

ing 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 Fed-

eral 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 \$60,000,000 for each of fiscal years 2021 through 2025.

**(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; Pub. L. 116-188, title I, §106, Oct. 30, 2020, 134 Stat. 917.)

**CODIFICATION**

Section is comprised of section 7 of Pub. L. 101-233. Subsec. (a) of section 7 of Pub. L. 101-233 amended sections 669b and 669c of this title and enacted provisions set out as a note under section 669b of this title.

**AMENDMENTS**

2020—Subsec. (c). Pub. L. 116-188 substituted “not to exceed \$60,000,000 for each of fiscal years 2021 through 2025.” for “not to exceed—” and pars. (1) to (5), authorizing appropriations for fiscal years 2003 through 2006 and fiscal years 2008 through 2012.

2006—Subsec. (c)(5). Pub. L. 109-322 substituted “each of fiscal years 2008 through 2012” for “fiscal year 2007”.

2002—Subsec. (c). Pub. L. 107-308 substituted “not to exceed—” and pars. (1) to (5) for “not to exceed \$50,000,000 for each of fiscal years 1999 through 2003.”

2000—Subsec. (c). Pub. L. 106-553 substituted “\$50,000,000” for “\$30,000,000”.

1998—Subsec. (c). Pub. L. 105-312 substituted “not to exceed \$30,000,000 for each of fiscal years 1999 through 2003.” for “not to exceed \$20,000,000 for each of fiscal years 1995 and 1996 and \$30,000,000 for each of fiscal years 1997 and 1998.”

1994—Subsec. (c). Pub. L. 103-375 substituted “\$20,000,000 for each of fiscal years 1995 and 1996 and \$30,000,000 for each of fiscal years 1997 and 1998” for “\$15,000,000 for each of fiscal years 1991, 1992, 1993, and 1994”.

**§ 4407. Allocation of amounts available to carry out this chapter**

**(a) Allocations**

Of the sums available to the Secretary for any fiscal year under this chapter and section 669b(b) of this title—

(1) such percentage of that sum (but at least 30 percent and not more than 60 percent) as is considered appropriate by the Secretary, which can be matched with non-Federal moneys in accordance with the requirements of subsection (b) of this section, less such amount (but not more than 4 percent of such percentage) considered necessary by the Secretary to defray the costs of administering this chapter during such fiscal year, shall be allocated by the Secretary to carry out approved wetlands conservation projects in Canada and Mexico in accordance with section 4405(b) of this title; and

(2) the remainder of such sum after paragraph (1) is applied (but at least 40 percent and not more than 70 percent), which can be matched with non-Federal moneys in accordance with the requirements of subsection (b) of this section, shall be allocated by the Secretary to carry out approved wetlands conservation projects in the United States in accordance with section 4405(a) of this title.

**(b) Cost sharing**

(1) Except as provided in paragraph (2), as a condition of providing assistance under this chapter for any approved wetlands conservation project, the Secretary shall require that the portion of the costs of the project paid with amounts provided by non-Federal United States sources is equal to at least the amount allocated under subsection (a) that is used for the project.

(2) Federal moneys allocated under subsection (a) may be used to pay 100 percent of the costs of such projects located on Federal lands and waters, including the acquisition of inholdings within such lands and waters.

(3) The non-Federal share of the United States contribution to the costs of such projects may not be derived from Federal grant programs. In the case of a project carried out in Canada or Mexico, the non-Federal share of the costs of the project may include cash contributions from non-United States sources that are used to pay costs of the project. In the case of a project carried out in Canada, funds from Canadian sources may comprise up to 50 percent of the non-Federal share of the costs of the project.

**(c) Partial payments**

(1) The Secretary may from time to time make payments to carry out approved wetlands conservation projects as such projects progress, but such payments, including previous payments, if any, shall not be more than the Federal pro rata share of any such project in conformity with subsection (b) of this section.

(2) The Secretary may enter into agreements to make payments on an initial portion of an approved wetlands conservation project and to agree to make payments on the remaining Federal share of the costs of such project from subsequent allocations if and when they become available. The liability of the United States