

after such date, see section 1217(b)(1) of Pub. L. 100-418, set out as an Effective Date note under section 3001 of Title 19, Customs Duties.

SUBCHAPTER III—STATE AND FEDERAL
WETLANDS ACQUISITION

§ 3921. National wetlands priority conservation plan

(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 interests 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.

(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.

(Pub. L. 99-645, title III, §301, Nov. 10, 1986, 100 Stat. 3586.)

§ 3922. Federal acquisition

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 3921 of this title.

(Pub. L. 99-645, title III, §304, Nov. 10, 1986, 100 Stat. 3588.)

Editorial Notes

REFERENCES IN TEXT

The Migratory Bird Conservation Act of 1929, referred to in text, is act Feb. 18, 1929, ch. 257, 45 Stat. 1222, which is classified generally to subchapter III (§715 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 715 of this title and Tables.

§ 3923. Restriction on use of eminent domain in acquisitions

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

(Pub. L. 99-645, title III, §305, Nov. 10, 1986, 100 Stat. 3588.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 99-645, Nov. 10, 1986, 100 Stat. 3582, known as the Emergency Wetlands Resources Act of 1986. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of this title and Tables.

SUBCHAPTER IV—WETLANDS INVENTORY
AND TREND ANALYSIS

§ 3931. National wetlands inventory project

(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;

- (3) produce, by September 30, 2000, National Wetlands Inventory maps for Alaska and other noncontiguous portions of the United States;

- (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 Deep-water Habitat in the Coterminous United States, 1950’s to 1970’s”;

- (5) produce, by April 30, 1990, a report that provides—

- (A) an assessment of the estimated total number of acres of wetland habitat as of the 1780’s in the areas that now comprise each State; and

- (B) an assessment of the estimated total number of acres of wetlands in each State as of the 1980’s, and the percentage of loss of wetlands in each State between the 1780’s and the 1980’s;

- (6) produce, by September 30, 2004, a digital wetlands data base for the United States based on the final wetlands maps produced under this section; and

- (7) archive and make available for dissemination wetlands data and maps digitized under

this section as such data and maps become available.

(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.

(Pub. L. 99-645, title IV, § 401, Nov. 10, 1986, 100 Stat. 3588; Pub. L. 101-233, § 18, Dec. 13, 1989, 103 Stat. 1978; Pub. L. 102-440, title III, § 305, Oct. 23, 1992, 106 Stat. 2235.)

Editorial Notes

AMENDMENTS

1992—Subsec. (a)(3). Pub. L. 102-440, § 305(1), substituted “by September 30, 2000” for “as soon as practicable”.

Subsec. (a)(4). Pub. L. 102-440, § 305(2), which directed amendment of par. (4) by substituting a semicolon for “. And”, was executed by making the substitution for “. and”, to reflect the probable intent of Congress.

Subsec. (a)(6), (7). Pub. L. 102-440, § 305(3), (4), added pars. (6) and (7).

1989—Subsec. (a)(5). Pub. L. 101-233 added par. (5).

§ 3932. Reports to Congress

(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—

(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;

(C) soil conservation programs; and

(D) certain income tax provisions;

(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—

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

(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

(7) recommendations for the conservation of wetlands resources based on an evaluation and comparison of all management alternatives, and combinations of management alternatives, such as State and local actions, Federal actions, and initiatives by private organizations and individuals.

(Pub. L. 99-645, title IV, § 402, Nov. 10, 1986, 100 Stat. 3589.)

CHAPTER 59A—WETLANDS

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§ 3951. Definitions

As used in this chapter, the term—

(1) “Secretary” means the Secretary of the Army;

(2) “Administrator” means the Administrator of the Environmental Protection Agency;

(3) “development activities” means any activity, including the discharge of dredged or fill material, which results directly in a more than de minimus¹ change in the hydrologic regime, bottom contour, or the type, distribution or diversity of hydrophytic vegetation, or

¹ So in original. Probably should be “de minimis”.