

(c) Ex officio Council members

The Secretary is authorized and encouraged to include as ex officio nonvoting members of the Council representatives of—

(1) the Federal, provincial, territorial, or State government agencies of Canada and Mexico, which are participating actively in carrying out one or more wetlands conservation projects under this chapter, the Plan, or the Agreement;

(2) the Environmental Protection Agency and other appropriate Federal agencies, in addition to the United States Fish and Wildlife Service, which are participating actively in carrying out one or more wetlands conservation projects under this chapter, the Plan, or the Agreement; and

(3) nonprofit charitable organizations and Native American interests, including tribal organizations, which are participating actively in one or more wetlands conservation projects under this chapter, the Plan, or the Agreement.

(d) Chairman

The Chairman shall be elected by the Council from its members for a three-year term, except that the first elected Chairman may serve a term of less than three years.

(e) Quorum

A majority of the current membership of the Council shall constitute a quorum for the transaction of business.

(f) Meetings

The Council shall meet at the call of the Chairman at least once a year. Council meetings shall be open to the public, and the Chairman shall take appropriate steps to provide adequate notice to the public of the time and place of such meetings. If a Council member appointed under subsection (a)(1)(C) or (a)(1)(D) of this section misses three consecutive regularly scheduled meetings, the Secretary may remove that individual in accordance with subsection (b)(4).

(g) Coordinator

The Director of the United States Fish and Wildlife Service shall appoint an individual who shall serve at the pleasure of the Director and—

(1) who shall be educated and experienced in the principles of fish, wildlife, and wetlands conservation;

(2) who shall be responsible, with assistance from the United States Fish and Wildlife Service, for facilitating consideration of wetlands conservation projects by the Council and otherwise assisting the Council in carrying out its responsibilities under this chapter; and

(3) who shall be compensated with the funds available under section 4407(a)(1) of this title for administering this chapter.

(Pub. L. 101-233, § 4, Dec. 13, 1989, 103 Stat. 1970; Pub. L. 101-593, title I, § 112(1)-(3), Nov. 16, 1990, 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 gener-

ally 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 “, and the Chairman shall take appropriate steps to provide adequate notice to the public of the time and place of such meetings” after “open to the public”.

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 contribu-

tions 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 the¹ United States citizenship to serve with the Chairman as ex officio members of the Migratory Bird Conservation 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 re-

ferred 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.”

¹ So in original.

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 such terms and conditions that will ensure that the interest will be administered for the long-term conservation and management of the wetland ecosystem and the fish and wildlife dependent thereon.

(b) Projects in Canada or Mexico

Subject to the allocation requirements of section 4407(a)(1) of this title and the limitations on

Federal contributions under section 4407(b) of this title, the Secretary shall grant or otherwise provide the Federal funds made available under this chapter and section 669b(b) of this title to public agencies and other entities for the purpose of assisting such entities and individuals in carrying out wetlands conservation projects in Canada or Mexico that have been approved by the Migratory Bird Conservation Commission: *Provided*, That the 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 may only grant or otherwise provide Federal funds if the grant is subject to the terms and conditions that will ensure that any real property interest acquired in whole or in part, or enhanced, managed, or restored with such Federal funds will be administered for the long-term conservation and management of such wetland ecosystem and the fish and wildlife dependent thereon. Real property and interests in real property acquired pursuant to this subsection shall not become part of the National Wildlife Refuge System. Acquisitions of real property and interests in real property carried out pursuant to this subsection shall not be subject to any provision of Federal law governing acquisitions of property for inclusion in the National Wildlife Refuge System.

(Pub. L. 101-233, §6, Dec. 13, 1989, 103 Stat. 1973.)

§ 4406. Amounts available to carry out this chapter

(a) Omitted

(b) Migratory bird fines, penalties, forfeitures

The sums received under section 707 of this title as penalties or fines, or from forfeitures of property are authorized to be appropriated to the Department of the Interior for purposes of allocation under section 4407 of this title. This subsection shall not be construed to require the sale of instrumentalities.

(c) Authorization of appropriations

In addition to the amounts made available under subsections (a) and (b) of this section, there are authorized to be appropriated to the Department of the Interior for purposes of allocation under section 4407 of this title not to exceed—

- (1) \$55,000,000 for fiscal year 2003;
- (2) \$60,000,000 for fiscal year 2004;
- (3) \$65,000,000 for fiscal year 2005;
- (4) \$70,000,000 for fiscal year 2006; and
- (5) \$75,000,000 for each of fiscal years 2008 through 2012.

(d) Availability of funds

Sums made available under this section shall be available until expended.

(Pub. L. 101-233, §7, Dec. 13, 1989, 103 Stat. 1974; Pub. L. 103-375, §4, Oct. 19, 1994, 108 Stat. 3495; Pub. L. 105-312, title III, §302, Oct. 30, 1998, 112 Stat. 2958; Pub. L. 106-553, §1(a)(2) [title IX, §902(i)], Dec. 21, 2000, 114 Stat. 2762, 2762A-124; Pub. L. 107-308, §5, Dec. 2, 2002, 116 Stat. 2447; Pub. L. 109-322, §2, Oct. 11, 2006, 120 Stat. 1756.)

CODIFICATION

Section is comprised of section 7 of Pub. L. 101-233. Subsec. (a) of section 7 of Pub. L. 101-233 amended sec-