

Public Law 99-645
99th Congress

An Act

Nov. 10, 1986
[S. 740]

Emergency
Wetlands
Resources Act of
1986.
16 USC 3901
note.

To promote the conservation of migratory waterfowl and to offset or prevent the serious loss of wetlands by the acquisition of wetlands and other essential habitat, 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 "Emergency Wetlands Resources Act of 1986".

16 USC 3901.

SEC. 2. FINDINGS AND STATEMENT OF PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) wetlands play an integral role in maintaining the quality of life through material contributions to our national economy, food supply, water supply and quality, flood control, and fish, wildlife, and plant resources, and thus to the health, safety, recreation, and economic well-being of all our citizens of the Nation;

(2) wetlands provide habitat essential for the breeding, spawning, nesting, migration, wintering and ultimate survival of a major portion of the migratory and resident fish and wildlife of the Nation; including migratory birds, endangered species, commercially and recreationally important finfish, shellfish and other aquatic organisms, and contain many unique species and communities of wild plants;

(3) the migratory bird treaty obligations of the Nation with Canada, Mexico, Japan, the Union of Soviet Socialist Republics, and with various countries in the Western Hemisphere require Federal protection of wetlands that are used by migratory birds for breeding, wintering or migration and needed to achieve and to maintain optimum population levels, distributions, and patterns of migration;

(4) wetlands, and the fish, wildlife, and plants dependent on wetlands, provide significant recreational and commercial benefits, including—

(A) contributions to a commercial marine harvest valued at over \$10,000,000,000 annually;

(B) support for a major portion of the Nation's multi-million dollar annual fur and hide harvest; and

(C) fishing, hunting, birdwatching, nature observation and other wetland-related recreational activities that generate billions of dollars annually;

(5) wetlands enhance the water quality and water supply of the Nation by serving as groundwater recharge areas, nutrient traps, and chemical sinks;

(6) wetlands provide a natural means of flood and erosion control by retaining water during periods of high runoff, thereby protecting against loss of life and property;

(7) wetlands constitute only a small percentage of the land area of the United States, are estimated to have been reduced by half in the contiguous States since the founding of our Nation, and continue to disappear by hundreds of thousands of acres each year;

(8) certain activities of the Federal Government have inappropriately altered or assisted in the alteration of wetlands, thereby unnecessarily stimulating and accelerating the loss of these valuable resources and the environmental and economic benefits that they provide; and

(9) the existing Federal, State, and private cooperation in wetlands conservation should be strengthened in order to minimize further losses of these valuable areas and to assure their management in the public interest for this and future generations.

(b) **PURPOSE.**—It is the purpose of this Act to promote, in concert with other Federal and State statutes and programs, the conservation of the wetlands of the Nation in order to maintain the public benefits they provide and to help fulfill international obligations contained in various migratory bird treaties and conventions with Canada, Mexico, Japan, the Union of Soviet Socialist Republics, and with various countries in the Western Hemisphere by—

International
agreements.
Canada.
Mexico.
Japan.
Union of Soviet
Socialist
Republics.

(1) intensifying cooperative efforts among private interests and local, State, and Federal governments for the management and conservation of wetlands; and

(2) intensifying efforts to protect the wetlands of the Nation through acquisition in fee, easements or other interests and methods by local, State, and Federal governments and the private sector.

SEC. 3. DEFINITIONS.

16 USC 3902.

For the purpose of this Act:

(1) The term "Committees" means the Committee on Merchant Marine and Fisheries and the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Environment and Public Works and the Committee on Energy and Natural Resources of the Senate.

(2) The term "designated unit" means a unit of the National Wildlife Refuge System designated by the Secretary under section 201(a)(2).

(3) The term "hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(4) The term "hydrophytic vegetation" means a plant growing in—

(A) water; or

(B) a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

(5) The term "wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

TITLE I—EXTENSION OF WETLANDS LOAN ACT**SEC. 101. EXTENSION OF WETLANDS LOAN ACT.**

(a) **AVAILABILITY OF APPROPRIATIONS.**—The first section of the Act entitled “An Act to promote the conservation of migratory waterfowl by the acquisition of wetlands, and for other essential waterfowl habitat, and for other purposes”, approved October 4, 1961 (16 U.S.C. 715k-3), is amended by striking out “September 30, 1986” and inserting in lieu thereof “September 30, 1988”.

(b) **REPAYMENT PROVISIONS.**—Section 3 of such Act (16 U.S.C. 715k-5) is amended by striking out the first three sentences.

TITLE II—REVENUES FOR REFUGE OPERATIONS AND THE MIGRATORY BIRD CONSERVATION FUND

National
Wildlife Refuge
System.

16 USC 3911.

SEC. 201. SALE OF ADMISSION PERMIT AT CERTAIN REFUGE UNITS.

(a) **SALE OF ADMISSION PERMITS.**—(1) Notwithstanding the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 et seq.), in order to provide additional revenues for the conservation of wetland resources of the Nation and for the operation and maintenance of refuges—

(A) the Secretary of the Interior may, at units of the National Wildlife Refuge System designated by the Secretary under paragraph (2)—

(i) charge fees for admission permits;

(ii) sell Golden Eagle passports and Golden Age passports;

(iii) issue at no charge lifetime admission permits as authorized in section 4(a)(5) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4—4601-11);

(B) the amounts collected by the Secretary as a result of the activities described in subparagraph (A) shall be distributed as provided in subsection (c).

(2) The Secretary shall designate a unit of the National Wildlife Refuge System for purposes of this Act if the Secretary determines, with respect to such unit, that—

(A) The level of visitation for recreational purposes is high enough to justify the collection of fees for admission permits for economic reasons.

(B) There is a practical mechanism in existence for implementing and operating a system of collecting fees for admission permits.

(C) Imposition of a fee for admission permits is not likely to result in undue economic hardship for a significant number of visitors to the unit.

(b) **EXCEPTIONS.**—(1) The Secretary may not require an admission permit under subsection (a)(1) for entry by a person into a designated unit if such person is the holder of—

(A) a valid migratory bird hunting and conservation stamp issued under section 2 of the Act of March 16, 1934 (16 U.S.C. 718b) (commonly known as the Duck Stamp Act);

(B) a valid Golden Eagle Passport issued under section 4(a)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-6a(a)(1));

(C) a valid Golden Age Passport issued under section 4(a)(4) of such Act; or

(D) a valid lifetime admission permit as authorized in section 4(a)(5) of such Act.

(2) Permits for a single visit to any designated unit shall be made available by the Secretary of the Interior for a reasonable fee, but not to exceed \$3 for individuals or \$7.50 per vehicle. For purposes of this subsection, the term "single visit" means a more or less continuous stay within a designated unit by a person or group described in subsection (d). Payment of a single visit fee and issuance of a single visit permit shall authorize exits from and re-entries to a single designated unit for a period of from one to fifteen days. Such period shall be defined for each designated unit by the Secretary based upon a determination of the period of time reasonably and ordinarily necessary for such a single visit.

(3) Special admission permits for uses such as group activities may be issued in accordance with procedures and at fees established by the Secretary.

(4) A person may not be required to purchase an admission permit under subsection (a)(1) in order to travel by private noncommercial vehicle over any road or highway—

(A)(i) established as part of the National Federal Aid System (as defined in section 101 of title 23, United States Code); and

(ii) commonly used by the public as a means of travel between two places which are outside the designated unit; or

(B) to any land in which such person has a property interest if such land is within any designated unit.

(5) A person may not be required to purchase an admission permit under subsection (a)(1) for entrance or admission to a unit of the National Wildlife Refuge System created, expanded, or modified by Public Law 96-487.

(c) DISTRIBUTION OF AMOUNTS COLLECTED.—Amounts collected from the sale of admission permits under this section and from fees collected at any unit of the National Wildlife Refuge System under subsections (b) and (c) of section 4 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-6a (b), (c)) shall be distributed as follows:

(A) Thirty per centum shall be available to the Secretary of the Interior until expended. The Secretary shall use such amount—

(i) first, to defray the cost of collection;

(ii) next, for operation and maintenance of the collecting unit; and

(iii) next, for operation and maintenance of all units within the National Wildlife Refuge System, except those units created, expanded, or modified by Public Law 96-487.

(B) Seventy percent shall be deposited into the migratory bird conservation fund established under section 4 of the Act of March 16, 1934 (16 U.S.C. 718d).

(d) PERSONS ACCOMPANYING PERMITTEES.—A person who holds a stamp, passport, or permit described in subsection (b) shall be entitled to general entrance into any designated unit, along with—

(1) any persons accompanying such person in a single, private, noncommercial vehicle; or

(2) where entry to the area is by any means other than single, private, noncommercial vehicle, the person and any accompanying spouse, children, or parents.

(e) RESTRICTIONS.—A permit issued under this section is nontransferable. Such a permit may not authorize any uses for

16 USC 3101
note.

which fees are charged under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 et seq.).

(f) **ESTABLISHMENT OF FEES; POSTING OF NOTICES.**—(1) All fees established pursuant to this section shall be fair and equitable. In establishing such fees, the Secretary shall consider the following:

(A) The direct and indirect cost to the Government.

(B) The benefits to the permit holder.

(C) The public policy or interest served.

(D) The comparable fees charged by non-Federal public agencies.

(E) The economic and administrative feasibility of fee collection and other pertinent factors.

(2) The Secretary shall require that notice that a fee has been established under this section—

(A) be prominently posted at each designated unit and at appropriate locations in each such unit; and

(B) to the extent practicable, be included in publications distributed at such units.

(g) **VOLUNTEERS.**—The Director of the United States Fish and Wildlife Service may accept services of volunteers to sell admission permits under this section or to sell Golden Eagle and Golden Age Passports or Migratory Bird Hunting and Conservation Stamps. The Director may use funds appropriated or otherwise made available to the Service to cover the cost of any surety bond that may be required of a volunteer performing the services authorized under this subsection.

SEC. 202. PRICE OF MIGRATORY BIRD HUNTING AND CONSERVATION STAMP.

16 USC 718b. Section 2(b) of the Act of March 16, 1934 (16 U.S.C. 718(b)), is amended in the first sentence—

(1) by striking out "\$7.50" and inserting in lieu thereof "\$10.00";

(2) by striking out "any hunting year" and inserting in lieu thereof "hunting years 1987 and 1988, \$12.50 for hunting years 1989 and 1990, and \$15.00 for each hunting year thereafter,"; and

(3) by inserting "available for obligation and" before "attributable".

16 USC 3912. SEC. 203. TRANSFERS TO MIGRATORY BIRD CONSERVATION FUND.

Notwithstanding any other provision of law, an amount equal to the amount of all import duties collected on arms and ammunition, as specified in subpart A of part 5 of schedule 7 of the Tariff Schedules of the United States, shall, beginning with the next fiscal year quarter after the date of enactment of this Act, be paid quarterly into the migratory bird conservation fund established under section 4 of the Act of March 16, 1934 (16 U.S.C. 718d).

TITLE III—STATE AND FEDERAL WETLAND ACQUISITION

SEC. 301. NATIONAL WETLANDS PRIORITY CONSERVATION PLAN.

16 USC 3921.
State and local
governments.

(a) **IN GENERAL.**—The Secretary shall establish, and periodically review and revise, a national wetlands priority conservation plan which shall specify, on a region-by-region basis or other basis considered appropriate by the Secretary, the types of wetlands and in-

terests in wetlands which should be given priority with respect to Federal and State acquisition.

(b) **CONSULTATION.**—The Secretary shall establish the plan required by subsection (a) after consultation with—

- (1) the Administrator of the Environmental Protection Agency;
- (2) the Secretary of Commerce;
- (3) the Secretary of Agriculture; and
- (4) (the chief executive officer of) each State.

State and local governments.

(c) **FACTORS TO BE CONSIDERED.**—The Secretary, in establishing the plan required by subsection (a), shall consider—

- (1) the estimated proportion remaining of the respective types of wetlands which existed at the time of European settlement;
- (2) the estimated current rate of loss and the threat of future losses of the respective types of wetlands; and
- (3) the contributions of the respective types of wetlands to—
 - (A) wildlife, including endangered and threatened species, migratory birds, and resident species;
 - (B) commercial and sport fisheries;
 - (C) surface and ground water quality and quantity, and flood control;
 - (D) outdoor recreation; and
 - (E) other areas or concerns the Secretary considers appropriate.

Fish and fishing.
Water.
Flood control.

SEC. 302. REMOVAL OF RESTRICTION ON ACQUISITION.

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 "national wildlife refuge areas under section 7(a)(5) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742f(5)) except migratory waterfowl areas which are authorized to be acquired by the Migratory Bird Conservation Act of 1929, as amended (16 U.S.C. 715-715s)" and inserting in lieu thereof "national wildlife refuge areas under section 7(a)(4) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742(f)(a)(4)) and wetlands acquired under section 304 of the Emergency Wetlands Resources Act of 1986".

SEC. 303. INCLUSION OF WETLANDS IN COMPREHENSIVE STATEWIDE OUTDOOR RECREATION PLANS.

Section 6 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-8) is amended—

- (1) in subsection (d), by adding at the end thereof the following new paragraph:

"For fiscal year 1988 and thereafter each comprehensive statewide outdoor recreation plan shall specifically address wetlands within that State as an important outdoor recreation resource as a prerequisite to approval, except that a revised comprehensive statewide outdoor recreation plan shall not be required by the Secretary, if a State submits, and the Secretary, acting through the Director of the National Park Service, approves, as a part of and as an addendum to the existing comprehensive statewide outdoor recreation plan, a wetlands priority plan developed in consultation with the State agency with responsibility for fish and wildlife resources and consistent with the national wetlands priority conservation plan developed under section 301 of the Emergency Wetlands Resources Act or, if such national plan has not been completed, consistent with the provisions of that section";

(2) in subsection (e)(1), by inserting, in the first sentence thereof, after "For the acquisition of land, waters, or interests in land or waters" the following: ", or wetland areas and interests therein as identified in the wetlands provisions of the comprehensive plan"; and

(3) in subsection (f)(3), by adding at the end thereof the following: "*Provided*, That wetland areas and interests therein as identified in the wetlands provisions of the comprehensive plan and proposed to be acquired as suitable replacement property within that same State that is otherwise acceptable to the Secretary, acting through the Director of the National Park Service, shall be considered to be of reasonably equivalent usefulness with the property proposed for conversion."

SEC. 304. FEDERAL ACQUISITION.

16 USC 3922.

The Secretary is authorized to purchase wetlands or interests in wetlands, which are not acquired under the authority of the Migratory Bird Conservation Act of 1929 (16 U.S.C. 715-715s), consistent with the wetlands priority conservation plan established under section 301.

16 USC 3923.

SEC. 305. RESTRICTION ON USE OF EMINENT DOMAIN IN ACQUISITIONS.

Agriculture and
agricultural
commodities.

The powers of condemnation or eminent domain shall not be used in the acquisition of wetlands under any provision of this Act where such wetlands have been constructed for the purpose of farming or ranching, or result from conservation activities associated with farming or ranching.

TITLE IV—WETLANDS INVENTORY AND TREND ANALYSIS

SEC. 401. NATIONAL WETLANDS INVENTORY PROJECT.

16 USC 3931.

(a) **IN GENERAL.**—The Secretary, acting through the Director of the United States Fish and Wildlife Service, shall continue the National Wetlands Inventory Project and shall—

(1) produce, by September 30, 1988, National Wetlands Inventory maps for the areas that have been identified by the Service as top priorities for mapping, including—

- (A) the entire coastal zone of the United States;
- (B) floodplains of major rivers; and
- (C) the Prairie Pothole region;

(2) produce, by September 30, 1998, National Wetlands Inventory maps for those portions of the contiguous United States for which final maps have not been produced earlier;

Alaska.

(3) produce, as soon as practicable, National Wetlands Inventory maps for Alaska and other noncontiguous portions of the United States; and

Reports.

(4) produce, by September 30, 1990, and at ten-year intervals thereafter, reports to update and improve the information contained in the report dated September 1982 and entitled "Status and Trends of Wetlands and Deepwater Habitat in the Conterminous United States, 1950's to 1970's".

State and local
governments.

(b) **NOTICE.**—The Secretary shall notify the appropriate State and local units of government at such time as he proposes to begin map preparation under subsection (a) in an area. Such notice shall include, but is not limited to, the identification of the area to be mapped, the proposed schedule for completion, and the identification of a source for further information.

SEC. 402. REPORTS TO CONGRESS.

16 USC 3932.

(a) **IN GENERAL.**—The Secretary, in consultation and cooperation with the Secretary of Agriculture, shall prepare and submit to the committees—

(1) by March 30, 1987, a report regarding the status, condition, and trends of wetlands in the lower Mississippi alluvial plain and the prairie pothole regions of the United States; and

(2) by September 30, 1987, a report regarding trends of wetlands in all other areas of the United States.

(b) **CONTENTS OF REPORTS.**—The reports required under subsection (a) shall contain—

(1) an analysis of the factors responsible for wetlands destruction, degradation, protection and enhancement;

(2) a compilation and analysis of Federal statutory and regulatory mechanisms, including expenditures, financial assistance, and tax provisions which—

Taxes.

(A) induce wetlands destruction or degradation; or

(B) protect or enhance wetlands;

(3) a compilation and analysis of Federal expenditures resulting from wetlands destruction, degradation, protection or enhancement;

(4) an analysis of public and private patterns of ownership of wetlands;

(5) an analysis of the environmental and economic impact of eliminating or restricting future Federal expenditures and financial assistance, whether direct or indirect, which have the effect of encouraging the destruction, degradation, protection or enhancement of wetlands, including—

(A) public works expenditures;

(B) assistance programs such as price support programs, commodity loans and purchase programs and disaster assistance programs;

Loans.

(C) soil conservation programs; and

(D) certain income tax provisions;

Taxes.

(6) an analysis of the environmental and economic impact of failure to restrict future Federal expenditures, financial assistance, and tax provisions which have the effect of encouraging the destruction, degradation, protection or enhancement of wetlands, including—

Taxes.

(A) assistance for normal silviculture activity (such as plowing, seeding, planting, cultivating, minor drainage, or harvesting for the production of fiber or forest products);

Agriculture and agricultural commodities.
Forests and forest products.

(B) Federal expenditures required incident to studies, evaluations, design, construction, operation, maintenance, or rehabilitation of Federal water resource development activities, including channel improvements;

(C) the commodity loans and purchases program and cotton, feed grain, wheat, and rice production stabilization programs administered by the Department of Agriculture; and

Loans.
Agriculture and agricultural commodities.

(D) Federal expenditures for the construction of publicly owned or publicly operated highways, roads, structures, or facilities that are essential links in a larger network or system; and

Highways.

(7) recommendations for the conservation of wetlands resources based on an evaluation and comparison of all manage-

State and local governments.

ment alternatives, and combinations of management alternatives, such as State and local actions, Federal actions, and initiatives by private organizations and individuals.

TITLE V—MISCELLANEOUS PROVISIONS

16 USC 668dd
note.

SEC. 501. MIGRATORY BIRD TREATY ACT.

Section 6(b) of the Act of July 3, 1918 (16 U.S.C. 707(b)) is amended by deleting "shall" the first place it appears therein and by inserting in lieu thereof "shall knowingly".

SEC. 502. BAYOU SAUVAGE URBAN NATIONAL WILDLIFE REFUGE.

(a) **PURPOSES OF REFUGE.**—The purposes of the Bayou Sauvage Urban National Wildlife Refuge are—

- (1) to enhance the populations of migratory, shore, and wading birds within the refuge;
- (2) to encourage natural diversity of fish and wildlife species within the refuge;
- (3) to protect the endangered and threatened species and otherwise to provide for the conservation and management of fish and wildlife within the refuge;
- (4) to fulfill the international treaty obligations of the United States respecting fish and wildlife;
- (5) to protect the archeological resources of the refuge;
- (6) to provide opportunities for scientific research and environmental education, with emphasis being given to the ecological and other values of wetlands; and
- (7) to provide opportunities for fish and wildlife oriented public uses and recreation in an urban setting.

(b) **ACQUISITION AND ESTABLISHMENT OF REFUGE.**—

Louisiana.

(1) **ACQUISITION.**—Within four years after the effective date of this section the Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") shall acquire the approximately nineteen thousand acres of lands and waters, and interests therein, located in Orleans Parish, Louisiana, that are depicted on the map entitled "Bayou Sauvage Urban National Wildlife Refuge", dated September 15, 1986, and on file at the United States Fish and Wildlife Service, Department of the Interior. The lands and waters, and interests therein, acquired under this paragraph comprise the Bayou Sauvage Urban National Wildlife Refuge. The acquisition shall be made through donation, purchase with donated or appropriated funds, or exchange, or through any combination of the foregoing.

Federal
Register,
publication.

(2) **ESTABLISHMENT.**—At such time as sufficient lands and waters, and interests therein, have been acquired under paragraph (1) to constitute an initial area that can be administered to carry out the purposes set forth in subsection (a), the Secretary shall establish the Bayou Sauvage Urban National Wildlife Refuge by publication of notice to that effect in the Federal Register.

(3) **BOUNDARY ADJUSTMENTS.**—The Secretary may make such adjustments with respect to the boundary of the Bayou Sauvage Urban National Wildlife Refuge as may be necessary to facilitate the acquisition of lands and waters, and interests therein, for the refuge and to facilitate the administration of the refuge.

(c) **ADMINISTRATION OF REFUGE.**—The Secretary shall administer all lands and waters, and interests therein, acquired under subsec-

tion (b) in accordance with the provisions of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee) to carry out the purposes set forth in subsection (a). The Secretary may utilize such additional statutory authority as may be available to him for the conservation and development of wildlife and natural resources, the development of outdoor recreation opportunities, and interpretive environmental education as he considers appropriate to carry out such purposes. Within two years after the effective date of this section, the Secretary shall complete a master plan for the development of the Bayou Sauvage Urban National Wildlife Refuge.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Department of the Interior—

(1) from funds not otherwise appropriated from the Land and Water Conservation Fund, such sums as may be necessary for the acquisition of lands and waters, and interests therein, for the Bayou Sauvage Urban National Wildlife Refuge; and

(2) \$5,000,000 for the development of the refuge.

The moneys appropriated under subparagraphs (1) and (2) shall remain available until expended.

(e) **EFFECTIVE DATE.**—This section takes effect on the later of the date of enactment of this Act or October 1, 1986.

Approved November 10, 1986.

LEGISLATIVE HISTORY—S. 740 (H.R. 1203):

HOUSE REPORTS: No. 99-86, Pt. 1, accompanying H.R. 1203 (Comm. on Merchant Marine and Fisheries).

SENATE REPORTS: No. 99-445 (Comm. on Environment and Public Works).

CONGRESSIONAL RECORD, Vol. 132 (1986):

Oct. 3, considered and passed Senate.

Oct. 14, considered and passed House.