually for the existing wildlife conservation and restoration account within the Federal aid-wildlife fund (Pittman-Robertson fund). Under S. 990, the account would continue to fund conservation and restoration grants, particularly those that focus on nongame species.

- *Endangered and threatened species recovery assistance.* Title II would authorize appropriations of \$150 million annually for grants to implement recovery plans for threatened and endangered species and species that may become threatened (known as at-risk species). The new grant program would focus on plans that emphasize multiple species and broad ecosystems. Those eligible for the new grants would include nonprofit organizations and private landowners.

- *Nonfederal land conservation grants.* Title III would authorize appropriations of \$50 million annually for grants to conserve lands and waters that are nationally or regionally significant but not owned by the Federal government. The grants would be used by States or groups of States to acquire lands or other property interests such as easements for permanent protection of important ecosystems. Title III also would authorize a one-time appropriation of \$9 million to New Hampshire for the purchase of a conservation easement on a property in the northern part of the State.

- *Conservation and restoration of shrubland and grassland.* Title IV would authorize appropriations of \$50 million annually for grants to enhance or restore grasslands or shrublands that are the habitats of endangered, threatened, or at-risk species. Land trusts and other conservation-oriented entities would use the grants for activities such as land erosion control, planting of native species, and restoration of riverfront areas.

### *Estimated Authorizations*

CBO estimates that the bill also would increase indefinite authorizations for existing endangered species grants, North American wetlands grants, and (after 2005) Federal aid-wildlife conservation grants by \$162 million over the next five years. (After 2006, when the specific authorizations in S. 990 end, the increases in indefinite authorizations caused by the bill would fall rapidly and disappear after 2010.) These increases would occur indirectly, as a result of authorizing new appropriations to the Pittman-Robertson fund.

*Interest on Balances in the Pittman-Robertson Fund.* Under existing law, interest earned on balances in the Pittman-Robertson fund is available in the following year without further appropriation either for grants made under the North American Wetlands Conservation Act (through 2005) or for traditional Federal aid-wildlife conservation grants (after 2005). Assuming appropriations to the wildlife conservation and restoration account in the Pittman-Robertson fund of the entire amounts authorized by title I, CBO estimates that interest earnings would increase by between \$7 million and \$23 million annually between fiscal years 2002 and 2006. The

interest earned would be available without further appropriation (beginning in 2003), but because such earnings would depend on the appropriation of funds to the account, they are considered to be discretionary for Federal budgetary purposes.

*Cooperative Endangered Species Conservation Grants.* Another provision of existing law authorizes the appropriation of amounts transferred to the Cooperative Endangered Species Conservation Fund (CESCF) each year from the general fund of the Treasury. The transfer is equal to 5 percent of each year's total deposits (including interest earnings) to the Pittman-Robertson fund and the sport fish restoration account of the Aquatic Resources Trust Fund. Appropriation of an additional \$350 million to the wildlife conservation and restoration account in the Pittman-Robertson fund would increase transfers from the general fund to the CESCF (and, correspondingly, the indefinite authorization level for appropriations from that fund) by \$18 million to \$19 million a year beginning in 2002.

*Pay-As-You-Go Considerations:* None.

#### INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

S. 990 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on State, local, or tribal governments. A great deal of the funds authorized by this legislation would go to State, local, and tribal governments. Any costs incurred by these governments to meet the conditions of this assistance would be voluntary.

*Estimate Prepared by:* Federal Costs: Deborah Reis; Impact on State, Local, and Tribal Governments: Marjorie Miller; Impact on the Private Sector: Lauren Marks.

*Estimate Approved by:* Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in *italic*, existing law in which no change is proposed is shown in roman:

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### **PITTMAN-ROBERTSON WILDLIFE RESTORATION ACT**

[Chapter 899, Approved Sept. 2, 1937, 50 Stat. 917]

[Amended through Public Law 106-553, Dec. 21, 2000]

AN ACT To provide that the United States shall aid the States in wildlife-restoration projects, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [16 U.S.C. 669]*  
**[That the]**



**SECTION 1. COOPERATION OF SECRETARY OF THE INTERIOR WITH STATES.**

*The* **【Secretary of Agriculture】**<sup>1</sup> *Secretary* is authorized to cooperate with the States, through their respective State fish and game departments, in wildlife-restoration projects as hereinafter set forth; but no money apportioned under this Act to any State shall be expended therein until its legislature, or other State agency authorized by the State constitution to make laws governing the conservation of wildlife, shall have assented to the provision of this Act and shall have passed laws for the conservation of wildlife which shall include a prohibition against the diversion of license fees paid by hunters for any other purpose than the administration of said State fish and game department, except that, until the final adjournment of the first regular session of the legislature held after the passage of this Act, the assent of the Governor of the State shall be sufficient. The **【Secretary of Agriculture】**<sup>1</sup> *Secretary* and the State fish and game department of each State accepting the benefits of this Act shall agree upon the wildlife-restoration projects to be aided in such State under the terms of this Act and all projects shall conform to the standards fixed by the Secretary of Agriculture.<sup>1</sup>

**【SEC. 2. 【16 U.S.C. 669a】 DEFINITIONS.**

**【As used in this Act—**

**【(1) the term “conservation” means the use of methods and procedures necessary or desirable to sustain healthy populations of wildlife, including all activities associated with scientific resources management such as research, census, monitoring of populations, acquisition, improvement and management of habitat, live trapping and transplantation, wildlife damage management, and periodic or total protection of a species or population, as well as the taking of individuals within wildlife stock or population if permitted by applicable State and Federal law;**

**【(2) the term “Secretary” means the Secretary of the Interior;**

**【(3) the term “State fish and game department” or “State fish and wildlife department” means any department or division of department of another name, or commission, or official or officials, of a State empowered under its laws to exercise the functions ordinarily exercised by a State fish and game department or State fish and wildlife department.**

**【(4) the term “wildlife” means any species of wild, free-ranging fauna including fish, and also fauna in captive breeding programs the object of which is to reintroduce individuals of a depleted indigenous species into previously occupied range;**

**【(5) the term “wildlife-associated recreation” means projects intended to meet the demand for outdoor activities associated with wildlife including, but not limited to, hunting and fishing, wildlife observation and photography, such projects as construction or restoration of wildlife viewing areas, observa-**

<sup>1</sup> Reorganization Plan No. II of 1939, transferred functions of the Secretary of Agriculture relating to conservation of wildlife, game, and migratory birds to the Secretary of the Interior.

tion towers, blinds, platforms, land and water trails, water access, field trialing, trail heads, and access for such projects;

[(6) the term “wildlife conservation and restoration program” means a program developed by a State fish and wildlife department and approved by the Secretary under section 304(d), the projects that constitute such a program, which may be implemented in whole or part through grants and contracts by a State to other State, Federal, or local agencies (including those that gather, evaluate, and disseminate information on wildlife and their habitats), wildlife conservation organizations, and outdoor recreation and conservation education entities from funds apportioned under this title, and maintenance of such projects;

[(7) the term “wildlife conservation education” means projects, including public outreach, intended to foster responsible natural resource stewardship; and

[(8) the term “wildlife-restoration project” includes the wildlife conservation and restoration program and means the selection, restoration, rehabilitation, and improvement of areas of land or water adaptable as feeding, resting, or breeding places for wildlife, including acquisition of such areas or estates or interests therein as are suitable or capable of being made suitable therefor, and the construction thereon or therein of such works as may be necessary to make them available for such purposes and also including such research into problems of wildlife management as may be necessary to efficient administration affecting wildlife resources, and such preliminary or incidental costs and expenses as may be incurred in and about such projects.]

## SEC. 2. DEFINITIONS.

*In this Act:*

(1) *ACCOUNT.*—*The term “Account” means the Wildlife Conservation and Restoration Account established by section 3(a)(2).*

(2) *CONSERVATION.*—

(A) *IN GENERAL.*—*The term “conservation” means the use of a method or procedure necessary or desirable—*

- (i) to sustain healthy populations of wildlife; or*
- (ii) to restore declining populations of wildlife.*

(B) *INCLUSIONS.*—*The term “conservation” includes any activity associated with scientific resources management, such as—*

- (i) research;*
- (ii) census;*
- (iii) monitoring of populations;*
- (iv) acquisition, improvement, and management of habitat;*
- (v) live trapping and transplantation;*
- (vi) wildlife damage management;*
- (vii) periodic or total protection of a species or population; and*
- (viii) the taking of individuals within a wildlife stock or population if permitted by applicable Federal law, State law, or law of the District of Columbia, a*

territory, or an Indian tribe for the purpose of protecting wildlife in decline.

(3) *FUND*.—The term “fund” means the Federal aid to wildlife restoration fund established by section 3(a)(1).

(4) *INDIAN TRIBE*.—The term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(5) *SECRETARY*.—The term “Secretary” means the Secretary of the Interior.

(6) *STATE FISH AND GAME DEPARTMENT*.—The term “State fish and game department” means any department or division of a department of another name, or commission, or 1 or more officials, of a State, the District of Columbia, a territory, or an Indian tribe empowered under the laws of the State, the District of Columbia, the territory, or the Indian tribe, respectively, to exercise the functions ordinarily exercised by a State fish and game department or a State fish and wildlife department.

(7) *TERRITORY*.—The term “territory” means Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands.

(8) *WILDLIFE*.—

(A) *IN GENERAL*.—Except as provided in subparagraph

(B), the term “wildlife” means—

(i) any species of wild, free-ranging fauna (excluding fish); and

(ii) any species of fauna (excluding fish) in a captive breeding program the object of which is to reintroduce individuals of a depleted native species into the previously occupied range of the species.

(B) *WILDLIFE CONSERVATION AND RESTORATION PROGRAM*.—For the purposes of each wildlife conservation and restoration program, the term “wildlife” includes fish and native plants.

(9) *WILDLIFE-ASSOCIATED RECREATION PROJECT*.—The term “wildlife-associated recreation project” means—

(A) a project intended to meet the demand for an outdoor activity associated with wildlife, such as hunting, fishing, and wildlife observation and photography;

(B) a project such as construction or restoration of a wildlife viewing area, observation tower, blind, platform, land or water trail, water access route, area for field trialing, or trail head; and

(C) a project to provide access for a project described in subparagraph (A) or (B).

(10) *WILDLIFE CONSERVATION AND RESTORATION PROGRAM*.—The term “wildlife conservation and restoration program” means a program developed by a State fish and game department and approved by the Secretary under section 12.

(11) *WILDLIFE CONSERVATION EDUCATION PROJECT*.—The term “wildlife conservation education project” means a project, including public outreach, that is intended to foster responsible natural resource stewardship.

(12) *WILDLIFE-RESTORATION PROJECT*.—

(A) *IN GENERAL.*—The term “wildlife-restoration project” means a project consisting of the selection, restoration, rehabilitation, or improvement of an area of land or water (including a property interest in land or water) that is adaptable as a feeding, resting, or breeding place for wildlife.

(B) *INCLUSIONS.*—The term “wildlife-restoration project” includes—

(i) acquisition of an area of land or water described in subparagraph (A) that is suitable or capable of being made suitable for feeding, resting, or breeding by wildlife;

(ii) restoration or rehabilitation of an area of land or water described in subparagraph (A) (such as through management of habitat and invasive species);

(iii) construction in an area described in subparagraph (A) of such works as are necessary to make the area available for feeding, resting, or breeding by wildlife;

(iv) such research into any problem of wildlife management as is necessary for efficient administration of wildlife resources; and

(v) such preliminary or incidental expenses as are incurred with respect to activities described in this paragraph.

**[SEC. 3. [16 U.S.C. 669b] (a)(1) An]**

**SEC. 3. FEDERAL AID TO WILDLIFE RESTORATION FUND.**

(a) *IN GENERAL.*—

(1) *FEDERAL AID TO WILDLIFE RESTORATION FUND.*—An amount equal to all revenues accruing each fiscal year (beginning with the fiscal year 1975) from any tax imposed on specified articles by sections 4161(b) and 4181 of the Internal Revenue Code of 1986 (26 U.S.C. 4161(b), 4181) shall, subject to the exemptions in section 4182 of such Code, be covered into the Federal aid to wildlife restoration fund (*other than the Account*) in the Treasury [(hereinafter referred to as the “fund”)] and is authorized to be appropriated and made available until expended to carry out the purposes of this Act<sup>2</sup> (*other than sections 4(d) and 12*). So much of such appropriation apportioned to any State for any fiscal year as remains unexpended at the close thereof is authorized to be made available for expenditure in that State until the close of the succeeding fiscal year. Any amount apportioned to any State under the provisions of this Act which is unexpended or unobligated at the end of the period during which it is available for expenditure on any project is authorized to be made available for expenditure by the Sec-

<sup>2</sup>The Act of September 6, 1950 (Chapter 896; 64 Stat. 595) in title I of chapter VII under the heading FISH AND WILDLIFE SERVICE, provides:

For carrying out the provisions of the Act of September 2, 1937, as amended (16 U.S.C. 669–669j), amounts equal to the sums credited during the next preceding fiscal year and each fiscal year thereafter to the special fund created by said Act.

This chapter may be cited as the “Interior Department Appropriation Act, 1951”.

retary of Agriculture in carrying out the provisions of the Migratory Bird Conservation Act.

[(2) There is established in the Federal aid to wildlife restoration fund a subaccount to be known as the “Wildlife Conservation and Restoration Account”. There are authorized to be appropriated for the purposes of the Wildlife Conservation and Restoration Account \$50,000,000 in fiscal year 2001 for apportionment in accordance with this Act to carry out State wildlife conservation and restoration programs. Further, interest on amounts transferred shall be treated in a manner consistent with 16 U.S.C. 669(b)(1)).]

(2) *WILDLIFE CONSERVATION AND RESTORATION ACCOUNT.*—

(A) *ESTABLISHMENT.*—*There is established in the fund an account to be known as the “Wildlife Conservation and Restoration Account”.*

(B) *FUNDING.*—

(i) *IN GENERAL.*—*There are authorized to be appropriated to the Account for apportionment to States, the District of Columbia, territories, and Indian tribes in accordance with section 4(d)—*

*(I) \$50,000,000 for fiscal year 2001; and*

*(II) \$350,000,000 for each of fiscal years 2002 through 2006.*

(ii) *AVAILABILITY.*—*Notwithstanding the matter under the heading “FEDERAL AID IN WILDLIFE RESTORATION” under the heading “FISH AND WILDLIFE SERVICE” in title I of chapter VII of the General Appropriation Act, 1951 (64 Stat. 693), the amount appropriated under clause (i)(II) for each of fiscal years 2002 through 2006 shall be available for obligation in that fiscal year.*

(b)(1) The Secretary of the Treasury shall invest in interest-bearing obligations of the United States such portion of the fund as is not, in his judgment, required for meeting a current year’s withdrawals. For purposes of such investment, the Secretary of the Treasury may—

(A) acquire obligations at the issue price and purchase outstanding obligations at the market price; and

(B) sell obligations held in the fund at the market price.

(2) The interest on obligations held in the fund—

(A) shall be credited to the fund;

(B) constitute the sums available for allocation by the Secretary under section 8 of the North American Wetlands Conservation Act; and

(C) shall become available for apportionment under this Act at the beginning of fiscal year 2006.

[(c)(1) Amounts transferred to the Wildlife Conservation and Restoration Account shall supplement, but not replace, existing funds available to the States from the sport fish restoration account and wildlife restoration account and shall be used for the development, revision, and implementation of wildlife conservation and restoration programs and should be used to address the unmet needs for a diverse array of wildlife and associated habitats, including species that are not hunted or fished, for wildlife conservation,

wildlife conservation education, and wildlife-associated recreation projects. Such funds may be used for new programs and projects as well as to enhance existing programs and projects.

[(2) Funds may be used by a State or an Indian tribe for the planning and implementation of its wildlife conservation and restoration program and wildlife conservation strategy, as provided in sections 4(d) and (e) of this Act, including wildlife conservation, wildlife conservation education, and wildlife-associated recreation projects. Such funds may be used for new programs and projects as well as to enhance existing programs and projects.]

[(3) Priority for funding from the Wildlife Conservation and Restoration Account shall be for those species with the greatest conservation need as defined by the State wildlife conservation and restoration program.]

[(d) Notwithstanding subsections (a) and (b) of this section, with respect to amounts transferred to the Wildlife Conservation and Restoration Account, so much of such amounts apportioned to any State for any fiscal year as remains unexpended at the close thereof shall remain available for obligation in that State until the close of the second succeeding fiscal year.]

**SEC. 4. [16 U.S.C. 669c] ALLOCATION AND APPORTIONMENT OF AVAILABLE AMOUNTS.**

(a) SET-ASIDE FOR EXPENSES FOR ADMINISTRATION OF THE PITTMAN-ROBERTSON WILDLIFE RESTORATION ACT.—

(1) IN GENERAL.—

(A) SET-ASIDE.—For fiscal year 2001 and each fiscal year thereafter, of the revenues (excluding interest accruing under section 3(b)) covered into the fund (*other than the Account*) for the fiscal year, the [Secretary of the Interior] *Secretary* may use not more than the available amount specified in subparagraph (B) for the fiscal year for expenses for administration incurred in implementation of this Act (*other than subsection (d) and sections 3(a)(2) and 12*), in accordance with this subsection and section 9.

(B) AVAILABLE AMOUNTS.—The available amount referred to in subparagraph (A) is—

(i) for each of fiscal years 2001 and 2002, \$9,000,000;

(ii) for fiscal year 2003, \$8,212,000; and

(iii) for fiscal year 2004 and each fiscal year thereafter, the sum of—

(I) the available amount for the preceding fiscal year; and

(II) the amount determined by multiplying—

(aa) the available amount for the preceding fiscal year; and

(bb) the change, relative to the preceding fiscal year, in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(2) PERIOD OF AVAILABILITY; APPORTIONMENT OF UNOBLIGATED AMOUNTS.—

(A) PERIOD OF AVAILABILITY.—For each fiscal year, the available amount under paragraph (1) shall remain available for obligation for use under that paragraph until the end of the fiscal year.

(B) APPORTIONMENT OF UNOBLIGATED AMOUNTS.—Not later than 60 days after the end of a fiscal year, the [Secretary of the Interior] *Secretary* shall apportion among the States any of the available amount under paragraph (1) that remains unobligated at the end of the fiscal year, on the same basis and in the same manner as other amounts made available under this Act *from the fund (other than the Account)* are apportioned among the States for the fiscal year.

(b) APPORTIONMENT TO STATES.—The [Secretary of the Interior] *Secretary*, after deducting the available amount under subsection (a), the amount apportioned under subsection (c), any amount apportioned under section 8A, and amounts provided as grants under sections 10 and 11, shall apportion the remainder of the revenue in [said fund] *the fund (other than the Account)* for each fiscal year among the several States in the following manner: One-half in the ratio which the area of each State bears to the total area of all the States, and one-half in the ratio which the number of paid hunting-license holders of each State in the second fiscal year preceding the fiscal year for which such apportionment is made, as certified to said Secretary by the State fish and game departments, bears to the total number of paid hunting-license holders of all the States. Such apportionments shall be adjusted equitably so that no State shall receive less than one-half of 1 per centum nor more than 5 per centum of the total amount apportioned. The term fiscal year as used in this Act shall be a period of twelve consecutive months from October 1 through the succeeding September 30, except that the period for enumeration of paid hunting-license holders shall be a State's fiscal or license year.

(c) One-half of the revenues accruing to the fund under this Act each fiscal year (beginning with the fiscal year 1975) from any tax imposed on pistols, revolvers, bows, and arrows shall be apportioned among the States in proportion to the ratio that the population of each State bears to the population of all the States: *Provided*, That each State shall be apportioned not more than 3 per centum and not less than 1 per centum of such revenues and Guam, the Virgin Islands, American Samoa, Puerto Rico, and the Northern Mariana Islands shall each be apportioned one-sixth of 1 per centum of such revenues. For the purpose of this subsection, population shall be determined on the basis of the latest decennial census for which figures are available, as certified by the Secretary of Commerce.

[(c)<sup>3</sup> APPORTIONMENT OF WILDLIFE CONSERVATION AND RESTORATION ACCOUNT.—

[(1) The [Secretary of the Interior] *Secretary* shall make the following apportionment from the Wildlife Conservation and Restoration Account:

<sup>3</sup>The second subsection (c) and subsection (d) were added by section 902(e) of H.R. 5548, as introduced in the 106th Congress and enacted into law by section 1(a)(2) of Public Law 106-553.

[(A) to<sup>4</sup> the District of Columbia and to the Commonwealth of Puerto Rico, each a sum equal to not more than one-half of 1 percent thereof.

[(B) to<sup>4</sup> Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands, each a sum equal to not more than one-fourth of 1 percent thereof.

[(2)(A) The [Secretary of the Interior] *Secretary*, after making the apportionment under paragraph (1), shall apportion the remaining amount in the Wildlife Conservation and Restoration Account for each fiscal year among the States in the following manner:

[(i) one-third of which is based on the ratio to which the land area of such State bears to the total land area of all such States; and

[(ii) two-thirds of which is based on the ratio to which the population of such State bears to the total population of all such States.

(B) The amounts apportioned under this paragraph shall be adjusted equitably so that no such State shall be apportioned a sum which is less than one percent of the amount available for apportionment under this paragraph for any fiscal year or more than five percent of such amount.

[(3) Of the amounts transferred to the Wildlife Conservation and Restoration Account, not to exceed 3 percent shall be available for any Federal expenses incurred in the administration and execution of programs carried out with such amounts.

[(d) WILDLIFE CONSERVATION AND RESTORATION PROGRAMS.—

[(1) Any State, through its fish and wildlife department, may apply to the [Secretary of the Interior] *Secretary* for approval of a wildlife conservation and restoration program, or for funds from the Wildlife Conservation and Restoration Account, to develop a program. To apply, a State shall submit a comprehensive plan that includes—

[(A) provisions vesting in the fish and wildlife department of the State overall responsibility and accountability for the program;

[(B) provisions for the development and implementation of—

[(i) wildlife conservation projects that expand and support existing wildlife programs, giving appropriate consideration to all wildlife;

[(ii) wildlife-associated recreation projects; and

[(iii) wildlife conservation education projects pursuant to programs under section 8(a); and

[(C) provisions to ensure public participation in the development, revision, and implementation of projects and programs required under this paragraph.

[(D) WILDLIFE CONSERVATION STRATEGY.—Within five years of the date of the initial apportionment, develop and begin implementation of a wildlife conservation strategy

<sup>4</sup> So in law. Should be "To".



based upon the best available and appropriate scientific information and data that—

【(i) uses such information on the distribution and abundance of species of wildlife, including low population and declining species as the State fish and wildlife department deems appropriate, that are indicative of the diversity and health of wildlife of the State;

【(ii) identifies the extent and condition of wildlife habitats and community types essential to conservation of species identified under paragraph (1);

【(iii) identifies the problems which may adversely affect the species identified under paragraph (1) or their habitats, and provides for priority research and surveys to identify factors which may assist in restoration and more effective conservation of such species and their habitats;

【(iv) determines those actions which should be taken to conserve the species identified under paragraph (1) and their habitats and establishes priorities for implementing such conservation actions;

【(v) provides for periodic monitoring of species identified under paragraph (1) and their habitats and the effectiveness of the conservation actions determined under paragraph (4), and for adapting conservation actions as appropriate to respond to new information or changing conditions;

【(vi) provides for the review of the State wildlife conservation strategy and, if appropriate, revision at intervals of not more than ten years;

【(vii) provides for coordination to the extent feasible the State fish and wildlife department, during the development, implementation, review, and revision of the wildlife conservation strategy, with Federal, State, and local agencies and Indian tribes that manage significant areas of land or water within the State, or administer programs that significantly affect the conservation of species identified under paragraph (1) or their habitats.

【(2) A State shall provide an opportunity for public participation in the development of the comprehensive plan required under paragraph (1).

【(3) If the Secretary finds that the comprehensive plan submitted by a State complies with paragraph (1), the Secretary shall approve the wildlife conservation and restoration program of the State and set aside from the apportionment to the State made pursuant to subsection (c) an amount that shall not exceed 75 percent of the estimated cost of developing and implementing the program.

【(4)(A) Except as provided in subparagraph (B), after the Secretary approves a State's wildlife conservation and restoration program, the Secretary may make payments on a project that is a segment of the State's wildlife conservation and restoration program as the project progresses. Such payments, including previous payments on the project, if any, shall not be

more than the United States pro rata share of such project. The Secretary, under such regulations as he may prescribe, may advance funds representing the United States pro rata share of a project that is a segment of a wildlife conservation and restoration program, including funds to develop such program.

[(B) Not more than 10 percent of the amounts apportioned to each State under this section for a State's wildlife conservation and restoration program may be used for wildlife-associated recreation.]

[(5) For purposes of this subsection, the term "State" shall include the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.]

(d) APPORTIONMENT OF AMOUNTS IN THE ACCOUNT.—

(1) DEDUCTION FOR ADMINISTRATIVE EXPENSES.—*For each fiscal year, the Secretary may deduct, for payment of administrative expenses incurred by the Secretary in carrying out activities funded from the Account, not more than 3 percent of the total amount of the Account available for apportionment for the fiscal year.*

(2) APPORTIONMENT TO DISTRICT OF COLUMBIA, TERRITORIES, AND INDIAN TRIBES.—

(A) IN GENERAL.—*For each fiscal year, after making the deduction under paragraph (1), the Secretary shall apportion from the amount in the Account remaining available for apportionment—*

*(i) to each of the District of Columbia and the Commonwealth of Puerto Rico, a sum equal to not more than  $\frac{1}{2}$  of 1 percent of that remaining amount;*

*(ii) to each of Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, a sum equal to not more than  $\frac{1}{4}$  of 1 percent of that remaining amount; and*

*(iii) to Indian tribes, a sum equal to not more than  $2\frac{1}{4}$  percent of that remaining amount, of which, subject to subparagraph (B)—*

*(I)  $\frac{1}{3}$  shall be apportioned among Indian tribes based on the ratio that the trust land area of each Indian tribe bears to the total trust land area of all Indian tribes; and*

*(II)  $\frac{2}{3}$  shall be apportioned among Indian tribes based on the ratio that the population of each Indian tribe bears to the total population of all Indian tribes.*

(B) MAXIMUM APPORTIONMENT FOR EACH INDIAN TRIBE.—*For each fiscal year, the amounts apportioned under subparagraph (A)(iii) shall be adjusted proportionately so that no Indian tribe is apportioned a sum that is more than 5 percent of the amount available for apportionment under subparagraph (A)(iii) for the fiscal year.*

(3) APPORTIONMENT TO STATES.—

(A) IN GENERAL.—*Subject to subparagraph (B), for each fiscal year, after making the deduction under para-*

graph (1) and the apportionment under paragraph (2), the Secretary shall apportion the amount in the Account remaining available for apportionment among States in the following manner:

(i)  $\frac{1}{3}$  based on the ratio that the area of each State bears to the total area of all States.

(ii)  $\frac{2}{3}$  based on the ratio that the population of each State bears to the total population of all States.

(B) MINIMUM AND MAXIMUM APPORTIONMENTS.—For each fiscal year, the amounts apportioned under this paragraph shall be adjusted proportionately so that no State is apportioned a sum that is—

(i) less than 1 percent of the amount available for apportionment under this paragraph for the fiscal year; or

(ii) more than 5 percent of that amount.

(4) USE.—

(A) IN GENERAL.—Apportionments under paragraphs (2) and (3)—

(i) shall supplement, but not supplant, funds available to States, the District of Columbia, territories, and Indian tribes—

(I) from the fund; or

(II) from the Sport Fish Restoration Account established by section 9504(a) of the Internal Revenue Code of 1986; and

(ii) shall be used to address the unmet needs for wildlife (including species that are not hunted or fished, and giving priority to species that are in decline), and the habitats on which the wildlife depend, for projects authorized to be carried out as part of wildlife conservation and restoration programs in accordance with section 12.

(B) PROHIBITION ON DIVERSION.—A State, the District of Columbia, a territory, or an Indian tribe shall not be eligible to receive an apportionment under paragraph (2) or (3) if the Secretary determines that the State, the District of Columbia, the territory, or the Indian tribe respectively, diverts funds from any source of revenue (including interest, dividends, and other income earned on the revenue) available to the State, the District of Columbia, the territory, or the Indian tribe after January 1, 2000, for conservation of wildlife for any purpose other than the administration of the State fish and game department in carrying out wildlife conservation activities.

(5) PERIOD OF AVAILABILITY OF APPORTIONMENTS.—Notwithstanding section 3(a)(1), for each fiscal year, the apportionment to a State, the District of Columbia, a territory, or an Indian tribe from the Account under this subsection shall remain available for obligation until the end of the second following fiscal year.

SEC. 5. [16 U.S.C. 669d] For each fiscal year, the [Secretary of the Interior] Secretary shall certify, at the time at which a deduction or apportionment is made, to the Secretary of the Treasury

and to each State fish and game department the sum which he has estimated to be deducted for administering this Act and the Migratory Bird Conservation Act and the sum which he has apportioned to each State. Any State desiring to avail itself of the benefits of this Act shall notify the [Secretary of the Interior] *Secretary* to this effect within sixty days after it has received the certification referred to in this section. The sum apportioned to any State which fails to notify the [Secretary of the Interior] *Secretary* as herein provided is authorized to be made available for expenditure by the [Secretary of the Interior] *Secretary* in carrying out the provisions of the Migratory Bird Conservation Act.

[SEC. 6. [16 U.S.C. 669e]

**SEC. 6. SUBMISSION AND APPROVAL OF PLANS AND PROJECTS.**

(a) Any State desiring to avail itself of the benefits of this Act (*other than sections 4(d) and 12*) shall, by its State fish and game department, submit programs or projects for wildlife restoration in either of the following two ways:

(1) The State shall prepare and submit to the [Secretary of the Interior] *Secretary* a comprehensive fish and wildlife resource management plan which shall insure the perpetuation of these resources for the economic, scientific, and recreational enrichment of the people. Such plan shall be for a period of not less than five years and be based on projections of desires and needs of the people for a period of not less than fifteen years. It shall include provisions for updating at intervals of not more than three years and be provided in a format as may be required by the [Secretary of the Interior] *Secretary*. If the [Secretary of the Interior] *Secretary* finds that such plans conform to standards established by him and approves such plans, he may finance up to 75 per centum of the cost of implementing segments of those plans meeting the purposes of [this Act from funds apportioned under this Act] *this Act (other than sections 4(d) and 12) from funds apportioned from the fund (other than the Account) under this Act* upon this approval of an annual agreement submitted to him.<sup>5</sup>

(2) A State may elect to avail itself of the benefits of this Act (*other than sections 4(d) and 12*) by its State fish and game department submitting to the [Secretary of the Interior] *Secretary* full and detailed statements of any wildlife-restoration project proposed for that State. If the [Secretary of the Interior] *Secretary* finds that such project meets with the standards set by him and approves said project, the State fish and game department shall furnish to him such surveys, plans, specifications, and estimates therefor as he may require. If the [Secretary of the Interior] *Secretary* approves the plans, specifications, and estimates for the project, he shall notify the State fish and game department and immediately set aside so much of [said fund as represents the share of the United States payable under this Act] *the fund (other than the Account) as represents the share of the United States payable from the fund (other than the Account) under this Act* on account of such project, which sum so set aside shall not exceed 75 per centum of the total estimated cost thereof.<sup>1</sup>

<sup>5</sup> Margins of paragraphs (1) and (2) so in law.

The **【Secretary of the Interior】** *Secretary* shall approve only such comprehensive plans or projects as may be substantial in character and design and the expenditure of funds hereby authorized shall be applied only to such approved comprehensive wildlife plans or projects and if otherwise applied they shall be replaced by the State before it may participate in any further apportionment under this Act *from the fund (other than the Account)*. No payment of any money apportioned under this Act *from the fund (other than the Account)* shall be made on any comprehensive wildlife plan or project until an agreement to participate therein shall have been submitted to and approved by the **【Secretary of the Interior】** *Secretary*.

(b) If the State elects to avail itself of the benefits of this Act by preparing a comprehensive fish and wildlife plan under option (1) of subsection (a) of this section, then the term "project" may be defined for the purposes of this Act as a wildlife program, all other definitions notwithstanding.

(c) Administrative costs in the form of overhead or indirect costs for services provided by State central service activities outside of the State agency having primary jurisdiction over the wildlife resources of the State which may be charged against programs or projects supported by the fund **【established by section 3 of this Act】** shall not exceed in any one fiscal year 3 per centum of the annual apportionment to the State.

**【SEC. 7. 【16 U.S.C. 669f】**

**SEC. 7. PAYMENT OF FUNDS TO STATES.**

(a) When the **【Secretary of the Interior】** *Secretary* shall find that any project approved by him has been completed or, if involving research relating to wildlife, is being conducted, in compliance with said plans and specifications, he shall cause to be paid to the proper authority of said State the amount set aside for said project. The **【Secretary of the Interior】** *Secretary* may, in his discretion, from time to time, make payments on said project as the same progresses; but these payments, including previous payments, if any, shall not be more than the United States pro rata share of the project in conformity with said plans and specifications. If a State has elected to avail itself of the benefits of this Act by preparing a comprehensive fish and wildlife plan as provided for under option (1) of subsection (a) of section 6 of this Act, and this plan has been approved by the **【Secretary of the Interior】** *Secretary*, then the *Secretary* may, in his discretion, and under such rules and regulations as he may prescribe, advance funds to the State for financing the United States pro rata share agreed upon between the State fish and game department and the *Secretary*.

(b) Any construction work and labor in each State shall be performed in accordance with its laws and under the direct supervision of the State fish and game department, subject to the inspection and approval of the **【Secretary of the Interior】** *Secretary* and in accordance with rules and regulations made pursuant to this Act. The **【Secretary of the Interior】** *Secretary* and the State fish and game department of each State may jointly determine at what times and in what amounts payments shall be made under this Act. Such payments shall be made by the *Secretary* of the Treas-

ury, on warrants drawn by the [Secretary of the Interior] *Secretary* against the said fund to such official or officials, or depository, as may be designated by the State fish and game department and authorized under the laws of the State to receive public funds of the State.

**[SEC. 8. [16 U.S.C. 669g]]**

**SEC. 8. MAINTENANCE OF PROJECTS; FUNDING OF HUNTER SAFETY PROGRAMS AND PUBLIC TARGET RANGES.**

(a) Maintenance of wildlife-restoration projects established under the provisions of this Act shall be the duty of the State in accordance with their respective laws. Beginning July 1, 1945, the term "wildlife-restoration project", as defined in section 2 of this Act, shall include maintenance of completed projects. Notwithstanding any other provisions of this Act, funds apportioned to a State under this Act may be expended by the State for management (exclusive of law enforcement and public relations) of wildlife areas and resources. [Funds from the Wildlife Conservation and Restoration Account may be used for a wildlife conservation education program, except that no such funds may be used for education efforts, projects, or programs that promote or encourage opposition to the regulated taking of wildlife.]

(b) Each State may use the funds apportioned to it under section 4(c) to pay up to 75 per centum of the costs of a hunter safety program and the construction, operation, and maintenance of public target ranges, as a part of such program. The non-Federal share of such costs may be derived from license fees paid by hunters, but not from other Federal grant programs. The Secretary shall issue not later than the 120th day after the effective date of this subsection such regulations as he deems advisable relative to the criteria for the establishment of hunter safety programs and public target ranges under this subsection.

**[SEC. 8A. [16 U.S.C. 669g-1]]**

**SEC. 8A. APPORTIONMENTS TO TERRITORIES.**

The [Secretary of the Interior] *Secretary* is authorized to cooperate with the Secretary of Agriculture of Puerto Rico, the Governor of Guam, the Governor of American Samoa, the Governor of the Commonwealth of the Northern Mariana Islands, and the Governor of the Virgin Islands, in the conduct of wildlife-restoration projects, as defined in section 2 of this Act, and hunter safety programs as provided by section 8(b) of this Act, upon such terms and conditions as he shall deem fair, just, and equitable, and is authorized to apportion to Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, out of the money available for apportionment *from the fund (other than the Account)* under this Act, such sums as he shall determine, not exceeding for Puerto Rico one-half of 1 per centum, for Guam one-sixth of 1 per centum, for American Samoa one-sixth of 1 per centum, and for the Commonwealth of the Northern Mariana Islands one-sixth of 1 per centum, and for the Virgin Islands one-sixth of 1 per centum of the total amount apportioned, in any one year, but the Secretary shall in no event require any of said cooperating agencies to pay an amount which will exceed 25 per centum of the cost of any project. Any unexpended or unobligated

balance of any apportionment made pursuant to this section shall be available for expenditure in Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands, as the case may be, in the succeeding year, on any approved project, and if unexpended or unobligated at the end of such year is authorized to be made available for expenditure by the [Secretary of the Interior] *Secretary* in carrying out the provisions of the Migratory Bird Conservation Act.

**SEC. 9. [16 U.S.C. 669h] REQUIREMENTS AND RESTRICTIONS CONCERNING USE OF AMOUNTS FOR EXPENSES FOR ADMINISTRATION.**

(a) AUTHORIZED EXPENSES FOR ADMINISTRATION.—Except as provided in subsection (b), the [Secretary of the Interior] *Secretary* may use available amounts under [section 4(a)(1)] *subsections (a)(1) and (d)(1) of section 4* only for expenses for administration that directly support the implementation of this Act that consist of—

(1) personnel costs of employees who directly administer this Act on a full-time basis;

(2) personnel costs of employees who directly administer this Act on a part-time basis for at least 20 hours each week, not to exceed the portion of those costs incurred with respect to the work hours of the employee during which the employee directly administers this Act, as those hours are certified by the supervisor of the employee;

(3) support costs directly associated with personnel costs authorized under paragraphs (1) and (2), excluding costs associated with staffing and operation of regional offices of the United States Fish and Wildlife Service and the Department of the Interior other than for the purposes of this Act;

(4) costs of determining under section 6(a) whether State comprehensive plans and projects are substantial in character and design;

(5) overhead costs, including the costs of general administrative services, that are directly attributable to administration of this Act and are based on—

(A) actual costs, as determined by a direct cost allocation methodology approved by the Director of the Office of Management and Budget for use by Federal agencies; and

(B) in the case of costs that are not determinable under subparagraph (A), an amount per full-time equivalent employee authorized under paragraphs (1) and (2) that does not exceed the amount charged or assessed for costs per full-time equivalent employee for any other division or program of the United States Fish and Wildlife Service;

(6) costs incurred in auditing, every 5 years, the wildlife and sport fish activities of each State fish and game department and the use of funds under section 6 by each State fish and game department;

(7) costs of audits under subsection (d);

(8) costs of necessary training of Federal and State full-time personnel who administer this Act to improve administration of this Act;

(9) costs of travel to States, territories, and Canada by personnel who—

(A) administer this Act on a full-time basis for purposes directly related to administration of State programs or projects; or

(B) administer grants under section 6, 10, or 11;

(10) costs of travel outside the United States (except travel to Canada), by personnel who administer this Act on a full-time basis, for purposes that directly relate to administration of this Act and that are approved directly by the Assistant Secretary for Fish and Wildlife and Parks;

(11) relocation expenses for personnel who, after relocation, will administer this Act on a full-time basis for at least 1 year, as certified by the Director of the United States Fish and Wildlife Service at the time at which the relocation expenses are incurred; and

(12) costs to audit, evaluate, approve, disapprove, and advise concerning grants under sections 6, 10, and 11.

(b) REPORTING OF OTHER USES.—

(1) IN GENERAL.—Subject to paragraph (2), if the [Secretary of the Interior] *Secretary* determines that available amounts under [section 4(a)(1)] *subsections (a)(1) and (d)(1) of section 4* should be used for an expense for administration other than an expense for administration described in subsection (a), the Secretary—

(A) shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Resources of the House of Representatives a report describing the expense for administration and stating the amount of the expense; and

(B) may use any such available amounts for the expense for administration only after the end of the 30-day period beginning on the date of submission of the report under subparagraph (A).

(2) MAXIMUM AMOUNT.—For any fiscal year, the [Secretary of the Interior] *Secretary* may use under paragraph (1) not more than \$25,000.

(c) RESTRICTION ON USE TO SUPPLEMENT GENERAL APPROPRIATIONS.—The [Secretary of the Interior] *Secretary* shall not use available amounts under subsection (b) to supplement the funding of any function for which general appropriations are made for the United States Fish and Wildlife Service or any other entity of the Department of the Interior.

(d) AUDIT REQUIREMENT.—

(1) IN GENERAL.—The Inspector General of the Department of the Interior shall procure the performance of biennial audits, in accordance with generally accepted accounting principles, of expenditures and obligations of amounts used by the [Secretary of the Interior] *Secretary* for expenses for administration incurred in implementation of this Act.

(2) AUDITOR.—

(A) IN GENERAL.—An audit under this subsection shall be performed under a contract that is awarded under competitive procedures (as defined in section 4 of the Office of



Federal Procurement Policy Act (41 U.S.C. 403)) by a person or entity that is not associated in any way with the Department of the Interior (except by way of a contract for the performance of an audit or other review).

(B) SUPERVISION OF AUDITOR.—The auditor selected under subparagraph (A) shall report to, and be supervised by, the Inspector General of the Department of the Interior, except that the auditor shall submit a copy of the biennial audit findings to the [Secretary of the Interior] *Secretary* at the time at which the findings are submitted to the Inspector General of the Department of the Interior.

(3) REPORT TO CONGRESS.—The Inspector General of the Department of the Interior shall promptly submit to the Committee on Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate—

(A) a report on the results of each audit under this subsection; and

(B) a copy of each audit under this subsection.

**SEC. 10. [16 U.S.C. 669h-1] FIREARM AND BOW HUNTER EDUCATION AND SAFETY PROGRAM GRANTS.**

(a) IN GENERAL.—

(1) GRANTS.—Of the revenues covered into the fund (*other than the Account*), \$7,500,000 for each of fiscal years 2001 and 2002, and \$8,000,000 for fiscal year 2003 and each fiscal year thereafter, shall be apportioned among the States in the manner specified in section 4(c) by the [Secretary of the Interior] *Secretary* and used to make grants to the States to be used for—

(A) in the case of a State that has not used all of the funds apportioned to the State under section 4(c) for the fiscal year in the manner described in section 8(b)—

(i) the enhancement of hunter education programs, hunter and sporting firearm safety programs, and hunter development programs;

(ii) the enhancement of interstate coordination and development of hunter education and shooting range programs;

(iii) the enhancement of bow hunter and archery education, safety, and development programs; and

(iv) the enhancement of construction or development of firearm shooting ranges and archery ranges, and the updating of safety features of firearm shooting ranges and archery ranges; and

(B) in the case of a State that has used all of the funds apportioned to the State under section 4(c) for the fiscal year in the manner described in section 8(b), any use authorized by this Act (including hunter safety programs and the construction, operation, and maintenance of public target ranges *but excluding any use authorized solely by section 12*).

(2) LIMITATION ON USE.—Under paragraph (1), a State shall not be required to use more than the amount described in section 8(b) for hunter safety programs and the construction, operation, and maintenance of public target ranges.

(b) **COST SHARING.**—The Federal share of the cost of any activity carried out with a grant under this section shall not exceed 75 percent of the total cost of the activity.

(c) **PERIOD OF AVAILABILITY; REAPPORTIONMENT.**—

(1) **PERIOD OF AVAILABILITY.**—Amounts made available and apportioned for grants under this section shall remain available only for the fiscal year for which the amounts are apportioned.

(2) **REAPPORTIONMENT.**—At the end of the period of availability under paragraph (1), the **Secretary of the Interior** *Secretary* shall apportion amounts made available that have not been used to make grants under this section among the States described in subsection (a)(1)(B) for use by those States in accordance with this Act (*other than sections 4(d) and 12*).

**SEC. 11. [16 U.S.C. 669h-2] MULTISTATE CONSERVATION GRANT PROGRAM.**

(a) **IN GENERAL.**—

(1) **AMOUNT FOR GRANTS.**—Not more than \$3,000,000 of the revenues covered into the fund (*other than the Account*) for a fiscal year shall be available to the **Secretary of the Interior** *Secretary* for making multistate conservation project grants in accordance with this section.

(2) **PERIOD OF AVAILABILITY; APPORTIONMENT.**—

(A) **PERIOD OF AVAILABILITY.**—Amounts made available under paragraph (1) shall remain available for making grants only for the first fiscal year for which the amount is made available and the following fiscal year.

(B) **APPORTIONMENT.**—At the end of the period of availability under subparagraph (A), the **Secretary of the Interior** *Secretary* shall apportion any amounts that remain available among the States in the manner specified in section 4(b) for use by the States in the same manner as funds apportioned under section 4(b).

(b) **SELECTION OF PROJECTS.**—

(1) **STATES OR ENTITIES TO BE BENEFITED.**—A project shall not be eligible for a grant under this section unless the project will benefit—

(A) at least 26 States;

(B) a majority of the States in a region of the United States Fish and Wildlife Service; or

(C) a regional association of State fish and game departments.

(2) **USE OF SUBMITTED PRIORITY LIST OF PROJECTS.**—The **Secretary of the Interior** *Secretary* may make grants under this section only for projects identified on a priority list of **wildlife restoration projects** *wildlife-restoration projects* described in paragraph (3).

(3) **PRIORITY LIST OF PROJECTS.**—A priority list referred to in paragraph (2) is a priority list of wildlife restoration projects that the International Association of Fish and Wildlife Agencies—

(A) prepares through a committee comprised of the heads of State fish and game departments (or their designees), in consultation with—

- (i) nongovernmental organizations that represent conservation organizations;
- (ii) sportsmen organizations; and
- (iii) industries that support or promote hunting, trapping, recreational shooting, bow hunting, or archery;

(B) approves by vote of a majority of the heads of State fish and game departments (or their designees); and

(C) not later than October 1 of each fiscal year, submits to the Assistant Director for Wildlife and Sport Fish Restoration Programs.

(4) PUBLICATION.—The Assistant Director for Wildlife and Sport Fish Restoration Programs shall publish in the Federal Register each priority list submitted under paragraph (3)(C).

(c) ELIGIBLE GRANTEES.—

(1) IN GENERAL.—The [Secretary of the Interior] *Secretary* may make a grant under this section only to—

(A) a State or group of States;

(B) the United States Fish and Wildlife Service, or a State or group of States, for the purpose of carrying out the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation; and

(C) subject to paragraph (2), a nongovernmental organization.

(2) NONGOVERNMENTAL ORGANIZATIONS.—

(A) IN GENERAL.—Any nongovernmental organization that applies for a grant under this section shall submit with the application to the International Association of Fish and Wildlife Agencies a certification that the organization—

(i) will not use the grant funds to fund, in whole or in part, any activity of the organization that promotes or encourages opposition to the regulated hunting or trapping of wildlife; and

(ii) will use the grant funds in compliance with subsection (d).

(B) PENALTIES FOR CERTAIN ACTIVITIES.—Any nongovernmental organization that is found to use grant funds in violation of subparagraph (A) shall return all funds received under this section and be subject to any other applicable penalties under law.

(d) USE OF GRANTS.—A grant under this section shall not be used, in whole or in part, for an activity, project, or program that promotes or encourages opposition to the regulated hunting or trapping of wildlife.

(e) NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any activity carried out under this section.

## **SEC. 12. WILDLIFE CONSERVATION AND RESTORATION PROGRAMS.**

(a) DEFINITION OF STATE.—*In this section, the term “State” means a State, the District of Columbia, a territory, and an Indian tribe.*

(b) WILDLIFE CONSERVATION AND RESTORATION PROGRAMS.—

(1) *IN GENERAL.*—A State, acting through the State fish and game department, may apply to the Secretary—

(A) for approval of a wildlife conservation and restoration program; and

(B) to receive funds from the apportionment to the State under section 4(d) to develop and implement the wildlife conservation and restoration program.

(2) *APPLICATION CONTENTS.*—As part of an application under paragraph (1), a State shall provide documentation demonstrating that the wildlife conservation and restoration program of the State includes—

(A) provisions vesting in the State fish and game department overall responsibility and accountability for the wildlife conservation and restoration program of the State;

(B) provisions to identify which species in the State are in greatest need of conservation; and

(C) provisions for the development, implementation, and maintenance, under the wildlife conservation and restoration program, of—

(i) wildlife conservation projects—

(I) that expand and support other wildlife programs; and

(II) that are selected giving appropriate consideration to all species of wildlife in accordance with subsection (c);

(ii) wildlife-associated recreation projects; and

(iii) wildlife conservation education projects.

(3) *PUBLIC PARTICIPATION.*—A State shall provide an opportunity for public participation in the development, implementation, and revision of the wildlife conservation and restoration program of the State and projects carried out under the wildlife conservation and restoration program.

(4) *APPROVAL FOR FUNDING.*—If the Secretary finds that the application submitted by a State meets the requirements of paragraph (2), the Secretary shall approve the wildlife conservation and restoration program of the State.

(5) *PAYMENT OF FEDERAL SHARE.*—

(A) *IN GENERAL.*—Subject to subparagraph (D), after the Secretary approves a wildlife conservation and restoration program of a State, the Secretary may use the apportionment to the State under section 4(d) to pay the Federal share of—

(i) the cost of implementation of the wildlife conservation and restoration program; and

(ii) the cost of development, implementation, and maintenance of each project that is part of the wildlife conservation and restoration program.

(B) *FEDERAL SHARE.*—The Federal share shall not exceed 75 percent.

(C) *TIMING OF PAYMENTS.*—Under such regulations as the Secretary may promulgate, the Secretary—

(i) shall make payments to a State under subparagraph (A) during the course of a project; and

(ii) may advance funds to pay the Federal share of the costs described in subparagraph (A).

(D) **MAXIMUM AMOUNT FOR CERTAIN ACTIVITIES.**—

(i) **IN GENERAL.**—Notwithstanding section 8(a), except as provided in clause (ii), for each fiscal year, not more than 10 percent of the apportionment to a State under section 4(d) for the wildlife conservation and restoration program of the State may be used for each of the following activities:

(I) Law enforcement activities.

(II) Wildlife-associated recreation projects.

(ii) **EXCEPTION.**—For any fiscal year, the limitation under clause (i) shall not apply to law enforcement activities or wildlife-associated recreation projects in a State if the State demonstrates to the satisfaction of the Secretary that law enforcement activities or wildlife-associated recreation projects, respectively, have a significant impact on high priority conservation activities.

(6) **METHOD OF IMPLEMENTATION OF PROJECTS.**—A State may implement a project that is part of the wildlife conservation and restoration program of the State through—

(A) a grant made by the State to, or a contract entered into by the State with—

(i) any Federal, State, or local agency (including an agency that gathers, evaluates, and disseminates information on wildlife and wildlife habitats);

(ii) an Indian tribe;

(iii) a wildlife conservation organization, sportsmen's organization, land trust, or other nonprofit organization; or

(iv) an outdoor recreation or conservation education entity; and

(B) any other method determined appropriate by the State.

(c) **WILDLIFE CONSERVATION STRATEGY.**—

(1) **IN GENERAL.**—Not later than 5 years after the date of the initial apportionment to a State under section 4(d), to be eligible to continue to receive funds from the apportionment to the State under section 4(d), the State shall, as part of the wildlife conservation and restoration program of the State, develop and implement a wildlife conservation strategy that is based on the best available and appropriate scientific information.

(2) **REQUIRED ELEMENTS.**—A wildlife conservation strategy shall—

(A) use such information on the distribution and abundance of species of wildlife as is indicative of the diversity and health of the wildlife of the State, including such information on species with low populations and declining numbers of individuals as the State fish and game department determines to be appropriate;

(B) identify the extent and condition of wildlife habitats and community types essential to conservation of the species of wildlife of the State identified using information described in subparagraph (A);

- (C)(i) identify the problems that may adversely affect—
    - (I) the species identified using information described in subparagraph (A); and
    - (II) the habitats of the species identified under subparagraph (B); and
  - (ii) provide for high priority research and surveys to identify factors that may assist in the restoration and more effective conservation of—
    - (I) the species identified using information described in subparagraph (A); and
    - (II) the habitats of the species identified under subparagraph (B);
  - (D)(i) describe which actions should be taken to conserve—
    - (I) the species identified using information described in subparagraph (A); and
    - (II) the habitats of the species identified under subparagraph (B); and
  - (ii) establish priorities for implementing those actions; and
  - (E) provide for—
    - (i) periodic monitoring of—
      - (I) the species identified using information described in subparagraph (A);
      - (II) the habitats of the species identified under subparagraph (B); and
      - (III) the effectiveness of the conservation actions described under subparagraph (D); and
    - (ii) adaptation of conservation actions as appropriate to respond to new information or changing conditions.
- (3) **PUBLIC PARTICIPATION IN DEVELOPMENT OF STRATEGY.**—A State shall provide an opportunity for public participation in the development and implementation of the wildlife conservation strategy of the State.
- (4) **REVIEW AND REVISION.**—Not less often than once every 7 years, a State shall review the wildlife conservation strategy of the State and make any appropriate revisions.
- (5) **COORDINATION.**—During the development, implementation, review, and revision of the wildlife conservation strategy of the State, a State shall provide for coordination between—
- (A) the State fish and game department; and
  - (B) Federal, State, and local agencies and Indian tribes that—
    - (i) manage significant areas of land or water within the State; or
    - (ii) administer programs that significantly affect the conservation of
      - (I) the species identified using information described in paragraph (2)(A); or
      - (II) the habitats of the species identified under paragraph (2)(B).
- (6) **EFFECT OF FAILURE TO DEVELOP OR CARRY OUT WILDLIFE CONSERVATION STRATEGY.**—

(A) *IN GENERAL.*—If, in any fiscal year, a State fails to develop, implement, obtain the approval of the Secretary for, review, or revise a wildlife conservation strategy as required under this subsection, the apportionment to the State under section 4(d) for the following fiscal year shall be reapportioned in accordance with section 4(d) to States that carry out those activities as required under this subsection.

(B) *CORRECTION OF DEFICIENCIES.*—If a State whose apportionment for a fiscal year is reapportioned under subparagraph (A) subsequently carries out the activities described in that subparagraph as required under this subsection, the State shall be eligible to receive an apportionment under section 4(d) for the fiscal year following the fiscal year of the reapportionment.

(d) *USE OF FUNDS FOR NEW AND EXISTING PROGRAMS AND PROJECTS.*—Funds made available from the Account to carry out activities under this section may be used—

(1) to carry out new programs and projects; and

(2) to enhance existing programs and projects.

(e) *PRIORITY FOR FUNDING.*—In using funds made available from the Account to carry out activities under this section, a State shall give priority to species that are in greatest need of conservation—

(1) as evidenced by—

(A) a low population and declining numbers of individuals;

(B) a current threat or reasonably anticipated threat to the habitat of the species; or

(C) any other similar indicator of need of conservation;

or

(2) as identified in the wildlife conservation strategy of the State under subsection (c).

(f) *LIMITATION ON USE OF FUNDS FOR WILDLIFE CONSERVATION EDUCATION PROJECTS.*—Funds made available from the Account to carry out wildlife conservation education projects shall not be used to fund, in whole or in part, any activity that promotes or encourages opposition to the regulated hunting or trapping of wildlife.

**[SEC. [12.] 13. [16 U.S.C. 669i]**

### **SEC. 13. RULES AND REGULATIONS.**

The Secretary of Agriculture<sup>6</sup> is authorized to make rules and regulations for carrying out the provisions of this Act.

### **SEC. 14. NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.**

Coordination with State fish and game department personnel or with personnel of any other agency of a State, the District of Columbia, a territory, or an Indian tribe under this Act shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

<sup>6</sup>Reorganization Plan No. II of 1939, transferred functions of the Secretary of Agriculture relating to conservation of wildlife, game, and migratory birds to the [Secretary of the Interior] Secretary.

**SEC. [13.] 15. [16 U.S.C. 669 note] SHORT TITLE.**

This Act may be cited as the “Pittman-Robertson Wildlife Restoration Act”.

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**ENDANGERED SPECIES ACT OF 1973**

**[Public Law 93–205, Approved Dec. 28, 1973, 87 Stat. 884]**

[Amended through Public Law 106–201, May 18, 2000]

AN ACT To provide for the conservation of endangered and threatened species of fish, wildlife, and plants, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [16 U.S.C. 1531 note] That this Act may be cited as the “Endangered Species Act of 1973”.*

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**FINDINGS, PURPOSES, AND POLICY**

**SEC. 2. [16 U.S.C. 1531] (a) FINDINGS.—**The Congress finds and declares that—

\* \* \* \* \*

**[CONFORMING AMENDMENTS]**

**[SEC. 13.**

**[** (a) Subsection 4(c) of the Act of October 15, 1966 (80 Stat. 928, 16 U.S.C. 668dd(c)), is further amended by revising the second sentence thereof to read as follows: “With the exception of endangered species and threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973 in States wherein a cooperative agreement does not exist pursuant to section 6(c) of that Act, nothing in this Act, shall be construed to authorize



the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the system.”

[(b) Subsection 10(a) of the Migratory Bird Conservation Act (45 Stat. 1224, 16 U.S.C. 715i(a)) and subsection 401(a) of the Act of June 15, 1935 (49 Stat. 383, 16 U.S.C. 715s(a)) are each amended by striking out “threatened with extinction,” and inserting in lieu thereof the following: “listed pursuant to section 4 of the Endangered Species Act of 1973 as endangered species or threatened species.”

[(c) Section 7(a)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–9(a)(1)) is amended by striking out:

["THREATENED SPECIES.—For any national area which may be authorized for the preservation of species of fish or wildlife that are threatened with extinction.” and inserting in lieu thereof the following:

["ENDANGERED SPECIES AND THREATENED SPECIES.—For lands, waters, or interests therein, the acquisition of which is authorized under section 5(a) of the Endangered Species Act of 1973, needed for the purpose of conserving endangered or threatened species of fish or wildlife or plants.”

[(d) The first sentence of section 2 of the Act of September 28, 1962, amended (76 Stat. 653, 16 U.S.C. 460k–1), is amended to read as follows:

["The Secretary is authorized to acquire areas of land, or interests therein, which are suitable for—

["(1) incidental fish and wildlife-oriented recreational development;

["(2) the protection of natural resources;

["(3) the conservation of endangered species or threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973; or

["(4) carrying out two or more of the purposes set forth in paragraphs (1) through (3) of this section, and are adjacent to, or within, the said conservation areas, except that the acquisition of any land or interest therein pursuant to this section shall be accomplished only with such funds as may be appropriated therefor by the Congress or donated for such purposes, but such property shall not be acquired with funds obtained from the sale of Federal migratory bird hunting stamps.”

[(e) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) is amended—

[(1) by striking out “Endangered Species Conservation Act of 1969” in section 3(1)(B) thereof and inserting in lieu thereof the following: “Endangered Species Act of 1973”;

[(2) by striking out “pursuant to the Endangered Species Conservation Act of 1969” in section 101(a)(3)(B) thereof and inserting in lieu thereof the following: “or threatened species pursuant to the Endangered Species Act of 1973”.

[(3) by striking out “endangered under the Endangered Species Conservation Act of 1969” in section 102(b)(3) thereof and inserting in lieu thereof the following: “an endangered species or threatened species pursuant to the Endangered Species Act of 1973”; and

[(4) by striking out “of the Interior and revisions of the Endangered Species List, authorized by the Endangered Species Conservation Act of 1969,” in section 202(a)(6) thereof and inserting in lieu thereof the following: “such revisions of the endangered species list and threatened species list published pursuant to section 4(c)(1) of the Endangered Species Act of 1973”.

[(f) Section 2(1) of the Federal Environmental Pesticide Control Act of 1972 (Public Law 92–516) is amended by striking out the words “by the Secretary of the Interior under Public Law 91–135” and inserting in lieu thereof the words “or threatened by the Secretary pursuant to the Endangered Species Act of 1973”.]

**SEC. 13. ENDANGERED AND THREATENED SPECIES RECOVERY ASSISTANCE.**

(a) **DEFINITIONS.**—*In this section:*

(1) **CONSERVATION ENTITY.**—

(A) **IN GENERAL.**—*The term “conservation entity” means a nonprofit entity that engages in activities to conserve or protect fish, wildlife, or plants, or habitats for fish, wildlife, or plants.*

(B) **INCLUSIONS.**—*The term “conservation entity” includes—*

- (i) *a sportsmen’s organization;*
- (ii) *an environmental organization; and*
- (iii) *a land trust.*

(2) **FARM OR RANCH.**—*The term “farm or ranch” means an activity with respect to which not less than \$1,000 in income is derived from agricultural production within a census year.*

(3) **PERSON.**—*The term “person” includes a conservation entity.*

(4) **SMALL LANDOWNER.**—*The term “small landowner” means—*

(A) *an individual who owns land in a State that—*

(i) *is used as a farm or ranch; and*

(ii) *has an acreage of not more than the greater of—*

(I) *50 percent of the average acreage of a farm or ranch in the State; or*

(II) *160 acres of land; and*

(B) *an individual who owns land that—*

(i) *is not used as a farm or ranch; and*

(ii) *has an acreage of not more than 160 acres.*

(5) **SPECIES AT RISK.**—*The term “species at risk” means a species that may become an endangered species or a threatened species if conservation actions are not taken to conserve and protect the species.*

(6) **SPECIES RECOVERY AGREEMENT.**—*The term “species recovery agreement” means an endangered and threatened species recovery agreement entered into under subsection (c).*

(b) **ENDANGERED AND THREATENED SPECIES RECOVERY ASSISTANCE.**—

(1) **FINANCIAL ASSISTANCE.**—*The Secretary may provide financial assistance to any person for development and implementation of an endangered and threatened species recovery*

agreement entered into by the Secretary and the person under subsection (c).

(2) *PRIORITY.*—In providing financial assistance under this subsection, the Secretary shall give priority to the development and implementation of species recovery agreements that—

(A) implement actions identified under recovery plans approved by the Secretary under section 4(f);

(B) have the greatest potential for contributing to the recovery of endangered species, threatened species, or species at risk;

(C) benefit multiple endangered species, threatened species, or species at risk;

(D) carry out activities specified in State or local conservation plans; or

(E) are proposed by small landowners.

(3) *PROHIBITION ON ASSISTANCE FOR REQUIRED ACTIVITIES.*—The Secretary shall not provide financial assistance under this subsection for any activity that is required—

(A) by a permit issued under section 10(a)(1)(B);

(B) by an incidental taking statement provided under section 7(b)(4); or

(C) under another provision of this Act, any other Federal law, or any State law.

(4) *PAYMENTS UNDER OTHER PROGRAMS.*—

(A) *OTHER PAYMENTS NOT AFFECTED.*—Financial assistance provided to a person under this subsection shall be in addition to, and shall not affect, the total amount of payments that the person is eligible to receive under—

(i) the conservation reserve program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.);

(ii) the wetlands reserve program established under subchapter C of that chapter (16 U.S.C. 3837 et seq.);

(iii) the environmental quality incentives program established under chapter 4 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3839aa et seq.); or

(iv) the Wildlife Habitat Incentive Program established under section 387 of the Federal Agriculture Improvement and Reform Act of 1996 (16 U.S.C. 3836a).

(B) *LIMITATION.*—A person shall not receive financial assistance under a species recovery agreement for any activity for which the person receives a payment under a program referred to in subparagraph (A) unless the species recovery agreement imposes on the person a financial or management obligation in addition to the obligations of the person under that program.

(c) *ENDANGERED AND THREATENED SPECIES RECOVERY AGREEMENTS.*—

(1) *IN GENERAL.*—In accordance with this subsection, the Secretary may enter into endangered and threatened species recovery agreements.

(2) *REQUIRED TERMS.*—*The Secretary shall include in each species recovery agreement with a person provisions that—*

*(A) require the person—*

*(i) to carry out on real property owned or leased by the person, or on Federal or State land, activities (such as activities that, consistent with applicable State water law (including regulations), make water available for endangered species, threatened species, or species at risk) that—*

*(I) are not required by Federal or State law; and*

*(II) contribute to the recovery of an endangered species, threatened species, or species at risk; or*

*(ii) to refrain from carrying out on real property owned or leased by the person otherwise lawful activities that would inhibit the recovery of an endangered species, threatened species, or species at risk, such as refraining from carrying out activities that, consistent with applicable State water law (including regulations), directly reduce the availability of water for such a species;*

*(B) describe the real property referred to in clauses (i) and (ii) of subparagraph (A);*

*(C) specify species recovery goals for the species recovery agreement, and activities for attaining the goals;*

*(D)(i) require the person to make demonstrable progress in accomplishing the species recovery goals; and*

*(ii) specify a schedule for implementation of the species recovery agreement;*

*(E) specify actions to be taken by the Secretary or the person to monitor the effectiveness of the species recovery agreement in attaining the species recovery goals;*

*(F) require the person to notify the Secretary if any right or obligation of the person under the species recovery agreement is assigned to any other person;*

*(G) require the person to notify the Secretary if any term of the species recovery agreement is breached;*

*(H) specify the date on which the species recovery agreement takes effect and the period of time during which the species recovery agreement shall remain in effect;*

*(I) schedule the disbursement of financial assistance provided under subsection (b) for implementation of the species recovery agreement, on an annual or other basis during the period in which the species recovery agreement is in effect, based on the schedule for implementation required under subparagraph (D)(ii); and*

*(J) provide that the Secretary shall, subject to paragraph (4)(C), terminate the species recovery agreement if the person fails to carry out the species recovery agreement.*

(3) *REVIEW AND APPROVAL OF PROPOSED SPECIES RECOVERY AGREEMENTS.*—*On submission by any person of a proposed species recovery agreement under this subsection, the Secretary shall—*

(A) review the proposed species recovery agreement and determine whether the species recovery agreement—

- (i) complies with this subsection; and
- (ii) will contribute to the recovery of each endangered species, threatened species, or species at risk that is the subject of the proposed species recovery agreement;

(B) propose to the person any additional provisions that are necessary for the species recovery agreement to comply with this subsection; and

(C) if the Secretary determines that the species recovery agreement complies with this subsection, enter into the species recovery agreement with the person.

(4) **MONITORING OF IMPLEMENTATION OF SPECIES RECOVERY AGREEMENTS.**—The Secretary shall—

(A) periodically monitor the implementation of each species recovery agreement;

(B) based on the information obtained from the monitoring, annually or otherwise disburse financial assistance under this section to implement the species recovery agreement as the Secretary determines to be appropriate under the species recovery agreement; and

(C) if the Secretary determines that the person is not making demonstrable progress in accomplishing the species recovery goals specified under paragraph (2)(C)—

- (i) propose 1 or more modifications to the species recovery agreement that are necessary to accomplish the species recovery goals; or
- (ii) terminate the species recovery agreement.

(5) **LIMITATION WITH RESPECT TO FEDERAL OR STATE LAND.**—The Secretary may enter into a species recovery agreement with a person with respect to Federal or State land only if the United States or the State, respectively, is a party to the species recovery agreement.

(d) **ALLOCATION OF FUNDS.**—Of the amounts made available to carry out this section for a fiscal year—

(1) 1/3 shall be made available to provide financial assistance for development and implementation of species recovery agreements by small landowners, subject to subparagraphs (A) through (D) of subsection (b)(2);

(2) 1/3 shall be made available to provide financial assistance for development and implementation of species recovery agreements on public land, subject to subparagraphs (A) through (D) of subsection (b)(2); and

(3) 1/3 shall be made available to provide financial assistance for development and implementation of species recovery agreements, subject to subsection (b)(2).

(e) **LIMITATION ON ADMINISTRATIVE EXPENSES.**—Of the amounts made available to carry out this section for a fiscal year, not more than 3 percent may be used to pay administrative expenses incurred in carrying out this section.

#### REPEALER

SEC. 14. [Section 14 consists of repeals of provisions of law.]

## AUTHORIZATION OF APPROPRIATIONS

SEC. 15. [16 U.S.C. 1542] (a) IN GENERAL.—Except as provided in subsection (b), (c), and (d), there are authorized to be appropriated—

(1) not to exceed \$35,000,000 for fiscal year 1988, \$36,500,000 for fiscal year 1989, \$38,000,000 for fiscal year 1990, \$39,500,000 for fiscal year 1991, and \$41,500,000 for fiscal year 1992 to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act;

(2) not to exceed \$5,750,000 for fiscal year 1988, \$6,250,000 for each of fiscal years 1989 and 1990, and \$6,750,000 for each of fiscal year 1991 and 1992 to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act; and

(3) not to exceed \$2,200,000 for fiscal year 1988, \$2,400,000 for each of fiscal years 1989 and 1990, and \$2,600,000 for each of fiscal years 1991 and 1992, to enable the Department of Agriculture to carry out its functions and responsibilities with respect to the enforcement of this Act and the Convention which pertain to the importation or exportation of plants.

(b) EXEMPTIONS FROM ACT.—There are authorized to be appropriated to the Secretary to assist him and the Endangered Species Committee in carrying out their functions under sections<sup>1</sup> 7 (e), (g), and (h) not to exceed \$600,000 for each of fiscal years 1988, 1989, 1990, 1991, and 1992.

(c) CONVENTION IMPLEMENTATION.—There are authorized to be appropriated to the Department of the Interior for purposes of carrying out section 8A(e) not to exceed \$400,000 for each of fiscal years 1988, 1989, and 1990, and \$500,000 for each of fiscal years 1991 and 1992, and such sums shall remain available until expended.

(d) *ENDANGERED AND THREATENED SPECIES RECOVERY ASSISTANCE*.—There is authorized to be appropriated to carry out section 13 \$150,000,000 for each of fiscal years 2002 through 2006.

## EFFECTIVE DATE

SEC. 16. [16 U.S.C. 1531 note] This Act shall take effect on the date of its enactment.

## MARINE MAMMAL PROTECTION ACT OF 1972

SEC. 17. [16 U.S.C. 1543] Except as otherwise provided in this Act, no provision of this Act shall take precedence over any more restrictive conflicting provision of the Marine Mammal Protection Act of 1972.

## ANNUAL COST ANALYSIS BY THE FISH AND WILDLIFE SERVICE

SEC. 18. [16 U.S.C. 1544] Notwithstanding section 3003 of Public Law 104–66 (31 U.S.C. 1113 note; 109 Stat. 734), on or before January 15, 1990, and each January 15 thereafter, the Sec-

<sup>1</sup> So in original. Probably should be “section”.

retary of the Interior, acting through the Fish and Wildlife Service, shall submit to the Congress an annual report covering the preceding fiscal year which shall contain—

(1) an accounting on a species by species basis of all reasonably unidentifiable Federal expenditures made primarily for the conservation of endangered or threatened species pursuant to this Act; and

(2) an accounting on a species by species basis for all reasonably identifiable expenditures made primarily for the conservation of endangered or threatened species pursuant to this Act by states receiving grants under section 6.

## **DINGELL-JOHNSON SPORT FISH RESTORATION ACT**

**[Chapter 658, Approved Aug. 9, 1950, 64 Stat. 430]**

[Amended through Public Law 106–408, Nov. 1, 2000]

AN ACT To provide that the United States shall aid the States in fish restoration and management projects, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [16 U.S.C. 777]* That (a) the Secretary of the Interior<sup>7</sup> is authorized and directed to cooperate with the States through their respective State fish and game departments in fish restoration and management projects as hereinafter set forth: No money apportioned under this Act to any State, except as hereinafter provided, shall be expended therein until its legislature, or other State agency authorized by the State constitution to make laws governing the conservation of fish, shall have assented to the provisions of this Act and shall have passed laws for the conservation of fish, which shall include a prohibition against the diversion of license fees paid by fishermen for any other purpose than the administration of said State fish and game department, except that, until the final adjournment of the first regular session of the legislature held after passage of this Act, the assent of the governor of the State shall be sufficient. The Secretary of the interior and the State fish and game department of each State accepting the benefits of this Act shall agree upon the fish restoration and management projects to be aided in such State under the terms of this Act, and all projects shall conform to the standards fixed by the Secretary of the Interior.

(b) ALLOCATION OF AMOUNTS BY COASTAL STATES BETWEEN MARINE FISH PROJECTS AND FRESHWATER FISH PROJECTS.—

(1) IN GENERAL.—Subject to paragraph (2), each coastal State, to the extent practicable, shall equitably allocate

<sup>7</sup> Transfer of functions to Secretary of Commerce from Secretary of the Interior in view of: creation of National Oceanic and Atmospheric Administration in Department of Commerce and Office of Administrator of such Administration; abolition of Bureau of Commercial Fisheries in Department of the Interior and Office of Director of such Bureau; transfers of functions, including functions formerly vested by law in Secretary of the Interior or Department of the Interior which were administered through Bureau of Commercial Fisheries or were primarily related to such Bureau, exclusive of certain enumerated functions with respect to Great Lakes fishery research, Missouri River Reservoir research, Gulf-Breeze Biological Laboratory, and Trans-Alaska pipeline investigations; and transfer of marine sport fish program of Bureau of Sport Fisheries and Wildlife by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to Title 5, Government Organization and Employees.

amounts apportioned to such State under this Act between marine fish projects and freshwater fish projects in the same proportion as the estimated number of resident marine anglers and the estimated number of resident freshwater anglers, respectively, bear to the estimated number of all resident anglers in that State.

(2) PRESERVATION OF FRESHWATER PROJECT ALLOCATION AT 1988 LEVEL.—(A) Subject to subparagraph (B), the amount allocated by a State pursuant to this subsection to freshwater fish projects for each fiscal year shall not be less than the amount allocated by such State to such projects for fiscal year 1988.

(B) Subparagraph (A) shall not apply to a State with respect to any fiscal year for which the amount apportioned to the State under this Act is less than the amount apportioned to the State under this Act for fiscal year 1988.

(3) COASTAL STATE DEFINED.—As used in this subsection, the term “coastal State” means any one of the States of Alabama, Alaska, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Virginia, and Washington. The term also includes the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

SEC. 2. [16 U.S.C. 777a] For purposes of this Act—

(1) the term “fish restoration and management projects” shall be construed to mean projects designed for the restoration and management of all species of fish which have material value in connection with sport or recreation in the marine and/or fresh waters of the United States and include—

(A) such research into problems of fish management and culture as may be necessary to efficient administration affecting fish resources;

(B) the acquisition of such facts as are necessary to guide and direct the regulation of fishing by law, including the extent of the fish population, the drain on the fish supply from fishing and/or natural causes, the necessity of legal regulation of fishing, and the effects of any measures of regulation that are applied;

(C) the formulation and adoption of plans of restocking waters with food and game fishes according to natural areas or districts to which such plans are applicable, together with the acquisition of such facts as are necessary to the formulation, execution, and testing the efficacy of such plans;

(D) the selection, restoration, rehabilitation, and improvement of areas of water or land adaptable as hatching, feeding, resting, or breeding places for fish, including acquisition by purchase, condemnation, lease, or gift of such areas or estates or interests therein as are suitable or capable of being made suitable therefor, and the construction thereon or therein of such works as may be necessary to make them available for such purposes, and such prelimi-



nary or incidental costs and expenses as may be incurred in and about such works; the term "State fish and game department" shall be construed to mean and include any department or division of department of another name, or commission, or official or officials, of a State empowered under its laws to exercise the functions ordinarily exercised by a State fish and game department;

(2) the term "outreach and communications program" means a program to improve communications with anglers, boaters, and the general public regarding angling and boating opportunities, to reduce barriers to participation in these activities, to advance adoption of sound fishing and boating practices, to promote conservation and the responsible use of the Nation's aquatic resources, and to further safety in fishing and boating; and

(3) the term "aquatic resource education program" means a program designed to enhance the public's understanding of aquatic resources and sportfishing, and to promote the development of responsible attitudes and ethics toward the aquatic environment.

SEC. 3. [16 U.S.C. 777b] To carry out the provisions of this Act for fiscal years after September 30, 1984, there are authorized to be appropriated from the Sport Fish Restoration Account established by section 9504(a) of the Internal Revenue Code of 1986 the amounts paid, transferred, or otherwise credited to that Account.<sup>8</sup> For purposes of the provision of the Act of August 31, 1951, which refers to this section, such amounts shall be treated as the amounts that are equal to the revenues described in this section. The appropriation made under the provisions of this section for each fiscal year shall continue available during the succeeding fiscal year. So much of such appropriation apportioned to any State for any fiscal year as remains unexpended at the close thereof is authorized to be made available for expenditure in that State until the close of the succeeding fiscal year. Any amount apportioned to any State under the provisions of this Act which is unexpended or unobligated at the end of the period during which it is available for expenditure on any project is authorized to be made available for expenditure by the Secretary of the Interior in carrying on the research program of the Fish and Wildlife Service in respect to fish of material value for sport and recreation.

SEC. 4. [16 U.S.C. 777c] (a) The Secretary of the Interior shall distribute 18 per centum of each annual appropriation made in accordance with the provisions of section 3 of this Act as provided in the Coastal Wetlands Planning, Protection,<sup>9</sup> and Restoration Act (title III, Public Law 101-646). Notwithstanding the provisions of

<sup>8</sup>The Act of August 31, 1951 (Chapter 375; 65 Stat. 261) in title I under the heading FISH AND WILDLIFE SERVICE, provides:

For carrying out the provisions of the Act of August 9, 1950 (Public Law 681), amounts equal to the revenues described in section 3 of said Act and credited during the next preceding fiscal year and each fiscal year thereafter, to remain available until expended.

<sup>9</sup>Transfer of functions to Secretary of Commerce from Secretary of the Interior by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, see note set out under section 777 of this title.

section 3 of this Act, such sums shall remain available to carry out such Act through fiscal year 2009.

(b) USE OF BALANCE AFTER DISTRIBUTION.—

(1) FISCAL YEAR 1998.—In fiscal year 1998, an amount equal to \$20,000,000 of the balance remaining after the distribution under subsection (a) shall be transferred to the Secretary of Transportation and shall be expended for State recreational boating safety programs under section 13106(a)(1) of title 46, United States Code.

(2) FISCAL YEAR 1999.—For fiscal year 1999, of the balance of each annual appropriation remaining after making the distribution under subsection (a), an amount equal to \$74,000,000, reduced by 82 percent of the amount appropriated for that fiscal year from the Boat Safety Account of the Aquatic Resources Trust Fund established by section 9504 of the Internal Revenue Code of 1986 to carry out the purposes of section 13106(a) of title 46, United States Code, shall be used as follows:

(A) \$10,000,000 shall be available to the Secretary of the Interior for 3 fiscal years for obligation for qualified projects under section 5604(c) of the Clean Vessel Act of 1992 (33 U.S.C. 1322 note).

(B) The balance remaining after the application of subparagraph (A) shall be transferred to the Secretary of Transportation and shall be expended for State recreational boating safety programs under section 13106 of title 46, United States Code.

(3) FISCAL YEARS 2000–2003.—For each of fiscal years 2000 through 2003, of the balance of each annual appropriation remaining after making the distribution under subsection (a), an amount equal to \$82,000,000, reduced by 82 percent of the amount appropriated for that fiscal year from the Boat Safety Account of the Aquatic Resources Trust Fund established by section 9504 of the Internal Revenue Code of 1986 to carry out the purposes of section 13106(a) of title 46, United States Code, shall be used as follows:

(A) \$10,000,000 shall be available for each fiscal year to the Secretary of the Interior for 3 fiscal years for obligation for qualified projects under section 5604(c) of the Clean Vessel Act of 1992 (33 U.S.C. 1322 note).

(B) \$8,000,000 shall be available for each fiscal year to the Secretary of the Interior for 3 fiscal years for obligation for qualified projects under section 7404(d) of the Sportfishing and Boating Safety Act of 1998.

(C) The balance remaining after the application of subparagraphs (A) and (B) shall be transferred for each such fiscal year to the Secretary of Transportation and shall be expended for State recreational boating safety programs under section 13106 of title 46, United States Code.

(4) TRANSFER OF CERTAIN FUNDS.—Amounts available under subparagraph (A) of paragraph (2) and subparagraphs (A) and (B) of paragraph (3) that are unobligated by the Secretary of the Interior after 3 fiscal years shall be transferred to the Secretary of Transportation and shall be expended for

State recreational boating safety programs under section 13106(a) of title 46, United States Code.

(c) NATIONAL OUTREACH AND COMMUNICATIONS PROGRAM.—Of the balance of each such annual appropriation remaining after making the distribution under subsections (a) and (b), respectively, an amount equal to—

- (1) \$5,000,000 for fiscal year 1999;
- (2) \$6,000,000 for fiscal year 2000;
- (3) \$7,000,000 for fiscal year 2001;
- (4) \$8,000,000 for fiscal year 2002; and
- (5) \$10,000,000 for fiscal year 2003;

shall be used for the National Outreach and Communications Program under section 8(d). Such amounts shall remain available for 3 fiscal years, after which any portion thereof that is unobligated by the Secretary of the Interior for that program may be expended by the Secretary under subsection (e).

(d) SET-ASIDE FOR EXPENSES FOR ADMINISTRATION OF THE DINGELL-JOHNSON SPORT FISH RESTORATION ACT.—

(1) IN GENERAL.—

(A) SET-ASIDE.—For fiscal year 2001 and each fiscal year thereafter, of the balance of each such annual appropriation remaining after the distribution and use under subsections (a), (b), and (c) and section 14, the Secretary of the Interior may use not more than the available amount specified in subparagraph (B) for the fiscal year for expenses for administration incurred in implementation of this Act, in accordance with this subsection and section 9.

(B) AVAILABLE AMOUNTS.—The available amount referred to in subparagraph (A) is—

- (i) for each of fiscal years 2001 and 2002, \$9,000,000;
- (ii) for fiscal year 2003, \$8,212,000; and
- (iii) for fiscal year 2004 and each fiscal year thereafter, the sum of—

(I) the available amount for the preceding fiscal year; and

(II) the amount determined by multiplying—

- (aa) the available amount for the preceding fiscal year; and
- (bb) the change, relative to the preceding fiscal year, in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(2) PERIOD OF AVAILABILITY; APPORTIONMENT OF UNOBLIGATED AMOUNTS.—

(A) PERIOD OF AVAILABILITY.—For each fiscal year, the available amount under paragraph (1) shall remain available for obligation for use under that paragraph until the end of the fiscal year.

(B) APPORTIONMENT OF UNOBLIGATED AMOUNTS.—Not later than 60 days after the end of a fiscal year, the Secretary of the Interior shall apportion among the States any of the available amount under paragraph (1) that remains

unobligated at the end of the fiscal year, on the same basis and in the same manner as other amounts made available under this Act are apportioned among the States under subsection (e) for the fiscal year.

(e) The Secretary of the Interior, after the distribution, transfer, use, and deduction under subsections (a), (b), (c), and (d), respectively, and after deducting amounts used for grants under section 14, shall apportion the remainder of each such annual appropriation among the several States in the following manner: 40 per centum in the ratio which the area of each State including coastal and Great Lakes waters (as determined by the Secretary of the Interior) bears to the total area of all the States, and 60 per centum in the ratio which the number of persons holding paid licenses to fish for sport or recreation in the State in the second fiscal year preceding the fiscal year for which such apportionment is made, as certified to said Secretary by the State fish and game departments, bears to the number of such persons in all the States. Such apportionments shall be adjusted equitably so that no State shall receive less than 1 per centum nor more than 5 per centum of the total amount apportioned. Where the apportionment to any State under this section is less than \$4,500 annually, the Secretary of the Interior may allocate not more than \$4,500 of said appropriation to said State to carry out the purposes of this Act when said State certifies to the Secretary of the Interior that it has set aside not less than \$1,500 from its fish-and-game funds or has made, through its legislature, an appropriation in this amount for said purposes.

(f) So much of any sum not allocated under the provisions of this section for any fiscal year is hereby authorized to be made available for expenditure to carry out the purposes of this Act until the close of the succeeding fiscal year. The term fiscal year as used in this section shall be a period of twelve consecutive months from October 1 through the succeeding September 30, except that the period for enumeration of persons holding licenses to fish shall be a State's fiscal or license year.

(g) EXPENSES FOR ADMINISTRATION OF CERTAIN PROGRAMS.—

(1) IN GENERAL.—For each fiscal year, of the amounts appropriated under section 3, the Secretary of the Interior shall use only funds authorized for use under subsections (a), (b)(3)(A), (b)(3)(B), and (c) to pay the expenses for administration incurred in carrying out the provisions of law referred to in those subsections, respectively.

(2) MAXIMUM AMOUNT.—For each fiscal year, the Secretary of the Interior may use not more than \$900,000 in accordance with paragraph (1).

SEC. 5. [16 U.S.C. 777d] For each fiscal year beginning with the fiscal year ending June 30, 1951, the Secretary of the Interior shall certify, at the time at which a deduction or apportionment is made, to the Secretary of the Treasury, and to each State fish and game department, the sum which he has estimated to be deducted for administering this Act and the sum which he has apportioned to each State for such fiscal year.

SEC. 6. [16 U.S.C. 777e] (a) Any State desiring to avail itself of the benefits of this Act shall, by its State fish and game department, submit programs or projects for fish restoration in either of the following two ways:

(1) The State shall prepare and submit to the Secretary of the Interior a comprehensive fish and wildlife resource management plan which shall insure the perpetuation of these resources for the economic, scientific, and recreational enrichment of the people. Such plan shall be for a period of not less than five years and be based on projections of desires and needs of the people for a period of not less than fifteen years. It shall include provisions for updating at intervals of not more than three years and be provided in a format as may be required by the Secretary of the Interior. If the Secretary of the Interior finds that such plans conform to standards established by him and approves such plans, he may finance up to 75 per centum of the cost of implementing segments of those plans meeting the purposes of this Act from funds apportioned under this Act upon this approval of an annual agreement submitted to him.

(2) A State may elect to avail itself of the benefits of this Act by its State fish and game department submitting to the Secretary of the Interior full and detailed statements of any fish restoration and management project proposed for that State. If the Secretary of the Interior finds that such project meets with the standards set by him and approves said project, the State fish and game department shall furnish to him such surveys, plans, specifications, and estimates therefor as he may require. If the Secretary of the interior approves the plans, specifications, and estimates for the project, he shall notify the State fish and game department and immediately set aside so much of said appropriation as represents the share of the United States payable under this Act on account of such project, which sum so set aside shall not exceed 75 per centum of the total estimated cost thereof.

The Secretary of the Interior shall approve only such comprehensive plans or projects as may be substantial in character and design and the expenditure of funds hereby authorized shall be applied only to such approved comprehensive fishery plan or projects and if otherwise applied they shall be replaced by the State before it may participate in any further apportionment under this Act. No payment of any money apportioned under this Act shall be made on any comprehensive fishery plan or project until an agreement to participate therein shall have been submitted to and approved by the Secretary of the Interior.

(b) If the State elects to avail itself of the benefits of this Act by preparing a comprehensive fish and wildlife plan under option (1) of subsection (a) of this section, then the term "project" may be defined for the purpose of this Act as a fishery program, all other definitions notwithstanding.

(c) Administrative costs in the form of overhead or indirect costs for services provided by State central service activities outside of the State fish and game department charged against programs or projects supported by funds made available under this Act shall not exceed in any one fiscal year 3 per centum of the annual apportionment to the State.

(d) The Secretary of the Interior may enter into agreements to finance up to 75 per centum of the initial costs of the acquisition of lands or interests therein and the construction of structures or facilities for<sup>10</sup> appropriations currently available for the purposes of this Act; and to agree to finance up to 75 per centum of the remaining costs over such a period of time as the Secretary may consider necessary. The liability of the United States in any such agreement is contingent upon the continued availability of funds for the purposes of this Act.

SEC. 7. [16 U.S.C. 777f] (a) When the Secretary of the Interior shall find that any project approved by him has been completed or, if involving research relating to fish, is being conducted, in compliance with said plans and specifications, he shall cause to be paid to the proper authority of said State the amount set aside for said project. The Secretary of the Interior may, in his discretion, from time to time, make payments on said project as the same progresses; but these payments, including previous payments, if any, shall not be more than the United States' pro rata share of the project in conformity with said plans and specifications. If a State has elected to avail itself of the benefits of this Act by preparing a comprehensive fish and wildlife plan as provided for under option (1) of subsection (a) of section 6 of this Act, and this plan has been approved by the Secretary of the Interior, then the Secretary may, in his discretion, and under such rules and regulations, as he may prescribe, advance funds to the State for financing the United States' pro rata share agreed upon between the State fish and game department and the Secretary.

(b) Any construction work and labor in each State shall be performed in accordance with its laws and under the direct supervision of the State fish and game department, subject to the inspection and approval of the Secretary of the Interior and in accordance with the rules and regulations made pursuant to this Act. The Secretary of the Interior and the State fish and game department of each State may jointly determine at what times and in what amounts payments shall be made under this Act. Such payments shall be made against the said appropriation to such official or officials, or depository, as may be designated by the State fish and game department and authorized under the laws of the State to receive public funds of the State.

SEC. 8. [16 U.S.C. 777g] (a) To maintain fish-restoration and management projects established under the provisions of this Act shall be the duty of the States according to their respective laws. Beginning July 1, 1953, maintenance of projects heretofore completed under the provisions of this Act may be considered as projects under this Act. Title to any real or personal property acquired by any State, and to improvements placed on State-owned lands through the use of funds paid to the State under the provisions of this Act, shall be vested in such State.

(b)(1) Each State shall allocate 15 percent of the funds apportioned to it for each fiscal year under section 4 of this Act for the payment of up to 75 per centum of the costs of the acquisition, de-

<sup>10</sup>So in original. Probably should be "from".

velopment, renovation, or improvement of facilities (and auxiliary facilities necessary to insure the safe use of such facilities) that create, or add to, public access to the waters of the United States to improve the suitability of such waters for recreational boating purposes. Notwithstanding this provision, States within a United States Fish and Wildlife Service Administrative Region may allocate more or less than 15 percent in a fiscal year, provided that the total regional allocation averages 15 percent over a 5 year period.

(2) So much of the funds that are allocated by a State under paragraph (1) in any fiscal year that remained unexpended or unobligated at the close of such year are authorized to be made available for the purposes described in paragraph (1) during the succeeding four fiscal years, but any portion of such funds that remain unexpended or unobligated at the close of such period are authorized to be made available for expenditure by the Secretary of the Interior in carrying out the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation.

(c) Each State may use not to exceed 15 percent of the funds apportioned to it under section 4 of this Act to pay up to 75 percent of the costs of an aquatic resource education and outreach and communications program for the purpose of increasing public understanding of the Nation's water resources and associated aquatic life forms. The non-Federal share of such costs may not be derived from other Federal grant programs. The Secretary shall issue not later than the one hundred and twentieth day after the effective date of this subsection such regulations as he deems advisable regarding the criteria for such programs.

(d) NATIONAL OUTREACH AND COMMUNICATIONS PROGRAM.—

(1) IMPLEMENTATION.—Within 1 year after the date of enactment of the Sportfishing and Boating Safety Act of 1998, the Secretary of the Interior shall develop and implement, in cooperation and consultation with the Sport Fishing and Boating Partnership Council, a national plan for outreach and communications.

(2) CONTENT.—The plan shall provide—

(A) guidance, including guidance on the development of an administrative process and funding priorities, for outreach and communications programs; and

(B) for the establishment of a national program.

(3) SECRETARY MAY MATCH OR FUND PROGRAMS.—Under the plan, the Secretary may obligate amounts available under subsection (c) or (d) of section 4 of this Act—

(A) to make grants to any State or private entity to pay all or any portion of the cost of carrying out any outreach and communications program under the plan; or

(B) to fund contracts with States or private entities to carry out such a program.

(4) REVIEW.—The plan shall be reviewed periodically, but not less frequently than once every 3 years.

(e) STATE OUTREACH AND COMMUNICATIONS PROGRAM.—Within 12 months after the completion of the national plan under subsection (d)(1), a State shall develop a plan for an outreach and com-

munications program and submit it to the Secretary. In developing the plan, a State shall—

(1) review the national plan developed under subsection (d);

(2) consult with anglers, boaters, the sportfishing and boating industries, and the general public; and

(3) establish priorities for the State outreach and communications program proposed for implementation.

(f) PUMPOUT STATIONS AND WASTE RECEPTION FACILITIES.—Amounts apportioned to States under section 4 of this Act may be used to pay not more than 75 percent of the costs of constructing, renovating, operating, or maintaining pumpout stations and waste reception facilities (as those terms are defined in the Clean Vessel Act of 1992).

(g) SURVEYS.—

(1) NATIONAL FRAMEWORK.—Within 6 months after the date of enactment of the Sportfishing and Boating Safety Act of 1998, the Secretary, in consultation with the States, shall adopt a national framework for a public boat access needs assessment which may be used by States to conduct surveys to determine the adequacy, number, location, and quality of facilities providing access to recreational waters for all sizes of recreational boats.

(2) STATE SURVEYS.—Within 18 months after such date of enactment, each State that agrees to conduct a public boat access needs survey following the recommended national framework shall report its findings to the Secretary for use in the development of a comprehensive national assessment of recreational boat access needs and facilities.

(3) EXCEPTION.—Paragraph (2) does not apply to a State if, within 18 months after such date of enactment, the Secretary certifies that the State has developed and is implementing a plan that ensures there are and will be public boat access adequate to meet the needs of recreational boaters on its waters.

(4) FUNDING.—A State that conducts a public boat access needs survey under paragraph (2) may fund the costs of conducting that assessment out of amounts allocated to it as funding dedicated to motorboat access to recreational waters under subsection (b)(1) of this section.

**SEC. 9. [16 U.S.C. 777h] REQUIREMENTS AND RESTRICTIONS CONCERNING USE OF AMOUNTS FOR EXPENSES FOR ADMINISTRATION.**

(a) AUTHORIZED EXPENSES FOR ADMINISTRATION.—Except as provided in subsection (b), the Secretary of the Interior may use available amounts under section 4(d)(1) only for expenses for administration that directly support the implementation of this Act that consist of—

(1) personnel costs of employees who directly administer this Act on a full-time basis;

(2) personnel costs of employees who directly administer this Act on a part-time basis for at least 20 hours each week, not to exceed the portion of those costs incurred with respect to the work hours of the employee during which the employee



directly administers this Act, as those hours are certified by the supervisor of the employee;

(3) support costs directly associated with personnel costs authorized under paragraphs (1) and (2), excluding costs associated with staffing and operation of regional offices of the United States Fish and Wildlife Service and the Department of the Interior other than for the purposes of this Act;

(4) costs of determining under section 6(a) whether State comprehensive plans and projects are substantial in character and design;

(5) overhead costs, including the costs of general administrative services, that are directly attributable to administration of this Act and are based on—

(A) actual costs, as determined by a direct cost allocation methodology approved by the Director of the Office of Management and Budget for use by Federal agencies; and

(B) in the case of costs that are not determinable under subparagraph (A), an amount per full-time equivalent employee authorized under paragraphs (1) and (2) that does not exceed the amount charged or assessed for costs per full-time equivalent employee for any other division or program of the United States Fish and Wildlife Service;

(6) costs incurred in auditing, every 5 years, the wildlife and sport fish activities of each State fish and game department and the use of funds under section 6 by each State fish and game department;

(7) costs of audits under subsection (d);

(8) costs of necessary training of Federal and State full-time personnel who administer this Act to improve administration of this Act;

(9) costs of travel to States, territories, and Canada by personnel who—

(A) administer this Act on a full-time basis for purposes directly related to administration of State programs or projects; or

(B) administer grants under section 6 or 14;

(10) costs of travel outside the United States (except travel to Canada), by personnel who administer this Act on a full-time basis, for purposes that directly relate to administration of this Act and that are approved directly by the Assistant Secretary for Fish and Wildlife and Parks;

(11) relocation expenses for personnel who, after relocation, will administer this Act on a full-time basis for at least 1 year, as certified by the Director of the United States Fish and Wildlife Service at the time at which the relocation expenses are incurred; and

(12) costs to audit, evaluate, approve, disapprove, and advise concerning grants under sections 6 and 14.

(b) REPORTING OF OTHER USES.—

(1) IN GENERAL.—Subject to paragraph (2), if the Secretary of the Interior determines that available amounts under section 4(d)(1) should be used for an expense for administration

other than an expense for administration described in subsection (a), the Secretary—

(A) shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Resources of the House of Representatives a report describing the expense for administration and stating the amount of the expense; and

(B) may use any such available amounts for the expense for administration only after the end of the 30-day period beginning on the date of submission of the report under subparagraph (A).

(2) MAXIMUM AMOUNT.—For any fiscal year, the Secretary of the Interior may use under paragraph (1) not more than \$25,000.

(c) RESTRICTION ON USE TO SUPPLEMENT GENERAL APPROPRIATIONS.—The Secretary of the Interior shall not use available amounts under subsection (b) to supplement the funding of any function for which general appropriations are made for the United States Fish and Wildlife Service or any other entity of the Department of the Interior.

(d) AUDIT REQUIREMENT.—

(1) IN GENERAL.—The Inspector General of the Department of the Interior shall procure the performance of biennial audits, in accordance with generally accepted accounting principles, of expenditures and obligations of amounts used by the Secretary of the Interior for expenses for administration incurred in implementation of this Act.

(2) AUDITOR.—

(A) IN GENERAL.—An audit under this subsection shall be performed under a contract that is awarded under competitive procedures (as defined in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)) by a person or entity that is not associated in any way with the Department of the Interior (except by way of a contract for the performance of an audit or other review).

(B) SUPERVISION OF AUDITOR.—The auditor selected under subparagraph (A) shall report to, and be supervised by, the Inspector General of the Department of the Interior, except that the auditor shall submit a copy of the biennial audit findings to the Secretary of the Interior at the time at which the findings are submitted to the Inspector General of the Department of the Interior.

(3) REPORT TO CONGRESS.—The Inspector General of the Department of the Interior shall promptly submit to the Committee on Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate—

(A) a report on the results of each audit under this subsection; and

(B) a copy of each audit under this subsection.

SEC. 10. [16 U.S.C. 777i] The Secretary of the Interior is authorized to make rules and regulations for carrying out the provisions of this Act.

[Sec. 11. Repealed, Public Law 89-348 (79 Stat. 1311).]

SEC. 12. [16 U.S.C. 777k] The Secretary of the Interior is authorized to cooperate with the Secretary of Agriculture of Puerto Rico, the Mayor of the District of Columbia, the Governor of Guam, the Governor of American Samoa, the Governor of the Commonwealth of the Northern Mariana Islands, and the Governor of the Virgin Islands, in the conduct of fish restoration and management projects as defined in section 2 of this Act, upon such terms and conditions as he shall deem fair, just, and equitable, and is authorized to apportion to Puerto Rico, the District of Columbia, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, out of money available for apportionment under this Act, such sums as he shall determine, not exceeding for Puerto Rico 1 per centum, for the District of Columbia one-third of 1 per centum, for Guam one-third of 1 per centum, for American Samoa one-third of 1 per centum, for the Commonwealth of the Northern Mariana Islands one-third of 1 per centum, and for the Virgin Islands one-third of 1 per centum of the total amount apportioned in any one year, but the Secretary shall in no event require any of said cooperating agencies to pay an amount which will exceed 25 per centum of the cost of any project. Any unexpended or unobligated balance of any apportionment made pursuant to this section shall be made available for expenditure in Puerto Rico, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands, as the case may be, in the succeeding year, on any approved projects, and if unexpended or unobligated at the end of such year is authorized to be made available for expenditure by the Secretary of the Interior in carrying on the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation.

**SEC. 13. [16 U.S.C. 777i] STATE USE OF CONTRIBUTIONS.**

A State may use contributions of funds, real property, materials, and services to carry out an activity under this Act in lieu of payment by the State of the State share of the cost of such activity. Such a State share shall be considered to be paid in an amount equal to the fair market value of any contribution so used.

**SEC. 14. [16 U.S.C. 777m] MULTISTATE CONSERVATION GRANT PROGRAM.**

(a) IN GENERAL.—

(1) AMOUNT FOR GRANTS.—Of the balance of each annual appropriation made under section 3 remaining after the distribution and use under subsections (a), (b), and (c) of section 4 in a fiscal year, not more than \$3,000,000 shall be available to the Secretary of the Interior for making multistate conservation project grants in accordance with this section.

(2) PERIOD OF AVAILABILITY; APPORTIONMENT.—

(A) PERIOD OF AVAILABILITY.—Amounts made available under paragraph (1) shall remain available for making grants only for the first fiscal year for which the amount is made available and the following fiscal year.

(B) APPORTIONMENT.—At the end of the period of availability under subparagraph (A), the Secretary of the

Interior shall apportion any amounts that remain available among the States in the manner specified in section 4(e) for use by the States in the same manner as funds apportioned under section 4(e).

(b) SELECTION OF PROJECTS.—

(1) STATES OR ENTITIES TO BE BENEFITED.—A project shall not be eligible for a grant under this section unless the project will benefit—

(A) at least 26 States;

(B) a majority of the States in a region of the United States Fish and Wildlife Service; or

(C) a regional association of State fish and game departments.

(2) USE OF SUBMITTED PRIORITY LIST OF PROJECTS.—The Secretary of the Interior may make grants under this section only for projects identified on a priority list of sport fish restoration projects described in paragraph (3).

(3) PRIORITY LIST OF PROJECTS.—A priority list referred to in paragraph (2) is a priority list of sport fish restoration projects that the International Association of Fish and Wildlife Agencies—

(A) prepares through a committee comprised of the heads of State fish and game departments (or their designees), in consultation with—

(i) nongovernmental organizations that represent conservation organizations;

(ii) sportsmen organizations; and

(iii) industries that fund the sport fish restoration programs under this Act;

(B) approves by vote of a majority of the heads of State fish and game departments (or their designees); and

(C) not later than October 1 of each fiscal year, submits to the Assistant Director for Wildlife and Sport Fish Restoration Programs.

(4) PUBLICATION.—The Assistant Director for Wildlife and Sport Fish Restoration Programs shall publish in the Federal Register each priority list submitted under paragraph (3)(C).

(c) ELIGIBLE GRANTEES.—

(1) IN GENERAL.—The Secretary of the Interior may make a grant under this section only to—

(A) a State or group of States;

(B) the United States Fish and Wildlife Service, or a State or group of States, for the purpose of carrying out the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation; and

(C) subject to paragraph (2), a nongovernmental organization.

(2) NONGOVERNMENTAL ORGANIZATIONS.—

(A) IN GENERAL.—Any nongovernmental organization that applies for a grant under this section shall submit with the application to the International Association of Fish and Wildlife Agencies a certification that the organization—

(i) will not use the grant funds to fund, in whole or in part, any activity of the organization that promotes or encourages opposition to the regulated taking of fish; and

(ii) will use the grant funds in compliance with subsection (d).

(B) **PENALTIES FOR CERTAIN ACTIVITIES.**—Any non-governmental organization that is found to use grant funds in violation of subparagraph (A) shall return all funds received under this section and be subject to any other applicable penalties under law.

(d) **USE OF GRANTS.**—A grant under this section shall not be used, in whole or in part, for an activity, project, or program that promotes or encourages opposition to the regulated taking of fish.

(e) **FUNDING FOR OTHER ACTIVITIES.**—Of the balance of each annual appropriation made under section 3 remaining after the distribution and use under subsections (a), (b), and (c) of section 4 for each fiscal year and after deducting amounts used for grants under subsection (a)—

(1) \$200,000 shall be made available for each of—

(A) the Atlantic States Marine Fisheries Commission;

(B) the Gulf States Marine Fisheries Commission;

(C) the Pacific States Marine Fisheries Commission;

and

(D) the Great Lakes Fisheries Commission; and

(2) \$400,000 shall be made available for the Sport Fishing and Boating Partnership Council established by the United States Fish and Wildlife Service.

(f) **NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.**—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any activity carried out under this section.

**SEC. 15. NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.**

*Coordination with State fish and game department personnel or with personnel of any other State agency under this Act shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).*

**SEC. [15.] 16. [16 U.S.C. 777 note] SHORT TITLE.**

This Act may be cited as the “Dingell-Johnson Sport Fish Restoration Act”.

[Public Law 102–587]

AN ACT to provide Congressional approval of a Governing International Fishery Agreement, and for other purposes.

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Oceans Act of 1992”.

\* \* \* \* \*

This Title may be cited as the “Partnerships for Wildlife Act”.

**SEC. 7102. FINDINGS.**

The Congress finds the following:

(1) Three-fourths of all American children and adults participate in wildlife-related recreational activities other than hunting, fishing and trapping.

(2) In 1985, Americans spent over \$14 billion on non-consumptive wildlife-related recreation.

(3) The United States and Canada are inhabited by approximately two thousand six hundred vertebrate species of native fish and wildlife, which have provided food, clothing, and other essentials to a rapidly expanding human population.

(4) Over 80 percent of vertebrate fish and wildlife species in North America are not harvested for human use.

(5) The continued well-being of this once-abundant fish and wildlife resource, and even the very existence of many species, is in peril.

(6) In 1967, the United States Fish and Wildlife Service reported that forty-five common migratory bird species, which are not hunted, had exhibited significant declines in abundance, and that thirteen of these species have experienced widespread, systematic declines of 46.9 percent during a twenty-year study period.

(7) There have been nationwide declines in frogs and other amphibians.

(8) Over two hundred and seventy-five of vertebrate fish and wildlife species in the United States are now officially classified as threatened or endangered by the Federal Government.

(9) During the past decade, fish and wildlife species, including invertebrates, were added to the rapidly growing list of threatened and endangered species in North America at the average rate of over one per month.

(10) Currently, eighty-two species of invertebrates in the United States are listed as threatened or endangered under the Endangered Species Act, and another nine hundred and fifty-one United States invertebrate species are candidates for listing under that Act.

(11) Proper management of fish and wildlife, before species become threatened or endangered with extinction, is the key to reversing the increasingly desperate status of fish and wildlife.

(12) Proper fish and wildlife conservation includes not only management of fish and wildlife species taken for recreation and protection of endangered and threatened species, but also management of the vast majority of species which fall into neither category.

(13) Partnerships in fish and wildlife conservation, such as the Federal Aid in Wildlife Restoration Program, the Federal Aid in Sport Fish Restoration Program, and the North American Wetlands Conservation Act have benefitted greatly the conservation of fish and wildlife and their habitats.

(14) A program that encourages partnerships among Federal and State governments and private entities to carry out wildlife conservation and appreciation projects would benefit all species of fish and wildlife through such activities as management, research, and interagency coordination.

(15) Many States, which are experiencing declining revenues, are finding it increasingly difficult to carry out projects

to conserve the entire array of diverse fish and wildlife species and to provide opportunities for the public to associate with, enjoy, and appreciate fish and wildlife through nonconsumptive activities.

**SEC. 7103 PURPOSES.**

The purposes of this title are to establish a partnership among the United States Fish and Wildlife Service, designated State agencies, and private organizations and individuals—

(1) to carry out wildlife conservation and appreciation projects to conserve the entire array of diverse fish and wildlife species in the United States and to provide opportunities for the public to use and enjoy these fish and wildlife species through nonconsumptive activities;

(2) to enable designated State agencies to respond more fully and utilize their statutory and administrative authorities by carrying out wildlife conservation and appreciation projects; and

(3) to encourage private donations, under the leadership of the National Fish and Wildlife Foundation, to carry out wildlife conservation and appreciation projects.

**SEC. 7104. DEFINITIONS.**

As used in this title—

(1) The terms “conserve” and “conservation” mean to use, and the use of, such methods and procedures which are necessary to ensure, to the maximum extent practicable, the well being and enhancement of fish and wildlife and their habitats for the educational, aesthetic, cultural, recreational, scientific, and ecological enrichment of the public. Such methods and procedures may include, but are not limited to, any activity associated with scientific resources management, such as research, census, law enforcement, habitat acquisition, maintenance, development, information, education, population manipulation, propagation, technical assistance to private landowners, live trapping, and transplantation.

(2) The term “designated State agency” means the State fish and wildlife agency, which shall be construed to mean any department, or any division of any department of another name, of a State that is empowered under its laws to exercise the functions ordinarily exercised by a State fish and wildlife agency.

(3) The term “fish and wildlife” means wild members of the animal kingdom that are in an unconfined state.

(4) The term “Fund” means the Wildlife Conservation and Appreciation Fund established under section 5(f) of this Act.

(5) The term “National Fish and Wildlife Foundation” means the charitable and nonprofit corporation established under section 2 of the National Fish and Wildlife Foundation Establishment Act (16 U.S.C. 3701).

(6) The term “nonconsumptive activities” means fish and wildlife associated activities other than harvesting of fish and wildlife and includes, but is not limited to, photographing, observing, learning about, or associating with, fish and wildlife.

(7) The term "Secretary" means the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service.

(8) The term "wildlife conservation and appreciation project" means a project which is directed toward nonconsumptive activities or toward the conservation of those species of fish and wildlife that—

2 (A) are not ordinarily taken for recreation, fur, or food; except that if under applicable State law, any fish and wildlife may be taken for recreation, fur, or food in some but not all, areas of the State, a wildlife conservation and appreciation project may be directed toward the conservation of any of such fish and wildlife within any area of the State in which such taking is not permitted.

(B) are not listed as endangered species or threatened species under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543); and

(C) are not marine mammals within the meaning of section 3(5) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1362(5)).

**SEC. 7105. WILDLIFE PARTNERSHIP PROGRAM.**

(a) IN GENERAL.—The Secretary shall provide the amounts available in the Fund to designated State agencies on a matching basis to assist in carrying out wildlife conservation and appreciation projects that are eligible under subsection (b) of this section.

(b) ELIGIBLE PROJECTS.—The following wildlife conservation and appreciation projects shall be eligible for matching funds from the Fund:

- (1) inventory of fish and wildlife species;
- (2) determination and monitoring of the size, range and distribution of populations of fish and wildlife species;
- (3) identification of the extent, condition, and location of the significant habitats of fish and wildlife species;
- (4) identification of the significant problems that may adversely affect fish and wildlife species and their significant habitats;
- (5) actions to conserve fish and wildlife species and their habitats; and
- (6) actions of which the principal purpose is to provide opportunities for the public to use and enjoy fish and wildlife through nonconsumptive activities.

(c) PROJECT STANDARDS.—The Secretary shall not provide funding to carry out an eligible wildlife conservation and appreciation project unless the Secretary determines that such a project—

- (1) is planned adequately to accomplish the stated objective or objectives;
- (2) utilizes accepted fish and wildlife management principles, sound design and appropriate procedures;
- (3) will yield benefits pertinent to the identified need at a level commensurate with project costs;
- (4) provides for the tracking of costs and accomplishments related to the project;
- (5) provides for monitoring, evaluating, and reporting of the accomplishment of project objectives; and



(6) complies with all applicable Federal environmental laws and regulations.

(d) LIMITATIONS ON FEDERAL PAYMENT.—The amount of appropriated Federal funds provided from the Fund by the Secretary to any designated State Agency with respect to any fiscal year to carry out an eligible wildlife conservation and appreciation project under this section—

- (1) may not exceed \$250,000;
- (2) may not exceed one third of the total project cost for that fiscal year;
- (3) may not exceed 40 percent of the total project cost for that fiscal year if designated State agencies from two or more States cooperate in implementing such a project;
- (4) may not be used to defray the administrative cost of State programs; and
- (5) may not exceed the State share of the cost of implementing such a project.

(e) FORM OF STATE SHARE.—The share of the cost of carrying out eligible projects under this section shall be from a non-Federal source and shall not be in the form of an in-kind contribution.

(f) ELIGIBILITY OF DESIGNATED STATE AGENCIES.—No designated State agency shall be eligible to receive matching funds from the Wildlife Conservation and Appreciation Fund if revenue derived from activities regulated by such an agency is diverted for any purpose other than the management and conservation of fish and wildlife. Such revenue shall include, but not be limited to, all income from the sale of hunting, fishing and trapping licenses; all income from nongame checkoff systems; all income from the sale of waterfowl, habitat conservation, and other stamps that are requisite for engaging in certain activities regulated by the designated State agency; all income from the sale of any commodities and products by the designated State agency from lands and waters administered by the State for fish and wildlife purposes; and all funds apportioned to the designated State agency under the Federal Aid in Wildlife and Sport Fish Restoration Programs.

(g) ESTABLISHMENT OF FUND—

(1) The Secretary shall establish the Fund, which shall consist of amounts deposited into the Fund by the Secretary under paragraph (2) of this subsection.

(2) The Secretary shall deposit into the Fund—

(A) amounts appropriated to the Secretary for deposit to the Fund, of which not more than 4 percent shall be available to the Secretary and the National Fish and Wildlife Foundation to defray the costs of administering this Act and evaluating wildlife conservation and appreciation projects; and

(B) amounts received as donations from the National Fish and Wildlife Foundation or other private entities or persons for deposit to the Fund.

(3) The Secretary may accept and use donations from the National Fish and Wildlife Foundation and other private entities or persons for purposes of assisting States under this section.

(4) Of the total amount provided from the Fund to assist a State in carrying out a wildlife conservation and appreciation project under subsection (a) of this section, at least 50 percent shall have been donated to the Fund by the National Fish and Wildlife Foundation.

(h) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Fund and to the Secretary for each of fiscal years 1992 through 1995 not to exceed \$6,250,000 to match the amount of contributions made to the Fund by the National Fish and Wildlife Foundation.

**SEC. 7106. NON-FEDERAL LAND CONSERVATION GRANT PROGRAM.**

(a) **ESTABLISHMENT.**—*In consultation with appropriate State, regional, and other units of government, the Secretary shall establish a competitive grant program, to be known as the “Non-Federal Land Conservation Grant Program” (referred to in this section as the “program”), to make grants to States or groups of States to pay the Federal share determined under subsection (c)(4) of the costs of conservation of non-Federal land or water of regional or national significance.*

(b) **RANKING CRITERIA.**—*In selecting among applications for grants for projects under the program, the Secretary shall—*

*(1) rank projects according to the extent to which a proposed project will protect watersheds and important scenic, cultural, recreational, fish, wildlife, and other ecological resources; and*

*(2) subject to paragraph (1), give preference to proposed projects—*

*(A) that seek to protect ecosystems;*

*(B) that are developed in collaboration with other States;*

*(C) with respect to which there has been public participation in the development of the project proposal;*

*(D) that are supported by communities and individuals that are located in the immediate vicinity of the proposed project or that would be directly affected by the proposed project; or*

*(E) that the State considers to be a State priority.*

(c) **GRANTS TO STATES.**—

*(1) NOTICE OF DEADLINE FOR APPLICATIONS.*—*The Secretary shall give reasonable advance notice of each deadline for submission of applications for grants under the program by publication of a notice in the Federal Register.*

*(2) SUBMISSION OF APPLICATIONS.*—

*(A) IN GENERAL.*—*A State or group of States may submit to the Secretary an application for a grant under the program.*

*(B) REQUIRED CONTENTS OF APPLICATIONS.*—*Each application shall include—*

*(i) a detailed description of each proposed project;*

*(ii) a detailed analysis of project costs, including costs associated with—*

*(I) planning;*

*(II) administration;*

*(III) property acquisition; and*

*(IV) property management;*

(iii) a statement describing how the project is of regional or national significance; and

(iv) a plan for stewardship of any land or water, or interest in land or water, to be acquired under the project.

(3) **SELECTION OF GRANT RECIPIENTS.**—Not later than 90 days after the date of receipt of an application, the Secretary shall—

(A) review the application; and

(B)(i) notify the State or group of States of the decision of the Secretary on the application; and

(ii) if the application is denied, provide an explanation of the reasons for the denial.

(4) **COST SHARING.**—The Federal share of the costs of a project under the program shall be—

(A) in the case of a project to acquire an interest in land or water that is not a permanent conservation easement, not more than 50 percent of the costs of the project;

(B) in the case of a project to acquire a permanent conservation easement, not more than 70 percent of the costs of the project; and

(C) in the case of a project involving 2 or more States, not more than 75 percent of the costs of the project.

(5) **EFFECT OF INSUFFICIENCY OF FUNDS.**—If the Secretary determines that there are insufficient funds available to make grants with respect to all applications that meet the requirements of this subsection, the Secretary shall give priority to those projects that best meet the ranking criteria established under subsection (b).

(6) **GRANTS TO STATE OF NEW HAMPSHIRE.**—Notwithstanding subsection (b) and paragraphs (3) and (5), the Secretary shall make grants under the program to the State of New Hampshire to pay the Federal share determined under paragraph (4) of the costs of acquiring conservation easements with respect to land or water located in northern New Hampshire and sold by International Paper to the Trust for Public Land.

(d) **REPORT.**—Not later than 60 days after the end of each fiscal year, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Resources of the House of Representatives a report describing the grants made under this section, including an analysis of how projects were ranked under subsection (b).

(e) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated—

(1) to carry out this section (other than subsection (c)(6)) \$50,000,000 for each of fiscal years 2002 through 2006; and

(2) to carry out subsection (c)(6) \$9,000,000 for the period of fiscal years 2002 and 2003.

#### **SEC. 7107. CONSERVATION AND RESTORATION OF SHRUBLAND AND GRASSLAND.**

(a) **DEFINITIONS.**—In this section:

(1) **CONSERVATION ACTIVITY.**—The term “conservation activity” means—

(A) a project or activity to reduce erosion;

- (B) a prescribed burn;
  - (C) the restoration of riparian habitat;
  - (D) the control or elimination of invasive or exotic species;
  - (E) the reestablishment of native grasses; and
  - (F) any other project or activity that restores or enhances habitat for endangered species, threatened species, or species at risk.
- (2) CONSERVATION AGREEMENT.—The term “conservation agreement” means an agreement entered into under subsection (c).
- (3) CONSERVATION ENTITY.—
- (A) IN GENERAL.—The term “conservation entity” means a nonprofit entity that engages in activities to conserve or protect fish, wildlife, or plants, or habitats for fish, wildlife, or plants.
  - (B) INCLUSIONS.—The term “conservation entity” includes—
    - (i) a sportsmen’s organization;
    - (ii) an environmental organization; and
    - (iii) a land trust.
- (4) COVERED LAND.—The term “covered land” means public or private—
- (A) natural grassland or shrubland that serves as habitat for endangered species, threatened species, or species at risk, as determined by the Secretary; or
  - (B) other land that—
    - (i) is located in an area that has been historically dominated by natural grassland or shrubland; and
    - (ii) if restored to natural grassland or shrubland, would have the potential to serve as habitat for endangered species, threatened species, or species at risk, as determined by the Secretary.
- (5) ENDANGERED SPECIES.—The term “endangered species” has the meaning given the term in section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532).
- (6) PERMIT HOLDER.—The term “permit holder” means an individual who holds a grazing permit for covered land that is the subject of a conservation agreement.
- (7) PROGRAM.—The term “program” means the conservation assistance program established under subsection (b).
- (8) SPECIES AT RISK.—The term “species at risk” means a species that may become an endangered species or a threatened species if conservation actions are not taken to conserve and protect the species.
- (9) THREATENED SPECIES.—The term “threatened species” has the meaning given the term in section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532).
- (b) ESTABLISHMENT OF PROGRAM.—As soon as practicable after the date of enactment of this section, the Secretary shall establish a conservation assistance program to encourage the conservation and restoration of covered land.
- (c) CONSERVATION AGREEMENTS.—

(1) *IN GENERAL.*—In carrying out the program, the Secretary shall enter into a conservation agreement with a landowner, permit holder, or conservation entity with respect to covered land under which—

(A) the Secretary shall award a grant to the landowner, permit holder, or conservation entity; and

(B) the landowner, permit holder, or conservation entity shall use the grant to carry out 1 or more conservation activities on the covered land that is the subject of the conservation agreement.

(2) *PERMITTED ACTIVITIES.*—

(A) *IN GENERAL.*—Subject to subparagraph (B), a conservation agreement may permit on the covered land subject to the conservation agreement—

(i) operation of a managed grazing system;

(ii) haying or mowing (except during the nesting season for birds);

(iii) fire rehabilitation; and

(iv) the construction of fire breaks and fences.

(B) *LIMITATION.*—An activity described in subparagraph (A) may be permitted only if the activity contributes to maintaining the viability of natural grass and shrub plant communities on the covered land subject to the conservation agreement.

(d) *PAYMENTS UNDER OTHER PROGRAMS.*—

(1) *OTHER PAYMENTS NOT AFFECTED.*—A grant awarded to a landowner, permit holder, or conservation entity under this section shall be in addition to, and shall not affect, the total amount of payments that the landowner, permit holder, or conservation entity is eligible to receive under—

(A) the conservation reserve program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.);

(B) the wetlands reserve program established under subchapter C of that chapter (16 U.S.C. 3837 et seq.);

(C) the environmental quality incentives program established under chapter 4 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3839aa et seq.); or

(D) the Wildlife Habitat Incentive Program established under section 387 of the Federal Agriculture Improvement and Reform Act of 1996 (16 U.S.C. 3836a).

(2) *LIMITATION.*—A landowner, permit holder, or conservation entity shall not receive a grant under a conservation agreement for any activity for which the landowner, permit holder, or conservation entity receives a payment under a program referred to in paragraph (1) unless the conservation agreement imposes on the landowner, permit holder, or conservation entity a financial or management obligation in addition to the obligations of the landowner, permit holder, or conservation entity under that program.

(e) *PROHIBITION ON ASSISTANCE FOR REQUIRED ACTIVITIES.*—The Secretary shall not award a grant under this section for any activity that is required under Federal or State law.

(f) *AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$50,000,000 for each of fiscal years 2002 through 2006.*

\* \* \* \* \*

## **DINGELL-JOHNSON SPORT FISH RESTORATION ACT**

**[Chapter 658, Approved Aug. 9, 1950, 64 Stat. 430]**

[Amended through Public Law 106–408, Nov. 1, 2000]

AN ACT To provide that the United States shall aid the States in fish restoration and management projects, and for other purposes.

\* \* \* \* \*

### **SEC. 15. NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.**

*Coordination with State fish and game department personnel or with personnel of any other State agency under this Act shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).*

### **SEC. [15.] 16. [16 U.S.C. 777 note] SHORT TITLE.**

This Act may be cited as the “Dingell-Johnson Sport Fish Restoration Act”.

