

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5.

Functions, appropriations, records, and property of Secretary of the Interior and Fish and Wildlife Service of Department of the Interior which affect or relate to breeding, raising, producing, marketing, or any other phase of production or distribution of domestically raised fur-bearing animals, or the products thereof transferred to Secretary of Agriculture by section 434 of Title 7, Agriculture.

Reorg. Plan No. III of 1940, § 3, eff. June 30, 1940, 5 F.R. 2108, 54 Stat. 1232, set out in the Appendix to Title 5, Government Organization and Employees, consolidated Bureau of Fisheries and Bureau of Biological Survey with their respective functions into one agency in Department of the Interior to be known as the Fish and Wildlife Service, and abolished the office of Commissioner and Deputy Commissioner of Fisheries and transferred their functions to the consolidated agency.

Reorg. Plan No. II of 1939, set out in the Appendix to Title 5, transferred Bureau of Fisheries in Department of Commerce, and its functions, to Department of the Interior; transferred functions of Secretary of Commerce relating to protection of fur seals and other fur-bearing animals to Secretary of the Interior; and transferred functions of Secretary of Agriculture relating to conservation of wildlife, game, and migratory birds to Secretary of the Interior.

#### APPROPRIATIONS

Section 4 of Pub. L. 85-624 provided that: "There is hereby authorized to be appropriated and expended such funds as may be necessary to carry out the purposes of this Act [amending this section and sections 662 to 664 of this title and enacting section 1008 of this title]."

#### STUDY OF SOFT- AND HARD-SHELL CLAMS

Act May 26, 1948, ch. 348, 62 Stat. 274, directed the Fish and Wildlife Service to undertake, in cooperation with appropriate State and interstate agencies in accordance with the provisions of the Act of August 14, 1946 (60 Stat. 1080), comprehensive studies of the soft-shell clam, *Mya arenaria*, and the hard-shell clam, *Venus mercenaria*, with particular respect to the biology, propagation, and methods of cultivation of such clams, required the Service to recommend appropriate measures for (1) arresting depletion in existing productive beds; (2) restoring to production beds formerly productive but now barren or unusable; (3) developing new areas which may be found suitable; (4) improving methods and techniques of digging, transplanting, and handling; and (5) otherwise increasing production and improving the quality of such clams for the benefit of both producers and consumers, and authorized for the five-year period beginning July 1, 1948, the sum of \$250,000 to carry out the studies of the soft-shell clam and the sum of \$250,000 to carry out the studies of the hard-shell clam.

#### EX. ORD. NO. 13443. FACILITATION OF HUNTING HERITAGE AND WILDLIFE CONSERVATION

Ex. Ord. No. 13443, Aug. 16, 2007, 72 F.R. 46537, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

**SECTION 1. Purpose.** The purpose of this order is to direct Federal agencies that have programs and activities that have a measurable effect on public land management, outdoor recreation, and wildlife management, including the Department of the Interior and the Department of Agriculture, to facilitate the expansion and enhancement of hunting opportunities and the management of game species and their habitat.

**SEC. 2. Federal Activities.** Federal agencies shall, consistent with agency missions:

(a) Evaluate the effect of agency actions on trends in hunting participation and, where appropriate to address declining trends, implement actions that expand and enhance hunting opportunities for the public;

(b) Consider the economic and recreational values of hunting in agency actions, as appropriate;

(c) Manage wildlife and wildlife habitats on public lands in a manner that expands and enhances hunting opportunities, including through the use of hunting in wildlife management planning;

(d) Work collaboratively with State governments to manage and conserve game species and their habitats in a manner that respects private property rights and State management authority over wildlife resources;

(e) Establish short and long term goals, in cooperation with State and tribal governments, and consistent with agency missions, to foster healthy and productive populations of game species and appropriate opportunities for the public to hunt those species;

(f) Ensure that agency plans and actions consider programs and recommendations of comprehensive planning efforts such as State Wildlife Action Plans, the North American Waterfowl Management Plan, and other range-wide management plans for big game and upland game birds;

(g) Seek the advice of State and tribal fish and wildlife agencies, and, as appropriate, consult with the Sporting Conservation Council and other organizations, with respect to the foregoing Federal activities.

**SEC. 3. North American Wildlife Policy Conference.** The Chairman of the Council on Environmental Quality (Chairman) shall, in coordination with the appropriate Federal agencies and in consultation with the Sporting Conservation Council and in cooperation with State and tribal fish and wildlife agencies and the public, convene not later than 1 year after the date of this order, and periodically thereafter at such times as the Chairman deems appropriate, a White House Conference on North American Wildlife Policy (Conference) to facilitate the exchange of information and advice relating to the means for achieving the goals of this order.

**SEC. 4. Recreational Hunting and Wildlife Resource Conservation Plan.** The Chairman shall prepare, consistent with applicable law and subject to the availability of appropriations, in coordination with the appropriate Federal agencies and in consultation with the Sporting Conservation Council, and in cooperation with State and tribal fish and wildlife agencies, not later than 1 year following the conclusion of the Conference, a comprehensive Recreational Hunting and Wildlife Conservation Plan that incorporates existing and ongoing activities and sets forth a 10-year agenda for fulfilling the actions identified in section 2 of this order.

**SEC. 5. Judicial Review.** This order is not intended to, and does not, create any right, benefit, trust responsibility, or privilege, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

GEORGE W. BUSH.

#### § 662. Impounding, diverting, or controlling of waters

##### (a) Consultations between agencies

Except as hereafter stated in subsection (h) of this section, whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, or by any public or private agency under Fed-

eral permit or license, such department or agency first shall consult with the United States Fish and Wildlife Service, Department of the Interior, and with the head of the agency exercising administration over the wildlife resources of the particular State wherein the impoundment, diversion, or other control facility is to be constructed, with a view to the conservation of wildlife resources by preventing loss of and damage to such resources as well as providing for the development and improvement thereof in connection with such water-resource development.

**(b) Reports and recommendations; consideration**

In furtherance of such purposes, the reports and recommendations of the Secretary of the Interior on the wildlife aspects of such projects, and any report of the head of the State agency exercising administration over the wildlife resources of the State, based on surveys and investigations conducted by the United States Fish and Wildlife Service and such State agency for the purpose of determining the possible damage to wildlife resources and for the purpose of determining means and measures that should be adopted to prevent the loss of or damage to such wildlife resources, as well as to provide concurrently for the development and improvement of such resources, shall be made an integral part of any report prepared or submitted by any agency of the Federal Government responsible for engineering surveys and construction of such projects when such reports are presented to the Congress or to any agency or person having the authority or the power, by administrative action or otherwise, (1) to authorize the construction of water-resource development projects or (2) to approve a report on the modification or supplementation of plans for previously authorized projects, to which sections 661 to 666c of this title apply. Recommendations of the Secretary of the Interior shall be as specific as is practicable with respect to features recommended for wildlife conservation and development, lands to be utilized or acquired for such purposes, the results expected, and shall describe the damage to wildlife attributable to the project and the measures proposed for mitigating or compensating for these damages. The reporting officers in project reports of the Federal agencies shall give full consideration to the report and recommendations of the Secretary of the Interior and to any report of the State agency on the wildlife aspects of such projects, and the project plan shall include such justifiable means and measures for wildlife purposes as the reporting agency finds should be adopted to obtain maximum overall project benefits.

**(c) Modification of projects; acquisition of lands**

Federal agencies authorized to construct or operate water-control projects are authorized to modify or add to the structures and operations of such projects, the construction of which has not been substantially completed on the date of enactment of the Fish and Wildlife Coordination Act, and to acquire lands in accordance with section 663 of this title, in order to accommodate the means and measures for such conservation of wildlife resources as an integral part of such projects: *Provided*, That for projects au-

thorized by a specific Act of Congress before the date of enactment of the Fish and Wildlife Coordination Act (1) such modification or land acquisition shall be compatible with the purposes for which the project was authorized; (2) the cost of such modifications or land acquisition, as means and measures to prevent loss of and damage to wildlife resources to the extent justifiable, shall be an integral part of the cost of such projects; and (3) the cost of such modifications or land acquisition for the development or improvement of wildlife resources may be included to the extent justifiable, and an appropriate share of the cost of any project may be allocated for this purpose with a finding as to the part of such allocated cost, if any, to be reimbursed by non-Federal interests.

**(d) Project costs**

The cost of planning for and the construction or installation and maintenance of such means and measures adopted to carry out the conservation purposes of this section shall constitute an integral part of the cost of such projects: *Provided*, That such cost attributable to the development and improvement of wildlife shall not extend beyond that necessary for (1) land acquisition, (2) facilities as specifically recommended in water resource project reports, (3) modification of the project, and (4) modification of project operations, but shall not include the operation of wildlife facilities.

**(e) Transfer of funds**

In the case of construction by a Federal agency, that agency is authorized to transfer to the United States Fish and Wildlife Service, out of appropriations or other funds made available for investigations, engineering, or construction, such funds as may be necessary to conduct all or part of the investigations required to carry out the purposes of this section.

**(f) Estimation of wildlife benefits or losses**

In addition to other requirements, there shall be included in any report submitted to Congress supporting a recommendation for authorization of any new project for the control or use of water as described herein (including any new division of such project or new supplemental works on such project) an estimation of the wildlife benefits or losses to be derived therefrom including benefits to be derived from measures recommended specifically for the development and improvement of wildlife resources, the cost of providing wildlife benefits (including the cost of additional facilities to be installed or lands to be acquired specifically for that particular phase of wildlife conservation relating to the development and improvement of wildlife), the part of the cost of joint-use facilities allocated to wildlife, and the part of such costs, if any, to be reimbursed by non-Federal interests.

**(g) Applicability to projects**

The provisions of this section shall be applicable with respect to any project for the control or use of water as prescribed herein, or any unit of such project authorized before or after the date of enactment of the Fish and Wildlife Coordination Act for planning or construction, but shall not be applicable to any project or unit thereof

authorized before the date of enactment of the Fish and Wildlife Coordination Act if the construction of the particular project or unit thereof has been substantially completed. A project or unit thereof shall be considered to be substantially completed when sixty percent or more of the estimated construction cost has been obligated for expenditure.

**(h) Exempt projects and activities**

The provisions of section 661 to 666c of this title shall not be applicable to those projects for the impoundment of water where the maximum surface area of such impoundments is less than ten acres, nor to activities for or in connection with programs primarily for land management and use carried out by Federal agencies with respect to Federal lands under their jurisdiction.

(Mar. 10, 1934, ch. 55, § 2, 48 Stat. 401; 1939 Reorg. Plan No. II, § 4(e), (f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433; Aug. 14, 1946, ch. 965, 60 Stat. 1080; Pub. L. 85-624, § 2, Aug. 12, 1958, 72 Stat. 564; Pub. L. 89-72, § 6(b), July 9, 1965, 79 Stat. 216.)

REFERENCES IN TEXT

The date of enactment of the Fish and Wildlife Coordination Act, referred to in subsecs. (c) and (g), probably refers to the date of enactment of Pub. L. 85-624, Aug. 12, 1958. See, also, Short Title note set out under section 661 of this title.

AMENDMENTS

1965—Subsec. (d). Pub. L. 89-72 added cl. (2) to proviso, redesignated cls. (2) and (3) thereof as (3) and (4), struck out “nor the construction of such facilities beyond those herein described” after “wildlife facilities” and struck out a second proviso which applied to projects constructed under Federal reclamation laws and required the Secretary of the Interior, in addition to allocations made under section 485h of Title 43, to make findings on part of estimated cost of the project which can properly be allocated to means and measures to prevent loss and damage to wildlife resources, which costs shall not be reimbursable, and provided for allocation of project costs to development and improvement of wildlife resources, now covered by sections 4607-12 to 4607-21 of this title.

1958—Pub. L. 85-624 amended section generally to require consultations with a view to the conservation of resources by providing for the development and improvement thereof in connection with water-resource development, to provide for inclusion of reports and recommendations of the Secretary of the Interior and of the heads of State agencies in reports prepared or submitted by agencies responsible for engineering surveys and construction of projects when such reports are presented to the Congress or to any agency or person having the authority or the power to authorize the construction of water-resource development projects or to approve a report on the modification or supplementation of plans for previously authorized projects, to authorize modification of projects and acquisition of lands, and to require an estimation of benefits or losses to wildlife to be incorporated in the reports submitted to the Congress.

1946—Act Aug. 14, 1946, amended section generally to provide for consultations between any agencies and the Fish and Wildlife Service and head of State agency exercising administration over State wildlife resources prior to the impounding of water in order to prevent loss and damage to wildlife resources. Former provisions of this section are covered by section 665 of this title.

TRANSFER OF FUNCTIONS

See Transfer of Functions note set out under section 661 of this title.

**§ 663. Impoundment or diversion of waters**

**(a) Conservation, maintenance, and management of wildlife resources; development and improvement**

Subject to the exceptions prescribed in section 662(h) of this title, whenever the waters of any stream or other body of water are impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, adequate provision, consistent with the primary purposes of such impoundment, diversion, or other control, shall be made for the use thereof, together with any areas of land, water, or interests therein, acquired or administered by a Federal agency in connection therewith, for the conservation, maintenance, and management of wildlife resources thereof, and its habitat thereon, including the development and improvement of such wildlife resources pursuant to the provisions of section 662 of this title.

**(b) Use and availability of waters, land, or interests therein**

The use of such waters, land, or interests therein for wildlife conservation purposes shall be in accordance with general plans approved jointly (1) by the head of the particular department or agency exercising primary administration in each instance, (2) by the Secretary of the Interior, and (3) by the head of the agency exercising the administration of the wildlife resources of the particular State wherein the waters and areas lie. Such waters and other interests shall be made available, without cost for administration, by such State agency, if the management of the properties relate to the conservation of wildlife other than migratory birds, or by the Secretary of the Interior, for administration in such manner as he may deem advisable, where the particular properties have value in carrying out the national migratory bird management program: *Provided*, That nothing in this section shall be construed as affecting the authority of the Secretary of Agriculture to cooperate with the States or in making lands available to the States with respect to the management of wildlife and wildlife habitat on lands administered by him.

**(c) Acquisition of land, waters, and interests therein; report to Congress**

When consistent with the purposes of sections 661 to 666c of this title and the reports and findings of the Secretary of the Interior prepared in accordance with section 662 of this title, land, waters, and interests therein may be acquired by Federal construction agencies for the wildlife conservation and development purposes of sections 661 to 666c of this title in connection with a project as reasonably needed to preserve and assure for the public benefit the wildlife potentials of the particular project area: *Provided*, That before properties are acquired for this purpose, the probable extent of such acquisition shall be set forth, along with other data necessary for project authorization, in a report submitted to the Congress, or in the case of a project previously authorized, no such prop-