

104 Stat. 2962; Pub. L. 107-308, §8(a)(6), (7), (b)(1), Dec. 2, 2002, 116 Stat. 2447, 2448.)

#### REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a)(1)(A), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

Public Law 92-463, referred to in subsec. (a)(1), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, known as the Federal Advisory Committee Act, which is set out in the Appendix to Title 5, Government Organization and Employees.

#### AMENDMENTS

2002—Subsec. (a)(1)(A). Pub. L. 107-308, §8(b)(1), amended directory language of Pub. L. 101-593, §112(1). See 1990 Amendment note below.

Subsec. (a)(1)(B). Pub. L. 107-308, §8(a)(6), substituted “section 3702(g)(2)(B)” for “section 3702(2)(B)”.

Subsec. (c). Pub. L. 107-308, §8(a)(7), substituted “Council” for “Commission” in introductory provisions.

1990—Subsec. (a)(1). Pub. L. 101-593, §112(2), inserted sentence at end relating to Public Law 92-463.

Subsec. (a)(1)(A). Pub. L. 101-593, §112(1), as amended by Pub. L. 107-308, §8(b)(1), inserted “, who shall be the responsible Federal official for ensuring Council compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)” after “Service”.

Subsec. (f). Pub. L. 101-593, §112(3), inserted before period at end of first sentence “, and the Chairman shall take appropriate steps to provide adequate notice to the public of the time and place of such meetings”.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-308, §8(b)(2), Dec. 2, 2002, 116 Stat. 2448, provided that: “Paragraph (1) of this subsection [amending this section] shall be effective on and after the effective date of section 112(1) of Public Law 101-593 (104 Stat. 2962) [Nov. 16, 1990].”

#### MEMBERSHIP OF NORTH AMERICAN WETLANDS CONSERVATION COUNCIL

Pub. L. 105-312, title III, §304, Oct. 30, 1998, 112 Stat. 2958, provided that:

“(a) IN GENERAL.—Notwithstanding section 4(a)(1)(D) of the North American Wetlands Conservation Act (16 U.S.C. 4403(a)(1)(D)), during the period of 1999 through 2002, the membership of the North American Wetlands Conservation Council under section 4(a)(1)(D) of that Act shall consist of—

“(1) 1 individual who shall be the Group Manager for Conservation Programs of Ducks Unlimited, Inc. and who shall serve for 1 term of 3 years beginning in 1999; and

“(2) 2 individuals who shall be appointed by the Secretary of the Interior in accordance with section 4 of that Act and who shall each represent a different organization described in section 4(a)(1)(D) of that Act.

“(b) PUBLICATION OF POLICY.—Not later than June 30, 1999, the Secretary of the Interior shall publish in the Federal Register, after notice and opportunity for public comment, a policy for making appointments under section 4(a)(1)(D) of the North American Wetlands Conservation Act (16 U.S.C. 4403(a)(1)(D)).”

#### § 4404. Approval of wetlands conservation projects

##### (a) Consideration by Council

The Council shall recommend wetlands conservation projects to the Migratory Bird Conservation Commission based on consideration of—

(1) the extent to which the wetlands conservation project fulfills the purposes of this chapter, the Plan, or the Agreement;

(2) the availability of sufficient non-Federal moneys to carry out any wetlands conservation project and to match Federal contributions in accordance with the requirements of section 4407(b) of this title;

(3) the extent to which any wetlands conservation project represents a partnership among public agencies and private entities;

(4) the consistency of any wetlands conservation project in the United States with the National Wetlands Priority Conservation Plan developed under section 3921 of this title;

(5) the extent to which any wetlands conservation project would aid the conservation of migratory nongame birds, other fish and wildlife and species that are listed, or are candidates to be listed, as threatened and endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(6) the substantiality of the character and design of the wetlands conservation project; and

(7) the recommendations of any partnerships among public agencies and private entities in Canada, Mexico, or the United States which are participating actively in carrying out one or more wetlands conservation projects under this chapter, the Plan, or the Agreement.

##### (b) Recommendations to Migratory Bird Conservation Commission

The Council shall submit to the Migratory Bird Conservation Commission each year a description, including estimated costs, of the wetlands conservation projects which the Council has considered under subsection (a) of this section and which it recommends, in order of priority, that the Migratory Bird Conservation Commission approve for Federal funding under this chapter and section 669b(b) of this title. Solely for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), recommendations by the Council for carrying out wetlands conservation projects under section 4405(a) of this title shall be considered Federal actions requiring the preparation of environmental assessments or, where appropriate, environmental impact statements.

##### (c) Council procedures

The Council shall establish practices and procedures for the carrying out of its functions under subsections (a) and (b) of this section. The procedures shall include requirements that—

(1) a quorum of the Council must be present before any business may be transacted; and

(2) no recommendations referred to in subsection (b) of this section may be adopted by the Council except by the vote of two-thirds of all members present and voting.

##### (d) Council representation on Migratory Bird Conservation Commission

The Chairman of the Council shall select 2 Council members of the<sup>1</sup> United States citizenship to serve with the Chairman as ex officio members of the Migratory Bird Conservation

<sup>1</sup> So in original.

Commission for the purposes of considering and voting upon wetlands conservation projects recommended by the Council.

**(e) Approval of Council recommendations by Migratory Bird Conservation Commission**

The Migratory Bird Conservation Commission, along with the two members of the Council referred to in subsection (d) of this section, shall approve, reject or reorder the priority of any wetlands conservation projects recommended by the Council based on, to the greatest extent practicable, the criteria of subsection (a) of this section. If the Migratory Bird Conservation Commission approves any wetlands conservation project, Federal funding shall be made available under this chapter and section 669b(b) of this title. If the Migratory Bird Conservation Commission rejects or reorders the priority of any wetlands conservation project recommended by the Council, the Migratory Bird Conservation Commission shall provide the Council and the appropriate Committees with a written statement explaining its rationale for the rejection or the priority modification.

**(f) Notification of appropriate Committees**

The Migratory Bird Conservation Commission shall submit annually to the appropriate Committees a report including a list and description of the wetlands conservation projects approved by the Migratory Bird Conservation Commission for Federal funding under subsection (e) of this section in order of priority; the amounts and sources of Federal and non-Federal funding for such projects; a justification for the approval of such projects and the order of priority for funding such projects; a list and description of the wetlands conservation projects which the Council recommended, in order of priority that the Migratory Bird Conservation Commission approve for Federal funding; and a justification for any rejection or re-ordering of the priority of wetlands conservation projects recommended by the Council that was based on factors other than the criteria of subsection (a) of this section.

(Pub. L. 101-233, § 5, Dec. 13, 1989, 103 Stat. 1972; Pub. L. 101-593, title I, § 112(4), Nov. 16, 1990, 104 Stat. 2962; Pub. L. 107-308, § 8(a)(8)-(11), Dec. 2, 2002, 116 Stat. 2448.)

REFERENCES IN TEXT

The Endangered Species Act of 1973, referred to in subsec. (a)(5), is Pub. L. 93-205, Dec. 28, 1973, 87 Stat. 884, as amended, which is classified generally to chapter 35 (§1531 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of this title and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (b), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

AMENDMENTS

2002—Subsec. (a)(5). Pub. L. 107-308, § 8(a)(8), inserted “of 1973” after “Endangered Species Act”.

Subsec. (b). Pub. L. 107-308, § 8(a)(9), substituted “each year” for “by January 1 of each year.”

Subsec. (d). Pub. L. 107-308, § 8(a)(10), substituted “2 Council members” for “one Council member”.

Subsec. (f). Pub. L. 107-308, § 8(a)(11), substituted “subsection (e)” for “subsection (d)”.

1990—Subsec. (b). Pub. L. 101-593 inserted at end “Solely for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), recommendations by the Council for carrying out wetlands conservation projects under section 4405(a) of this title shall be considered Federal actions requiring the preparation of environmental assessments or, where appropriate, environmental impact statements.”

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which the 5th item on page 177 identifies a reporting provision which, as subsequently amended, is contained in subsec. (f) of this section), see section 3003 of Pub. L. 104-66, as amended, and section 1(a)(4) [div. A, § 1402(1)] of Pub. L. 106-554, set out as notes under section 1113 of Title 31, Money and Finance.

**§ 4405. Conditions relating to wetlands conservation projects**

**(a) Projects in United States**

(1) Subject to the allocation requirements of section 4407(a)(2) of this title and the limitations on Federal contributions under section 4407(b) of this title, the Secretary shall assist in carrying out wetlands conservation projects in the United States, which have been approved by the Migratory Bird Conservation Commission, with the Federal funds made available under this chapter and section 669b(b) of this title.

(2) Except as provided in paragraph (3), any lands or waters or interests therein acquired in whole or in part by the Secretary with the Federal funds made available under this chapter and section 669b(b) of this title to carry out wetlands conservation projects shall be included in the National Wildlife Refuge System.

(3) In lieu of including in the National Wildlife Refuge System any lands or waters or interests therein acquired under this chapter, the Secretary may, with the concurrence of the Migratory Bird Conservation Commission, grant or otherwise provide the Federal funds made available under this chapter and section 669b(b) of this title or convey any real property interest acquired in whole or in part with such funds without cost to a State or to another public agency or other entity upon a finding by the Secretary that the real property interests should not be included in the National Wildlife Refuge System: *Provided*, That any grant recipient shall have been so identified in the project description accompanying the recommendation from the Council and approved by the Migratory Bird Conservation Commission. The Secretary shall not convey any such interest to a State, another public agency or other entity unless the Secretary determines that such State, agency or other entity is committed to undertake the management of the property being transferred in accordance with the objectives of this chapter, and the deed or other instrument of transfer contains provisions for the reversion of title to the property to the United States if such State, agency or other entity fails to manage the property in accordance with the objectives of this chapter. Any real property interest conveyed pursuant to this paragraph shall be subject to