

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources

The meeting was called to order by Senator Charlie L. Angell at
Chairperson

8:00 a.m. ~~AM~~ on Tuesday, March 29, 1983 in room 123-S of the Capitol.

All members were present ~~except~~:

Committee staff present:

Ramon Powers, Research Department
Don Hayward, Revisor's Office
LaVonne Mumert, Secretary to the Committee

Conferees appearing before the committee: None

The minutes of the March 25, 1983 meeting were approved.

Senator Gordon gave the report of the Subcommittee on the problem of crop damage in the area of the Perry Reservoir (Attachment 1). The Subcommittee considered the following: (1) Fish and Game assistance in crop protection, (2) providing food for wildlife under severe conditions, (3) changing the hunting season, and (4) an "in lieu of" tax for property leased by Fish and Game from the Corps of Engineers. The Subcommittee recommends: (1) a freeze on Fish and Game accepting any additional land on Perry Reservoir until July 1, 1984, and (2) requesting an interim committee to study the problem of an "in lieu of" tax and the leasing process of Fish and Game. Senator Gordon moved that the Subcommittee Report be adopted, and the motion carried.

H.B. 2480 - Parks and recreation, Johnson county park district; sale of land

Senator Chaney moved that the bill be reported favorably for passage. Senator Feleciano seconded the motion, and the motion carried 11-0.

S.B. 409 - Confirmation by the Senate of the chief engineer of the state board of agriculture

Senator Feleciano made a conceptual motion that the bill be amended to include provisions that with respect to the position of chief engineer, the person appointed to such position shall not attain permanent classified status under the Kansas Civil Service Act unless and until confirmed by the Senate. Senator Hess seconded the motion, and the motion carried. Senator Feleciano moved that the bill be reported favorably, as amended, for passage. Senator Vidricksen seconded the motion, and the motion carried 9-2.

S.B. 209 - Kansas natural gas price control act

Senator Feleciano moved that the bill be reported favorably as amended by the Subcommittee Report. Senator Rehorn seconded the motion. Senator Roitz made a conceptual motion that the bill be amended to provide that the producers of intrastate natural gas shall collect the full amount allowed under their existing contracts and the NGPA ceiling prices; however, they would pay into an escrow account the difference between what they collect and what they would have collected had the prices under the intrastate gas purchase contracts been frozen on the effective date of the act and until December 31, 1984. The amount collected in that account will be rebated to all natural gas consumers in the state. Senator Hess seconded the motion. After discussion, the Chairman ruled the conceptual motion is an idea and the vote will decide whether or not the idea should be drafted into an amendment to be presented not later than Thursday at which time a vote will be taken on the amendment. The motion carried.

The meeting was adjourned at 8:48 a.m. by the Chairman. The next meeting of the Committee will be at 8:00 a.m. on March 30, 1983.

Senate Energy & Natural Resources
Mar. 29, 1983

<u>Name</u>	<u>Organization</u>
Don Schuyler	ICIOGA
Jane E. Thurlough	MAPCO Inc
Lon Stanton	KPC
Bill Perdue	KPC
Don Willoughby	INJ
Robert C. Anderson	MidCont
Bob Clawson	KS Energy office
Paul Johnson	PACK

Attachment 1

TO: Senator Angell, Chairman
Energy and Natural Resources Committee

FROM: Subcommittee Members:
Senator Gordon, Chairman
Senator Kerr, Member
Senator Gannon, Member

RE: Subcommittee Report on crop damage in Jefferson
County by geese, etc.

The subcommittee held a hearing on February 10, 1983 to hear from the involved people regarding four areas of concern, namely:

1. Question of Fish and Game assistance in crop protection.
2. Food to be provided for wildlife under severe conditions.
3. Changing of hunting season to help prevent another similar situation.
4. Providing an "in lieu of" tax for property leased by Fish and Game from the Corps of Engineers' property.

There were many informative conferees of which excerpts are enclosed. There were some problems resolved at the hearing after various groups were made aware of related problems and agencies reviewed their responsibilities. Since the hearing several phone calls and additional information has been received including a copy of the enclosed letter from Congressman Jim Slattery. The subcommittee met at 7:30 a.m. on March 17 to finalize this report.

The subcommittee makes the following recommendations.

1. Recommends a freeze on the Kansas Fish and Game accepting any additional land from the Corps of Engineers for wildlife on the Perry Reservoir until such time as the legislature has time to meet and hold hearings on the problem involving an "in lieu of" tax on the property taken out of production around Perry Reservoir.
 - (a) that the freeze be limited to the Perry Reservoir,
 - (b) that the freeze be limited until July 1, 1984.
2. Asks the Senate Energy and Natural Resources Committee for endorsement on the freeze request.
3. Requests an interim committee in 1983 to study the problem of an "in lieu of" tax and the leasing process of the Kansas Fish & Game.
 - (a) that the interim committee also consider leasing arrangements on other Kansas reservoirs,
 - (b) that a tour of the reservoir site may be visited to review the concerns,
 - (c) that a hearing of the Jefferson County concerned residents and county commissioners be invited to such hearing. Some of those other problems may be presented as they are related.


Francis Gordon, Subcommittee Chairman

Atch. 1

February 10, 1983

Subcommittee Report about crop damage in Jefferson County by geese, etc.

Members: Senator Gordon, Chairman
Senator Kerr
Senator Gannon

Purpose of meeting:

After several phone calls from Jefferson County farmers and the County Commissioners, Senator Gordon contacted the Fish and Game Commission about the deep snow problem that was causing geese to damage the farmers' unharvested crops in Jefferson County.

This problem was brought to the attention of the Chairman, Senator Angell, of the Senate Committee on Energy and Natural Resources, and he appointed this subcommittee to study it. There were four areas of concern to be reviewed by the subcommittee which are as follows:

1. Question of Fish and Game assistance in crop protection.
2. Food to be provided for wildlife under severe conditions.
3. Changing of hunting season to help prevent another similar situation.
4. Providing an "in lieu of" tax for property leased by Fish and Game from the Corps of Engineers' property.

Testimony of Conferees:

One of the conferees, Dr. Ray Burns, told the subcommittee that they were experiencing a migratory bird problem that comes with the snow cover and is not a spasmodic thing. During the present heavy snow at this particular time, the snow geese are being provided heated water in an electric power generator plant reservoir at Iataan, Missouri, and are returning to the Perry Reservoir seeking food, therefore, the unharvested crop is appealing to the geese since food is not provided by the National Wildlife Service or by the Kansas Fish and Game. It was noted that it is unusual to have to have unharvested crops in February.

Mr. Jim Phillips, Valley Falls, told the committee that they have a severe blackbird problem in the Valley Falls area, and the annual damage caused by the birds comes in excess of \$90,000 worth of damage each year and increases every year. In addition to

Subcommittee Report - Crop Damage

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grain loss, it also increased the disease problem. In answer to a question as to any suggestions as to how best to address the problem, he told the committee the answer was to simply depopulate the area of such birds. Also reported was that this much damage occurred within a four mile area of Valley Falls.

The Fish and Game Commission was represented by Ken Montei who explained the leasing of land which is done by competitive bidding. In order to get a bid form, you can contact the Topeka office or write to the Fish and Game Office at Pratt. He said that when land is up for sharecrop bidding, the notice requirements are put in all major papers.

The Jefferson County Commissioners were represented by two members who are deeply concerned about the Fish and Game leasing additional land from the Corps of Engineers. As long as the Corps of Engineers sharecrop the farmable land, 75% of the revenue for "in lieu of" taxes is returned to Jefferson County or other counties having reservoirs involved with the Corps of Engineers leasing. Jefferson County in 1981 received \$81,000 for the "in lieu of" taxes from the Corps of Engineers leased land. However, due to no return or "in lieu of" taxes being returned by Fish and Game, Jefferson County does not wish any additional land leased to Fish and Game and suggested that the legislature review leasing policies from the Corps of Engineers. Estimates are that if the Fish and Game Commission were not providing this leasing method, the Jefferson County revenue would be increased by approximately \$90,000 (3/5 to school districts and 2/5 for the county).

Discussion by the Fish and Game and Corps of Engineers regarding present leasing agreements resulted in opinions that the Fish and Game was not permitted to make "in lieu of" taxes to Jefferson County since the Fish and Game returns are to be used in improving the facilities, roads, and hunting conditions.

Perry Wildlife Area northeast of Topeka has 10,984 acres managed by Fish and Game plus 3,000 acres managed by the Corps of Engineers. Wildlife consists of quail, pheasant, deer, squirrel, rabbit, water fowl, and furbearers. Teal and early migrant duck provide excellent hunting on 1,000 acres of manmade marshes.

David A. Jackson, Chief, Natural Resources Management Branch, representing the Corps of Engineers generalized on their policies.

Robert Kelly from Lincoln, Nebraska, representing the National Wildlife Service, explained to the group the policy concerning the damages from wildlife and stated

Subcommittee Report - Crop Damage

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he was furnishing "zon guns" and "cracker bullets" to the Kansas Fish and Game to help protect crops from damage. Also explained was possible changes in the hunting season.

Representative Robin Leach and Senator Ed Reilly supported an interium committee study since time does not allow the numerous hearings to be held this session in the Senate Energy and Natural Resources Committee.

The subcommittee took no action or made any additional recommendations.

The meeting was adjourned.

F&G disputes before legislature

Several Jefferson County farmers and governmental officials appeared before a subcommittee of the Energy and Natural Resources Committee on Feb. 10 in Topeka to give testimony on the effects of waterfowl feeding on unharvested crops, the Fish and Game Commission's take over of Corps of Engineer land at Perry Lake, and the loss of revenue when the Fish and Game Commission acquires more federal agricultural land.

The subcommittee was chaired by Francis Gordon of the First Senatorial District. Area legislators sitting in on the hearing were Senator Ed Rielly Jr., Leavenworth, and Representative Robin Leach, Linwood.

Dr. Ray Burns, Valley Falls, a goose victim, leads off the testimony. He said that several thousand geese had moved into the area last week and that in less than an hour, had consumed a two- to three-acre patch of unharvested grain.

Burns estimated the loss of grain revenue at \$1,200 to \$1,500.

The Valley Falls farmer blamed the Fish and Game Commission for responding too slow to the need for assistance. Burns claims the Fish and Game Commission has provided a habitat for the waterfowl by constructing marshes in the area. Since a habitat has been provided, Burns feels that the problem is predictable and the Fish and Game Commission should provide compensation when the geese damage standing crops.

Not only are geese causing farmers problems, but also blackbirds.

Jim Phillips, Valley Falls, said the severity of the blackbird population has increased over the year. He also blames the Fish and Game Commission for their inability to control blackbirds in the area. He feels that the game population has not increased, but that the starling and blackbird populations have increased. He also noted that these birds are carriers of diseases to livestock.

Richard Malm, chairman of the Board of Jefferson County Commissioners, addressed the loss of revenue from leases when the Fish and Game Commission acquires land from the Corps of Engineers. The commissioners said that in 1981 approximately \$82,000 was returned to the county through Corps of Engineer leases. Some of the money went to school districts and a portion to the county's budget.

According to Malm, when Perry Lake was first constructed, the county received approximately \$200,000. He said that when Fish and Game takes over land the revenue decreases.

Ivan Clare, an Ozawie farmer, testified that he paid \$10,000 to the Corps for leased agricultural land. He noted the leases run from one to five years.

However, the Fish and Game Commission has a different procedure in leasing land. They lease on a share basis and can not make a profit on the lease. Any money derived from a lease is returned to improve the land, such as building a fence on the land or making some other improvements.

A Fish and Game spokesman said most of the land leased by Fish and Game is not put up for competitive bidding. The spokesman did say that in 1977, the commission did start to take competitive bidding for some agricultural tracts.

The Fish and Game Commission said approximately 80,000 to 100,000 geese are wintering on Squaw Creek. According to the commission, the geese began moving into Kansas in early February and since that time the commission has tried to respond to calls of geese damaging unharvested crops.

A spokesman said the agency has spent a lot of time trying to reduce damages. The commission also noted that their refuge system hasn't had good use and that they are re-evaluating the system.

Robert Kelly, Lincoln, Neb., said there are things the landowner can do to drive the geese away. He also noted that there are no funds in the

mill to pay for damages to crops by waterfowl.

Officials briefly discussed the aspect of extending the Snow Goose season as a means of helping alleviate the problem. Kelly said that it is up to the state to establish a season, but that it has to be in the framework with the Federal Government.

Representative Leach said he strongly opposes Fish and Game taking over any more land in Jefferson County.

"I hope the legislature shuts down Fish and Game and doesn't let them have any more prime agricultural land," Roy Dix, a farmer, said.

Whether or not the subcommittee will be able to assist the farmers with the problem is questionable. However, Representative Leach feels that more pressure is being applied to Fish and Game to keep them from taking any more land in Jefferson County.

Most recent payments to counties
(from public lands)

County	Payment in-lieu of taxes*	Corps of Engineers**	State***
Barton	\$	\$	\$ 3,054
Bourbon			4,531
Butler	9,246	35,722	
Chautauqua	966	1,273	
Cherokee			16,146
Cheyenne			65
Clark			1,100
Clay	12,361	7,731	64
Cloud			84
Coffey	17,415	14,577	
Cowley	3,000	444	
Dickinson	1,027	727	
Douglas	14,181	23,082	
Ellsworth	14,624	122,061	
Finney			99
Geary	16,708	18,808	
Greenwood	12,985	19,217	
Hodgeman			73
Jefferson	27,105	82,438	
Jewell	4,933		264
Johnson		2,639	
Kingman	995		2,647
Labette	1,770	567	3,392
Lincoln	597	1,889	
Linn			1,980
Lyon	3,634	2,468	769
Marion	8,443	21,864	
Marshall	4,267	678	
McPherson			823
Miami	8,951	90,891	
Mitchell	18,421		
Montgomery	13,491	7,730	673
Morris	4,118	3,397	

(over)

(2/83)

County	Payment in-lieu of taxes*	Corps of Engineers**	State***
Neosho			3,655
Norton	5,784		
Osage	22,900	55,094	
Osborne	2,511		
Ottawa			1,007
Phillips	8,567		
Pottawatomie	(not obtained)	3,556	
Pratt			5,469
Reno	11,072		
Republic			14
Riley	9,213	8,148	
Rooks	5,198		
Russell	14,408	3,842	292
Sheridan			294
Sherman			396
Sedgwick	647		
Trego	11,344		
Wilson		21	
Woodson	3,377	4,448	4,269
	<i>294,259.</i>	<i>533,312</i>	<i>52,055</i>

* Paid by Bureau of Land Management on a per acre basis (on BOR lands this has been \$ 0.75/acre).

** Paid by Corps of Engineers based on 75% of total collected from agricultural leases.

*** Paid by Kansas Fish and Game Commission on Commission owned lands which produce income.



Congress of the United States
House of Representatives

JIM SLATTERY
2ND DISTRICT, KANSAS

March 10, 1983

The Honorable E. Francis Gordon
Kansas Senate
State Capitol
Topeka, Kansas 66603

Dear Senator Gordon:

I have completed the initial review of federal legislation regarding the payment by the Kansas Fish and Game Commission to a county in lieu of taxes.

The authority for the granting of a license to a state for fish and wildlife management purposes in accordance with an approved general plan is Section 3 of the Fish and Wildlife Coordination Act of 1934, as amended (16 U.S.C. 663).

The Fish and Wildlife Coordination Act does not contain authority for the planting and harvesting of crops for food and/or habitat for wildlife. Under 16 U.S.C. 460d, a license for fish and wildlife management purposes may authorize the state, either directly, by service contract or by sharecrop agreements with local farmers, to use project lands to provide food and/or habitat for wildlife, and necessary compensation to farmers under any sharecrop agreement.

The use of the licensed property will be in conformance with an annual management plan mutually agreed upon by the licensee and the District Engineer. The plan will include activities to be performed, areas to be designated for various species of fish and wildlife propagation, areas to be outgranted by agricultural agreement or sharecropped, areas proposed for wildlife cover and type of cover to be cultivated, and all structures and improvements proposed.

In addition, the management plan should contain estimates of revenues to be generated annually and where these funds will be expended. Particular attention should be directed to activities performed by third parties which will result in receipt of income

The Honorable E. Francis Gordon
March 9, 1983
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by the licensee, as well as the expenditures contemplated by the licensee, to assure that they are in conformance with the license conditions and the approved plan.

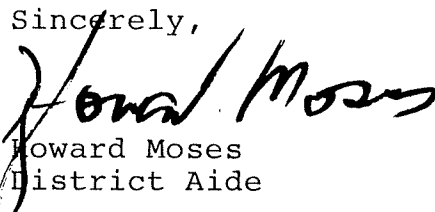
The payment of direct and reasonable expenses is authorized for funds generated from the licensee's operation. Monetary proceeds derived from the licensee's activities, which will not be required in furtherance of the license purposes during each five-year period, will be paid directly to the Government at the expiration of each five year period.

Money accrued by the licensee is generated from the sale of surplus crops rather than lease rent and no percentage of these funds is paid to the state for the benefit of the county.

Congressman Slattery has expressed his desire to cooperate in any way in this matter. The results of the Special Subcommittee reviewing this issue, and any subsequent interim committees, would prove most helpful in determining specific actions this office may take. A report on the Subcommittee's actions would be appreciated.

If I may be of further assistance, please feel free to contact me.

Sincerely,


Howard Moses
District Aide

cc: Jim Slattery

Enc.

HM:vm

cc: Ray Burns
R. R. #2
Valley Falls, Ks.

Title XVI, Sec. 460 D, U.S. Code. (This deals with the Corps of Engineers policy in regard to share cropping of Corps land.)

access to areas to be developed by the Secretary of Agriculture adjacent national forest lands unless to do so will materially impair the primary purposes of the parkway;

(3) The Secretary of the Interior may relocate and reconstruct portions of the Appalachian Trail, including trail shelters, that may be disturbed by the parkway extension and such relocation and reconstruction may be performed (A) on non-Federal lands when the Appalachian Trail Conference obtains the consent of the owner to the use of the lands for the purpose and agrees to assume maintenance thereof, and (B) upon national forest lands with the approval of the Secretary of Agriculture.

Pub.L. 90-555, § 2, Oct. 9, 1968, 82 Stat. 968.

Historical Note

References in Text. The Act of Aug. 10, 1961 (75 Stat. 337), referred to in text, is Pub.L. 87-135, which authorized an appropriation of \$35,000 for a survey of a proposed national parkway from the

Blue Ridge Parkway at Tennessee Falls or Beech Gap southwest and running into the State of Georgia, and was not classified to the Code.

§ 460a-8. Same; licenses or permits for rights-of-way over parkway lands

The Secretary of the Interior may issue revocable licenses or permits for rights-of-way over, across, and upon parkway lands, or for the use of parkway lands by the owners or lessees of adjacent lands, or for such purposes and under such terms and conditions as he may determine to be consistent with the use of such lands for parkway purposes.

Pub.L. 90-555, § 3, Oct. 9, 1968, 82 Stat. 968.

§ 460a-9. Same; part of Blue Ridge Parkway; administration and maintenance of parkway extension

The parkway extension herein authorized shall be a part of the Blue Ridge Parkway and shall be administered and maintained by the Secretary of the Interior in accordance with the laws and regulations applicable thereto, including section 460a-4 of this title.

Pub.L. 90-555, § 4, Oct. 9, 1968, 82 Stat. 968.

§ 460a-10. Same; transfer of national forest lands to Secretary of Agriculture

With the concurrence of the Secretary of Agriculture the Secretary of the Interior may transfer to the Secretary of Agriculture for na-

costs acquired for, or in connection with, the parkway extension.

Pub.L. 90-555, § 5, Oct. 9, 1968, 82 Stat. 968.

§ 460a-11. Same; authorization of appropriation

There is hereby authorized to be appropriated, for construction of the Blue Ridge Parkway extension, not more than \$87,536,000, plus or minus such amounts, if any, as may be justified by reason of fluctuations in construction costs as indicated by engineering cost indices applicable to the type of construction involved herein.

Pub.L. 90-555, § 6, Oct. 9, 1968, 82 Stat. 968.

§§ 460b, 460c. Repealed. Pub.L. 85-767, § 2 [19, 21, 23, 33], Aug. 27, 1958, 72 Stat. 919

Historical Note

Section 460b. Acts June 16, 1936, c. 582, § 5, 49 Stat. 1520; June 8, 1938, c. 328, § 8, 52 Stat. 635; Sept. 5, 1940, c. 715, § 9, 54 Stat. 870, related to determination of location of parkways upon public lands, national forests, or other Federal reservations.

Section 460c. Act Sept. 7, 1950, c. 912, § 4(b), 64 Stat. 787, related to administration of parkway appropriations.

PUBLIC PARK AND RECREATIONAL FACILITIES AT WATER RESOURCE DEVELOPMENT PROJECTS

§ 460d. Construction and operation of public parks and recreational facilities in water resource development projects; lease of lands; preference for use; penalty; application of section 3401 of Title 18; citations and arrests with and without process; limitations; disposition of receipts

The Chief of Engineers, under the supervision of the Secretary of the Army, is authorized to construct, maintain, and operate public park and recreational facilities at water resource development projects under the control of the Department of the Army, to permit the construction of such facilities by local interests (particularly those to be operated and maintained by such interests), and to permit the maintenance and operation of such facilities by local interests. The Secretary of the Army is also authorized to grant leases of lands, including structures or facilities thereon, at water resource development projects for such periods, and upon such terms and for such purposes as he may deem reasonable in the public interest: *Provided*, That leases to non-profit organizations for park or recreational purposes may be granted

at reduced or nominal considerations in recognition of the public service to be rendered in utilizing the leased premises: *Provided further* That preference shall be given to Federal, State, or local governmental agencies, and licenses or leases where appropriate, may be granted without monetary considerations, to such agencies for the use of all or any portion of a project area for any public purpose, when the Secretary of the Army determines such action to be in the public interest and for such periods of time and upon such conditions as he may find advisable: *And provided further*, That in any such lease or license to a Federal, State, or local governmental agency which involves lands to be utilized for the development and conservation of fish and wildlife, forests, and other natural resources, the licensee or lessee may be authorized to cut timber and harvest crops as may be necessary to further such beneficial uses and to collect and utilize the proceeds of any sale of timber and crops in the development, conservation, maintenance, and utilization of such lands. Any balance of proceeds not so utilized shall be paid to the United States at such time or times as the Secretary of the Army may determine appropriate. The water areas of all such projects shall be open to public use generally for boating, swimming, bathing, fishing, and other recreational purposes, and ready access to and exit from such areas along the shores of such projects shall be maintained for general public use, when such use is determined by the Secretary of the Army not to be contrary to the public interest, all under such rules and regulations as the Secretary of the Army may deem necessary including but not limited to prohibitions of dumping and unauthorized disposal in any manner of refuse, garbage, rubbish, trash, debris, or litter of any kind at such water resource development projects, either into the waters of such projects or onto any land federally owned and administered by the Chief of Engineers. Any violation of such rules and regulations shall be punished by a fine of not more than \$500 or imprisonment for not more than six months, or both. Any persons charged with the violation of such rules and regulations may be tried and sentenced in accordance with the provisions of section 3401 of Title 18. All persons designated by the Chief of Engineers for that purpose shall have the authority to issue a citation for violation of the regulations adopted by the Secretary of the Army, requiring the appearance of any person charged with violation to appear before the United States magistrate, within whose jurisdiction the water resource development project is located, for trial; and upon sworn information of any competent person any United States magistrate in the proper jurisdiction shall issue process for the arrest of any person charged with the violation of said regulations; but nothing herein contained shall be construed as preventing the arrest by any officer of the United States, without process, of any person taken in the act of violating said regulations. No use of any area to which this section applies shall be permitted which is inconsistent with the laws for the protection of fish and game of the State in which such area is situated.

All moneys received by the United States for leases or privileges

shall be deposited in the Treasury of the United States as miscellaneous receipts.

Dec. 22, 1944, c. 665, § 4, 58 Stat. 889; July 24, 1946, c. 596, § 4, 60 Stat. 642; Sept. 3, 1954, c. 1264, Title II, § 209, 68 Stat. 1266; Oct. 23, 1962, Pub.L. 87-874, Title II, § 207, 76 Stat. 1195; Sept. 3, 1964, Pub.L. 88-578, § 2(a), 78 Stat. 899; Dec. 31, 1970, Pub.L. 91-611, Title II, § 234, 84 Stat. 1833.

Historical Note

Codification. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of Act July 26, 1947, c. 343, Title 11, 61 Stat. 501. Section 205(a) of Act July 26, 1947, was repealed by section 53 of Act Aug. 10, 1956, c. 1041, 70A Stat. 641. Section 1 of Act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011 to 3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

1970 Amendment. Pub.L. 91-611 provided that the rules and regulations should include but not be limited to prohibitions of dumping and unauthorized disposal of refuse, garbage, rubbish, trash, debris, or litter of any kind at water resource development projects, prescribed penalty for violation of the rules and regulations, provided for trial and sentence in accordance with section 2401 of Title 18, authorized issuance of citation for violation of the regulations, provided for issuance of process for arrest of any violators, and recognized the authority of Federal officer without process to arrest any person taken in act of violating the regulations.

1964 Amendment. Pub.L. 88-578 deleted ", without charge," following "The water areas of all such projects shall be open to public use generally".

1962 Amendment. Pub.L. 87-874, substituted references to water resource development projects for references to reservoir areas wherever appearing, and authorized the Chief of Engineers to permit the construction, maintenance, and operation of facilities by local interests.

1954 Amendment. Act Sept. 3, 1954 amended section generally, and, among other changes, inserted "for park or recreational purposes" in first proviso, inserted "or leases where appropriate" in second proviso, and inserted third proviso permitting lessees and licensees to cut timber and harvest crops in certain cases and containing provisions with respect to the collection, utilization, and disposition of the proceeds from the sale of timber and crops.

1946 Amendment. Act July 24, 1946 inserted first proviso dealing with leases to nonprofit organizations.

Effective Date of 1964 Amendment. Amendment by Pub.L. 88-578 effective Jan. 1, 1965, see part of section 1(a) of Pub.L. 88-578, set out as a note under section 4601-4 of this title.

Secretary of Air Force. For transfer of certain functions relating to real property under the jurisdiction of the Air Force, and certain functions relating to construction of buildings and facilities in so far as they may pertain to the Department of the Air Force, from the Secretary of the Army to the Secretary of the Air Force, see Secretary of Defense Transfer Order Nos. 14, eff. July 1, 1948; 18, eff. July 7, 1948; and 40 [App.B (60)], July 22, 1949.

Section as Unaffected by Submerged Lands Act. Provisions of this section as not amended, modified or repealed by the Submerged Lands Act, see section 1303 of Title 43, Public Lands.

Legislative History. For legislative history and purpose of Act Dec. 22, 1944, see 1944 U.S.Code Cong.Service p. 1349. See, also, Pub.L. 88-578, 1964 U.S.Code Cong. and Adm.News, p. 3633.

Library References

Waters and Water Courses \Leftrightarrow 168.

C.J.S. Waters \S 129 et seq.

Public Law 85-624, Sec. 3 (A) (B), Fish & Wildlife Coordination
Act of 1958

Sec.

- 668ff. San Francisco Bay National Wildlife Refuge; establishment and designation.
- 668gg. Same; description.
- 668hh. Same; establishment of area; publication in Federal Register; corrections in boundaries; maximum area; administration by Secretary.
- 668ii. Same; acquisition by Secretary of lands and waters or interests therein.
- 668jj. Same; authorization of appropriations.

GAME, FUR-BEARING ANIMALS AND FISH

§ 661. Declaration of purpose; cooperation of agencies; surveys and investigations; donations

For the purpose of recognizing the vital contribution of our wildlife resources to the Nation, the increasing public interest and significance thereof due to expansion of our national economy and other factors, and to provide that wildlife conservation shall receive equal consideration and be coordinated with other features of water-resource development programs through the effectual and harmonious planning, development, maintenance, and coordination of wildlife conservation and rehabilitation for the purposes of sections 661 to 666c of this title in the United States, its Territories and possessions, the Secretary of the Interior is authorized (1) to provide assistance to, and cooperate with, Federal, State, and public or private agencies and organizations in the development, protection, rearing, and stocking of all species of wildlife, resources thereof, and their habitat, in controlling losses of the same from disease or other causes, in minimizing damages from overabundant species, in providing public shooting and fishing areas, including easements across public lands for access thereto, and in carrying out other measures necessary to effectuate the purposes of said sections; (2) to make surveys and investigations of the wildlife of the public domain, including lands and waters or interests therein acquired or controlled by any agency of the United States; and (3) to accept donations of land and contributions of funds in furtherance of the purposes of said sections.

Mar. 10, 1934, c. 55, § 1, 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, c. 965, 60 Stat. 1080; Aug. 12, 1953, Pub.L. 85-624, § 2, 72 Stat. 501.

Historical Note

1938 Amendment. Pub.L. 85-624 insert provisions which relate to recognition of the vital contribution of wildlife resources to the Nation, the increasing public interest and significance thereof,

and to equal consideration and coordination of wildlife conservation with other water-resource development programs, and which authorize the Secretary provide public fishing areas, and to

accept donations of lands and contributions of funds.

1946 Amendment. Act Aug. 14, 1946 amended section generally in order to promote more effectual planning and cooperation between Federal, State, public, and private agencies for the conservation and rehabilitation of wildlife.

Short Title. Section 1 of Pub.L. 85-624 provided that the Act of March 10, 1934, as amended, and as further amended by Pub.L. 85-624, which Act is classified to sections 661 to 666c of this title, should be popularly known as the "Fish and Wildlife Coordination Act".

Transfer of Functions. Transfer of functions to Secretary of Commerce from Secretary of the Interior in view of: the creation of the National Oceanic and Atmospheric Administration in the Department of Commerce and the Office of Administrator of such Administration; the abolition of the Bureau of Commercial Fisheries in the Interior Department and the Office of Director of such Bureau; transfers of functions, including functions formerly vested by law in the Secretary of the Interior or the Interior Department which were administered through the Bureau of Commercial Fisheries or were primarily related to such Bureau, exclusive of certain enumerated functions with respect to Great Lakes fishery research, Missouri River Reservoir research, Gulf Breeze Biological Laboratory, and Trans-Alaska pipeline investigations; and transfer of marine sport fish program of Bureau of Sport Fisheries and Wildlife by 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 7227, 84 Stat. 2090, set out in the Appendix to Title 5, Government Organization and Employees.

All functions of all other officers of the Department of the Interior and all functions of all agencies and employees of such Department were, with two exceptions, transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan. No. 3, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1242, set out in the Appendix to Title 5, Government Organization and Employees.

All functions, appropriations, records, and property of the Secretary of the Interior and the Fish and Wildlife Service of the Department of the Interior which affect or relate to the breeding, raising, including, marketing, or any other phase of the production or distribution

of domestically raised fur-bearing animals, or the products thereof were transferred to the Secretary of Agriculture by section 434 of Title 7, Agriculture.

1940 Reorg. Plan No. III, § 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 the Bureau of Fisheries and the Bureau of Biological Survey with their respective functions into one agency in the Department of the Interior to be known as the Fish and Wildlife Service, and abolished the office of the Commissioner and Deputy Commissioner of Fisheries and transferred their functions to the consolidated agency.

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

1939 Reorg. Plan No. III, § 3, eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231, set out in the Appendix to Title 5, Government Organization and Employees, consolidated the Bureau of Fisheries and the Bureau of Biological Survey with their respective functions into one agency in the Department of the Interior to be known as the Fish and Wildlife Service, and abolished the office of the Commissioner and Deputy Commissioner of Fisheries and transferred their functions to the consolidated agency.

Appropriations. Section 4 of Pub.L. 85-624, provided that: "There is 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 adding section 1008 of this title]."

Study of Soft- and Hard-Shell Clams; Appropriations; Termination Date. Act May 26, 1948, c. 348, 62 Stat. 274, authorized Fish and Wildlife Service of the Department of the Interior to undertake, in cooperation with State and interstate agencies 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, and to recom-

mend measures for (1) arresting depletion in productive beds; (2) restoring to production beds formerly productive; (3) developing new areas; (4) improving methods of digging, transplanting, and handling; and (5) otherwise increasing production and improving quality for benefit of both producers and consumers, and, authorized appropriation for the five-year period beginning July 1, 1943, 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.

Administration of Refuse Act Permit Program. Administration of Refuse Act permit program to regulate discharge of pollutants and other refuse matter into navigable waters of United States or their tributaries, see Ex.Ord.No.11574, Dec. 23, 1970, 35 F.R. 19627, set out as a note under section 407 of Title 33, Navigation and Navigable Waters.

Library References

Fish ↔ S.
Game ↔ 3½.

C.J.S. Fish § 26.
C.J.S. Game § 7.

Code of Federal Regulations

Nondiscrimination in federally-assisted programs, see 43 CFR 17.1 et seq. and Appendices.

§ 662. Impounding, diverting, or controlling of waters— Consultations between agencies

(a) 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 Federal 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.

Reports and recommendations; consideration

(b) 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 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.

Modification of projects; acquisition of lands

(c) 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 authorized 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.

Project costs

(d) 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.

Transfer of funds

(e) 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.

Estimation of wildlife benefits or losses

(f) 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.

Applicability to projects

(g) 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.

Exempt projects and activities

(h) The provisions of sections 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, c. 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

§ 965, 60 Stat. 1080; Aug. 12, 1958, Pub.L. 85-624, § 2, 72 Stat. 564; July 9, 1965, Pub.L. 89-72, § 6(b), 79 Stat. 216.

Historical Note

References in Text. The Fish and Wildlife Coordination Act, referred to in subsecs. (c) and (g), is Act Mar. 10, 1934, as designated by Pub.L. 85-624. Such act was enacted into law Mar. 10, 1934.

1965 Amendment. Subsec. (d). Pub.L. 89-72 added cl. (2) to the proviso, redesignated cls. (2) and (3) thereof as (3) and (4), deleted therefrom "nor the construction of such facilities beyond those herein described" following "wildlife facilities" and deleted a second proviso which applied to projects constructed under Federal reclamation law and referred to allocations made under section 4301 of Title 43, to make findings on part of estimated cost of the project which can properly be allocated to plans 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 4601-12 and 4601-21 of this title.

1958 Amendment. 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 Amendment. 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 notes under section 681 of this title.

Legislative History. For legislative history and purpose of Pub.L. 85-624, see 1958 U.S. Code Cong. and Adm. News, p. 3446. See, also, Pub.L. 89-72, 1965 U.S. Code Cong. and Adm. News, p. 1864.

Library References

Fish § 8.
Game § 3½.
Levees and Flood Control § 1.
Waters and Water Courses § 150.
C.J.S. Fish § 26.
C.J.S. Game § 7.
C.J.S. Levees and Flood Control § 4.
C.J.S. Waters § 129 et seq.

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1. Construction with other laws—National Environmental Policy Act
If Corps of Engineers complies with National Environmental Policy Act, section 4321 et seq. of Title 42, in good faith

Note 1

it will automatically take into consideration all factors required by this section and it is not reasonable to require them to do both separately. Environmental Defense Fund, Inc. v. Froehlike, C.A. Ark.1972, 473 F.2d 346.

Under National Environmental Policy Act, section 4321 et seq. of Title 42, and this section, Secretary of Army could refuse to authorize dredge and fill project in navigable waters for factually substantial ecological reasons even though project would not interfere with navigation, flood control or the production of power. Zabel v. Tabb, C.A.Fla. 1970, 430 F.2d 199, certiorari denied 91 S.Ct. 573, 401 U.S. 910, 27 L.Ed.2d 805.

Compliance with National Environmental Policy Act, section 4321 et seq. of Title 42, is de facto compliance with this section. Cape Henry Bird Club v. Laird, D.C.Va.1973, 359 F.Supp. 404, affirmed 484 F.2d 453.

2. — Water Bank Act

Water Bank Act, section 1301 et seq. of this title, which sets up leasing program for preservation of wetlands to be administered by Agriculture Department does not purport to establish enforceable standards which must be followed by all government agencies in construction projects, while this section does require governmental agencies including the Corps of Engineers to coordinate their activities so that adverse effect on fish and wildlife will be minimized. Environmental Defense Fund, Inc. v. Froehlike, C.A.Ark.1972, 473 F.2d 346.

3. Retroactive effect

Although congressional command that Chief of Engineers and Secretary of Army consult with Fish and Wildlife Service before issuing permit under section 403 of Title 33 for private dredge and fill operation was not in existence at time permit was denied, correctness of decision with respect to granting of permit would be determined by standard of this section. Zabel v. Tabb, C.A.Fla.1970, 430 F.2d 199, certiorari denied 91 S.Ct. 573, 401 U.S. 910, 27 L.Ed.2d 805.

4. Dredging and filling operations

This section requires that agency, whether public or private, dredging and filling submerged lands under governmental permit consult with Fish and Wildlife Service with view of conservation of wildlife resources. Zabel v. Tabb, C.A.Fla.1970, 430 F.2d 199, certiorari denied 91 S.Ct. 573, 401 U.S. 910, 27 L.Ed.2d 805.

With respect to this section, Congress intended that Chief of Engineers and Secretary of Army consult with Fish and Wildlife Service before issuing permit under section 403 of Title 33 for private dredge and fill operation. Id.

5. Hydroelectric power projects

Wildlife conservation aspect of proposed hydroelectric power project at High Mountain Sheep site on Snake River must be explored and evaluated by Federal Power Commission in acting on license applications for construction of dam. Udall v. Federal Power Commission, Dist.Col.1967, 87 S.Ct. 1712, 387 U.S. 428, 18 L.Ed.2d 569.

Where Federal Power Commission granted license to construct a hydroelectric project on the Cedar River, on condition that licensee should maintain such fish protective devices and should comply with such reasonable conditions in interest of fish life as would be prescribed on recommendation of the Secretary of Interior, and views of Iowa State Conservation Commission were considered by Power Commission, defects, if any, in Commission's proceeding relative to protection of wildlife resources, were not sufficiently vital or prejudicial to justify vacation of orders. State of Iowa v. Federal Power Commission, C.A.Iowa. 1949, 178 F.2d 421, certiorari denied 70 S.Ct. 1024, 339 U.S. 979, 94 L.Ed. 1383.

6. Irrigation projects

Federal Power Commission's limited schedule for release of waters to maintain fish runs below dam to first 20 of 50-year license granted irrigation districts for water project was proper where districts and city were, without license, not required to protect fall fish runs, and in 20 years, there might be sufficient water for irrigation need if the release of waters continued as before. State of Cal. v. Federal Power Commission, C.A.Cal.1965, 345 F.2d 907, certiorari denied 86 S.Ct. 394, 397, 382 U.S. 941, 15 L.Ed.2d 351.

7. Persons who must be consulted

Army Corps of Engineers sufficiently complied with provisions of this section when, during preparation of environmental impact statement on Tennessee-Tombigbee Waterway project, they consulted with subordinate officials of Department of Interior as to possible effects of waterway on area wildlife rather than taking cabinet level action. Environmental Defense Fund, Inc. v. Corps of Engineers of U. S. Army, C.A.Miss. 1971, 492 F.2d 1123.

a. Mitigation plans

Under this section, Corps of Engineers, while it may recommend mitigation plan to Congress, has no authority to provide for mitigation in absence of specific congressional authorization. Cape Henry Bird Club v. Laird, D.C.Va.1973, 359 F.Supp. 404, affirmed 484 F.2d 453.

This section contemplates that plan of mitigation be submitted to Congress by construction agency when Congress is asked to appropriate funds for project itself, even though project has already been generally authorized. Akers v. Reiser, D.C.Tenn.1972, 339 F.Supp. 1375.

b. Hearing

Where landowners applying for permit to dredge and fill in navigable waters were given hearing before Corps of Engineers, the body empowered to grant or deny a permit, and were allowed to rebut findings and conclusions of Fish and Wildlife Service before the deciding body, denial of permit without hearing before Fish and Wildlife Service did not constitute deprivation of property without due process of law. Zabel v. Tabb, C.A.Fla.1970, 430 F.2d 199, certiorari denied 91 S.Ct. 873, 401 U.S. 910, 27 L.Ed.2d 805.

c. Jurisdiction

Where essence of action against Army Corps of Engineers and others to enjoin further dam construction on river required determination of whether federal officials had exceeded their authority or had exercised their authority in a void manner in construction of dams, allegations of complaint fell within the exception to the doctrine of sovereign immunity and federal court had jurisdiction. Association of Northwest Steelheaders (Northwest Steelheaders Council of Trout Unlimited) v. U. S. Army Corps of Engineers, C.A.Wash.1973, 485 F.2d 87.

In view of possible disastrous effects on drinking water supply of Florida, partial state of construction of canal and bar congressional priority given to preserving and protecting natural resources, statutes including National Environmental Policy Act, section 4321 et seq. of Title 42, this section, and others were applicable to construction of cross-Florida barge canal, and federal district court had jurisdiction of subject matter of applicant for injunctive relief against continuation of construction. Environmental Defense Fund Inc. v. Corps of Engineers of U. S. Army, D.C.D.C.1971, 324 F.Supp. 878.

11. Persons entitled to maintain action

Sportsmen's organizations and individual plaintiffs operating businesses connected with activities on river sufficiently set forth allegations that the interests they sought to protect were within the zone of interests to be protected by statutes pursuant to which they sought to bring action against United States to halt further dam construction, because plaintiffs were among the injured and dispute was presented in an adversary context and in form historically viewed as capable of just judicial resolution. Association of Northwest Steelheaders (Northwest Steelheaders Council of Trout Unlimited) v. U. S. Army Corps of Engineers, C.A.Wash.1973, 485 F.2d 87.

Individual plaintiffs who were Florida citizens and users of Florida recreational facilities, and organizations which through their research and other activities had actively sought to preserve and enhance natural environment for benefit of posterity would suffer real injury if anticipated environmental damage occurred as result of construction of cross-Florida barge canal and accordingly were "aggrieved" persons within Administrative Procedure Act, sections 551 et seq. and 701 et seq. of Title 5, and had standing to seek injunctive relief against continuation of such construction by Army Corps of Engineers. Environmental Defense Fund Inc. v. Corps of Engineers of U. S. Army, D.C.D.C.1971, 324 F.Supp. 878.

12. Complaint

Complaint by Florida citizens and others alleging that cross-Florida barge canal was being constructed in violation of numerous federal statutes and that, if requested injunctive relief was not granted, irreparable damage would result, including destruction of unique timber and aquatic life in specified locations and almost certain pollution of considerable portion of water supply for state of Florida stated claim upon which relief could be granted. Environmental Defense Fund Inc. v. Corps of Engineers of U. S. Army, D.C.D.C.1971, 324 F.Supp. 878.

13. Dismissal

Mere inferential suggestion that relief sought by individual plaintiffs against United States seeking to halt further construction of dam would work an intolerable burden on governmental functions which outweighed any private harm would not support dismissal of suit as an explicit finding that the relief sought would work an intolerable bur-

Note 13

den on governmental functions, and that such burden outweighed private harm is required. *Association of Northwest Steelheaders (Northwest Steelheaders Council of Trout Unlimited) v. U. S. Army Corps of Engineers*, C.A.Wash.1973, 485 F.2d 67.

14. Injunctions

Where there was strong possibility that plaintiffs, Florida citizens and others, would be likely to succeed in demonstrating noncompliance with certain statutes in construction of cross-Florida barge canal and where there was strong possibility that further construction and related operations as planned might irreparably damage marine and plant life and primary source of drinking water for state of Florida, there was sufficient basis for preliminary injunction. *Environmental Defense Fund Inc. v. Corps of Engineers of U. S. Army*, D.C.D.C.1971, 524 F.Supp. 878.

15. Record

Record in action for declaratory and injunctive relief, against federal dam project on environmental grounds estab-

lished that Corps of Engineers had not departed from congressional intent or policies under this section. *Cape Henry Bird Club v. Laird*, D.C.Va.1973, 359 F.Supp. 404, affirmed 484 F.2d 453.

16. Remand

In view of record in action against United States officials seeking to enjoin further dam construction and to compel compliance with certain federal laws and fact that on appeal government asserted that the required environmental impact statement had been filed and the fish and wildlife mitigation and enhancement plan was being prepared, case was remanded to trial court, to determine whether each prayer of relief would constitute an intolerable burden to governmental functions which outweighed any private harm so that dismissal was required and whether the causes of action based on alleged noncompliance with specified federal laws were moot. *Association of Northwest Steelheaders (Northwest Steelheaders Council of Trout Unlimited) v. U. S. Army Corps of Engineers*, C.A.Wash.1973, 485 F.2d 67.

§ 663. Same—Conservation, maintenance, and management of wildlife resources; development and improvement

(a) 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.

Use and availability of waters, land, or interests therein

(b) 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 where

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.

Acquisition of land, waters, and interests therein; report to Congress

(c) 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 sections 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 properties shall be acquired unless specifically authorized by Congress, if specific authority for such acquisition is recommended by the construction agency.

Use of acquired properties

(d) Properties acquired for the purposes of this section shall continue to be used for such purposes, and shall not become the subject of exchange or other transactions if such exchange or other transaction would defeat the initial purpose of their acquisition.

Availability of Federal lands acquired or withdrawn for Federal water-resource purposes

(e) Federal lands acquired or withdrawn for Federal water-resource purposes and made available to the States or to the Secretary of the Interior for wildlife management purposes, shall be made available for such purposes in accordance with sections 661 to 666c of this title, notwithstanding other provisions of law.

National forest lands

(f) Any lands acquired pursuant to this section by any Federal agency within the exterior boundaries of a national forest shall, upon acquisition, be added to and become national forest lands, and shall be administered as a part of the forest within which they are situated, subject to all laws applicable to lands acquired under the provisions of the Act of March 1, 1911 (36 Stat. 961), unless such lands are ac-

quired to carry out the National Migratory Bird Management Program.

Mar. 10, 1934, c. 55, § 3, 48 Stat. 401; 1940 Reorg. Plan No. III, § 3, eff. June 30, 1940, 5 F.R. 2108, 54 Stat. 1232; Aug. 14, 1946, c. 965, 60 Stat. 1080; Aug. 12, 1958, Pub.L. 85-624, § 2, 72 Stat. 566.

Historical Note

References in Text. The Act of March 1, 1911 (36 Stat. 961), referred to in subsec. (f), is classified to sections 480, 500, 513 to 517, 518, 519, 521, 532 and 563 of this title.

1958 Amendment. Subsec. (a). Pub.L. 85-624 designated first sentence of existing provisions as subsec. (a), and, among other changes, inserted "Subject to the exceptions prescribed in section 662(b) of this title" preceding "whenever the waters", substituted "diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage" for "diverted, or otherwise controlled for any purpose whatever", and inserted provisions requiring adequate provision to be made for the development and improvement of wildlife resources pursuant to the provisions of section 662 of this title.

Subsec. (b). Pub.L. 85-624 designated second sentence of existing provisions as

subsec. (b), included the use of land for wildlife conservation purposes, and 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 land available to the States with respect to the management of wildlife and wildlife habitat on lands administered by him.

Subsecs. (c)-(f). Pub.L. 85-624 added subsecs. (c)-(f).

1916 Amendment. Act Aug. 14, 1916, amended section generally to provide for the conservation and maintenance of wildlife resources upon the impounding of waters, and to provide for the use of said waters under certain conditions.

Transfer of Functions. See notes under section 661 of this title.

Legislative History. For legislative history and purpose of Pub.L. 85-624, see 1958 U.S. Code Cong. and Adm. News, p. 3446.

Notes of Decisions

1. **Persons entitled to maintain action.** Riparian owners whose lands were located on river below dam constructed under section 372 et seq. of Title 43 were not, as parties in interest, entitled to enforce any right of use to flow of waters of river for spawning and fishing of salmon and other fish for both general commercial purposes and general recrea-

tional purposes of plaintiffs and public under this section requiring that adequate provision be made in construction by United States of any dams or diversionary works for the conservation, maintenance and management of wildlife resources and its habitat. *Rauk v. Krug*, D.C. Cal. 1950, 90 F. Supp. 773.

§ 664. Administration; rules and regulations; availability of lands to State agencies

Such areas as are made available to the Secretary of the Interior for the purposes of sections 661 to 666c of this title, pursuant to sections 661 and 663 of this title or pursuant to any other authorization, shall be administered by him directly or in accordance with cooperative agreements entered into pursuant to the provisions of section 662 of this title and in accordance with such rules and regulations for the conservation, maintenance, and management of wildlife, resources thereof, and its habitat thereon, as may be adopted by the Secretary in accordance with general plans approved jointly by the Secretary

the Interior and the head of the department or agency exercising primary administration of such areas: *Provided*, That such rules and regulations shall not be inconsistent with the laws for the protection of fish and game of the States in which such area is situated: *Provided further*, That lands having value to the National Migratory Bird Management Program may, pursuant to general plans, be made available without cost directly to the State agency having control over wildlife resources, if it is jointly determined by the Secretary of the Interior and such State agency that this would be in the public interest: *And provided further*, That the Secretary of the Interior shall have the right to assume the management and administration of such lands in behalf of the National Migratory Bird Management Program if the Secretary finds that the State agency has withdrawn from or otherwise relinquished such management and administration.

Mar. 10, 1934, c. 55, § 4, 48 Stat. 402; 1939 Reorg. Plan No. II, § 4(e), (f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433; 1940 Reorg. Plan No. III, § 3, eff. June 30, 1940, 5 F.R. 2108, 54 Stat. 1232; Aug. 14, 1946, c. 965, 60 Stat. 1080; Aug. 12, 1958, Pub.L. 85-624, § 2, 72 Stat. 567.

Historical Note

1958 Amendment. Pub.L. 85-624 permitted lands having value to the National Bird Management Program to be made available directly to the State agency having control over wildlife resources.

1946 Amendment. Act Aug. 14, 1946 amended section generally to provide for administration of wildlife areas, and for

the promulgation of rules and regulations.

Transfer of Functions. See notes under section 661 of this title.

Legislative History. For legislative history and purpose of Pub.L. 85-624, see 1958 U.S. Code Cong. and Adm. News, p. 3446.

Code of Federal Regulations

Animal management, see 50 CFR 30.1 et seq.

Applicability and scope of provisions, see 50 CFR 25.1 et seq.

Cabin sites on public conservation and recreation areas, see 43 CFR 21.1 et seq.

Enforcement of provisions, see 50 CFR 27.1 et seq.

Fish hatchery areas.

Hunting and fishing activities, see 50 CFR 71.1 et seq.

Management of, see 50 CFR 70.1 et seq.

Hunting, provisions applicable, see 50 CFR 32.1 et seq.

Land use management, see 50 CFR 29.1 et seq.

Prohibited acts, see 50 CFR 26.1 et seq.

Public use and recreational activities, see 50 CFR 28.1 et seq.

Sport fishing, provisions applicable, see 50 CFR 33.1 et seq.

Wildlife species management, see 50 CFR 31.1 et seq.

Notes of Decisions

Certiorari

Possibility that federal government could not permit electric power company to cross federal wildlife refuge was so certain that electric company could not be substantially injured by

towns' refusal of permission to cross public streets with transmission line and to defeat review of towns' action by certiorari. *Boston Edison Co. v. Bd. of Selectmen of Concord*, 1963, 242 N.E.2d 863, 355 Mass. 79.

Legislative History. For legislative history 1958 U.S. Code Cong. and Adm. News, P. history and purpose of Pub.L. 85-881, see 4615.

Cross References

Original jurisdiction of district courts in condemnation proceedings, see section 1356 of Title 28, Judiciary and Judicial Procedure.

§ 2665. Sale of certain interests in land; logs

(a) The President, through an executive department or the Federal Maritime Board, may sell to any person or foreign government any interest in land that is acquired under section 2664 of this title for the production of lumber or timber products, except land under the control of the Department of the Army or the Department of the Air Force.

(b) The President, through an executive department or the Federal Maritime Board, may sell to any person or foreign government any logs wholly or partly manufactured by, or otherwise procured for, the Army, Navy, Air Force, or Federal Maritime Board.

(c) Sales under subsection (a) or (b) shall be at prices determined by the President acting through the selling agency.

(d) Proceeds of sales under subsection (a) or (b) shall be credited to the appropriations under which the property was procured.

Aug. 10, 1956, c. 1041, 70A Stat. 149.

Historical and Revision Notes

Revised

Section
2665(a)

Source (U. S. Code)
50:172 (last par., less 36th
through 64th, and 73d
through 109th, words)

2665(b)

50:172 (36th through 64th
words of last par.)

2665(c)

50:172 (73d through 90th
words of last par.)

2665(d)

50:172 (91st through 109th
words of last par.)

Source (Statutes at Large)

July 9, 1918, ch. 143, subch. XV, § 8 (last par.), 40 Stat. 888.

Explanatory Notes

In subsection (a), the words "an executive department or the Federal Maritime Board" are substituted for the words "any department or the United States Maritime Commission" to reflect an opinion of the Judge Advocate General of the Army (JAGA 1954/1723) and to name the successor of the United States Maritime Commission. The last 19 words are inserted to reflect that opinion (see the Act of February 20, 1931 (10 U.S.C. 1354)). The words "and dispose of" are omitted as surplusage.

In subsection (b), the words "an executive department or the Federal Maritime Board" are inserted for clarity and to name the successor of the United States Maritime Commission.

In subsections (a) and (b), the word "person" is substituted for the words "individuals, corporations," since section 1 of title 1 defines the word "person" to cover both individuals and corporations. The words "States or" are omitted as surplusage.

In subsection (c), the words "the selling agency" are substituted for the words "his above representatives selling or disposing of the same".

Abolition of Federal Maritime Board. Section 304 of 1961 Reorg. Plan No. 7, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, set out in the Appendix to Title 5, Government Organization and Employees, abolished the Federal Maritime Board, including the offices of the members of the Board. Functions of the Board were transferred either to the Federal Maritime Commission or to the Secretary of Commerce by sections 103 and 202 of 1961 Reorg. Plan No. 7.

§ 2666. Acquisition: land purchase contracts; limitation on commission

The maximum amount payable as commission on a contract for the purchase of land from funds appropriated for the Department of Defense is 2 percent of the purchase price.

Aug. 10, 1956, c. 1041, 70A Stat. 149.

Historical and Revision Notes

Revised
Section
2666

Source (U. S. Code)
5:174b

Source (Statutes at Large)
Aug. 1, 1953, ch. 305, § 606, 67 Stat. 350.

§ 2667. Leases: non-excess property

(a) Whenever the Secretary of a military department considers it advantageous to the United States, he may lease to such lessee and upon such terms as he considers will promote the national defense or be in the public interest, real or personal property that is—

- (1) under the control of that department;
- (2) not for the time needed for public use; and
- (3) not excess property, as defined by section 472 of title 40.

(b) A lease under subsection (a)—

(1) may not be for more than five years, unless the Secretary concerned determines that a lease for a longer period will promote the national defense or be in the public interest;

(2) may give the lessee the first right to buy the property if the lease is revoked to allow the United States to sell the property under any other provision of law;

(3) must permit the Secretary to revoke the lease at any time, unless he determines that the omission of such a provision will promote the national defense or be in the public interest;

(4) must be revocable by the Secretary during a national emergency declared by the President; and

(5) may provide, notwithstanding section 303b of title 40 or any other provision of law, for the maintenance, protection, repair, or restoration, by the lessee, of the property leased, or of the entire unit or installation where a substantial part of it is leased, as part or all of the consideration for the lease.

(c) This section does not apply to oil, mineral, or phosphate lands.

(d) Money rentals received by the United States directly from a lease under this section shall be covered into the Treasury as miscellaneous receipts. Payments for utilities or services furnished to the lessee under such a lease by the department concerned may be

covered into the Treasury to the credit of the appropriation from which the cost of furnishing them was paid.

(e) The interest of a lessee of property leased under this section may be taxed by State or local governments. A lease under this section shall provide that, if and to the extent that the leased property is later made taxable by State or local governments under an act of Congress, the lease shall be renegotiated.

Aug. 10, 1956, c. 1041, 70A Stat. 150.

Historical and Revision Notes

Revised Section	Source (U. S. Code)	erty and Administrative Services Act of 1949.
2667(a)	5:826s-3 (1st sentence) 10:1270 (1st sentence) 34:522a (1st sentence)	In subsection (b)(2), the words "may give" are substituted for the first 12 words of the third sentence of 5:826s-3 10:1270, and 34:522a. The words "if the lease is revoked to allow the United States to sell the property" are substituted for the words "in the event of the revocation of the lease in order to permit sale thereof by the Government". The words "under any other provision of law" are inserted for clarity. The words "the first right to buy" are substituted for the words "a right of first refusal". The words "but this section shall not be construed as authorizing the sale of any property unless the sale thereof is otherwise authorized by law" are omitted as surplusage, since the revised section deals only with leases of property.
2667(b)	5:826s-3 (2d through 6th sentences) 10:1270 (2d through 6th sentences) 34:522a (2d through 6th sentences)	
2667(c)	5:826s-3 (last sentence) 10:1270 (last sentence) 34:522a (last sentence)	
2667(d)	5:826s-3 (less 1st 6 sentences) 10:1270 (less 1st 6 sentences) 34:522a (less 1st 6 sentences)	
2667(e)	5:826s-6 10:1270d 34:522e	

Source (Statutes at Large)

Aug. 5, 1947, ch. 493, §§ 1, 6, 81 Stat. 774, 775; Sept. 23, 1951, ch. 434, § 605 (as applicable to Act of Aug. 5, 1947, ch. 493, § 1), 65 Stat. 386.

Explanatory Notes

In subsection (a), the words "considers . . . United States" are substituted for the words "shall deem . . . Government". The words "and conditions" are omitted as surplusage. The words "he considers" are substituted for the words "in his judgment".

In subsection (a)(3), the words "excess property, as defined by section 472 of title 40" are substituted for the words "surplus to the needs of the Department within the meaning of the Surplus Property Act of 1944 [Act of October 3, 1944 (58 Stat. 785)]", in 5:826s-3, 10:1270, and 34:522a, since the words "excess property" are so defined by the Federal Prop-

erty and Administrative Services Act of 1949. In subsection (b)(3), the words "must permit" are substituted for the words "Each such lease shall contain a provision permitting". The words "from the lease" are omitted as surplusage.

In subsection (b)(5), the words "any such lease" and "of such property" are omitted as surplusage.

In subsection (c), the words "This section does" are substituted for the words "The authority herein granted shall".

In subsection (e), the words "of property" are inserted for clarity. The words "leased under" are substituted for the words "made or created pursuant to". The words "may be taxed by State or local governments" are substituted for the words "shall be made subject to State or local taxation". The last sentence is substituted for the last sentence of 5:826s-6 10:1270d, and 34:522e.

Code of Federal Regulations

Lease of real and personal property, Navy Department, see 32 CFR 738.5.

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1. Construction

This section was equivocal in its language, and court was not bound to interpret it literally but could take into account congressional concern as indicated by legislative history. Secretary of Treasury of Puerto Rico v. Esso Standard Oil Co., (P. R.), C.A. Puerto Rico 1964, 332 F.2d 624.

2. Construction with other laws

This section and the Wherry Military Housing Act of 1949, section 1748 et seq. of Title 12, interlock and must be read together. Offutt Housing Co. v. Sarpy County, Neb., U.S.Neb.1956, 78 S.Ct. 814, 351 U.S. 253, 100 L.Ed. 1151.

3. Power or authority of Secretary

Unless such authority was positively conferred by Congress on the Secretary of War [now Secretary of Defense], he could not sell or transfer to a city or individual land belonging to the government. U. S. v. Forbes, D.C.Ala.1919, 259 F. 585, affirmed 268 F. 273.

The power conferred by Congress upon the Secretary of War [now Secretary of Defense] to lease government property under his control carried with it by implication the power to make such stipulations as were usual between landlord and tenant and reasonably necessary for the proper execution of the power to lease the property, and thus the Secretary might have stipulated in such lease that certain alterations and improvements, deemed necessary to make the premises suitable for the lessee's use, should be made by the lessee, the cost thereof to be deducted from the rent reserved, such

stipulation being germane to the subject matter of the lease and not unusual in such transactions. 1930, 36 Op.Atty.Gen. 282.

Under section 522 of former Title 34, Navy, the Secretary of the Navy was authorized to lease naval lands, together with personal property constituting a part of the plant or plants in existence upon such real property, but he had no authority to lease other personal property, nor the lands excepted by the proviso, to wit, "oil, mineral, or phosphate lands". 1919, 32 Op.Atty.Gen. 75.

This section did not authorize Secretary to lease water power created by dam and lock on Black Warrior River. Ala.1913, 30 Op.Atty.Gen. 154.

Such portion of the Ft. Sill Military Reservation can be set apart as may be required for the erection of the necessary buildings to be used as a mission and school for the Apache prisoners of war. 1899, 22 Op.Atty.Gen. 303.

Long-continued exercise of a power of this kind by the Secretary of War [now Secretary of Defense], and the open and notorious use of government reservations by such licensees without legislative objection from Congress or the adoption of any legislative rule on the subject, implied the tacit assent of Congress to this custom. 1898, 22 Op.Atty.Gen. 240.

The Secretary of War [now Secretary of Defense] had no authority to grant permission for the erection of a mess hall, reading room, and library within the Army reservation on Ship Island. 1897, 21 Op.Atty.Gen. 565. See also, 1897, 21 Op.Atty.Gen. 537.

The Secretary of War [now Secretary of Defense] had no power to turn over government property to states or individuals, to be used for any purpose not authorized by some Act of Congress. 1891, 20 Op.Atty.Gen. 90.

4. Approval by Secretary

Modification of agreement to suspend steel products plant lease which was not approved by Secretary of the Navy and which was known by lessee to require such approval was not binding on government. Penn-Ohio Steel Corp. v. U. S., 1936, 354 F.2d 254, 173 Ct.Cl. 1934.

Assistant Secretary of the Navy's oral approval of agreement to suspend steel products plant lease rendered agreement binding upon government. Id.

§ 2665. Sale of certain interests in land; logs

(a) The President, through an executive department, may sell to any person or foreign government any interest in land that is acquired under section 2664 of this title for the production of lumber or timber products, except land under the control of the Department of the Army or the Department of the Air Force.

(b) The President, through an executive department, may sell to any person or foreign government any logs wholly or partly manufactured by, or otherwise procured for, the Army, Navy, Air Force, or Department of Transportation.

[See main volume for text of (c)]

(d) Appropriations of the Department of Defense available for operation and maintenance during a fiscal year may be reimbursed for all expenses of production of lumber and timber products pursuant to this section from amounts received as proceeds from the sale of any such property during such fiscal year.

(e)(1) Each State in which is located a military installation or facility from which timber and timber products are sold in a fiscal year is entitled at the end of such year to an amount equal to 25 percent of (A) the amount received by the United States during such year as proceeds from the sale of timber and timber products produced on such installation or facility, less (B) the amount of reimbursement of appropriations of the Department of Defense under subsection (d) for all expenses of production of timber and timber products during such year attributable to such installation or facility.

(2) The amount paid to a State pursuant to paragraph (1) shall be expended as the State legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which the military installation or facility is situated.

(3) In a case in which a military installation or facility is located in more than one State or county, the amount paid pursuant to paragraph (1) shall be distributed in a manner proportional to the area of such installation or facility in each State or county.

As amended Aug. 1, 1977, Pub.L. 95-82, Title VI, § 610, 91 Stat. 378; Dec. 12, 1980, Pub.L. 96-513, Title V, § 511(91), 94 Stat. 2928; Aug. 6, 1981, Pub.L. 97-31, § 12(3)(B), 95 Stat. 153; Dec. 23, 1981, Pub.L. 97-99, Title IX, § 910(a), 95 Stat. 1386.

Codification. Amendment by Pub.L. 97-31 has been executed to text in accordance with the probable intent of Congress, notwithstanding amendment of section by Pub.L. 96-513 which substituted different language than language contained in amendatory provisions of Pub.L. 97-31.

1981 Amendments. Subsec. (a), Pub.L. 97-31, § 12(3)(B)(i), struck out reference to Federal Maritime Commission. See Codification note set out above.

Subsec. (b), Pub.L. 97-31, § 12(3)(B), substituted "or Department of Transportation" for "or Federal Maritime Commission", and struck out "or the Federal Maritime Commission" following "department". See Codification note set out above.

Subsec. (e). Pub.L. 97-99 added subsec. (e).

1980 Amendment. Subsecs. (a), (b), Pub.L. 96-513 substituted "Commission" for "Board" wherever appearing.

1977 Amendment. Subsec. (d), Pub.L. 95-82 substituted provisions relating to reimbursement of production expenses

during any fiscal year from proceeds from sales for property during such fiscal year, for provisions requiring proceeds from sales under subsec. (a) or (b) of this section to be credited to the appropriations under which the property concerned was procured.

Effective Date of 1981 Amendment. Section 910(b) of Pub.L. 97-99 provided that: "Subsection (e) of section 2665 of title 10, United States Code [subsec. (e) of this section], as added by subsection (a), shall apply with respect to timber and timber products sold after September 30, 1981."

Effective Date of 1980 Amendment. Amendment by Pub.L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub.L. 96-513, set out as a note under section 101 of this title.

Legislative History. For legislative history and purpose of Pub.L. 95-82, see 1977 U.S. Code Cong. and Adm. News, p. 542. See, also, Pub.L. 96-513, 1980 U.S. Code Cong. and Adm. News, p. 6333; Pub.L. 97-31, 1981 U.S. Code Cong. and Adm. News, p. 92.

§ 2667. Leases: non-excess property

(a) Whenever the Secretary of a military department considers it advantageous to the United States, he may lease to such lessee and upon

such terms as he considers will promote the national defense or be in the public interest, real or personal property that is—

[See main volume for text of (1) and (2)]

(3) not excess property, as defined by section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472).

(b) A lease under subsection (a)—

(1) may not be for more than five years, unless the Secretary concerned determines that a lease for a longer period will promote the national defense or be in the public interest;

(2) may give the lessee the first right to buy the property if the lease is revoked to allow the United States to sell the property under any other provision of law;

(3) must permit the Secretary to revoke the lease at any time, unless he determines that the omission of such a provision will promote the national defense or be in the public interest; and

(4) may provide, notwithstanding section 321 of the Act entitled "An Act making appropriations for the Legislative Branch of the Government for the fiscal year ending June 30, 1933, and for other purposes", approved June 30, 1932 (40 U.S.C. 303b), or any other provision of law, for the maintenance, protection, repair, or restoration, by the lessee, of the property leased, or of the entire unit or installation where a substantial part of it is leased, as part or all of the consideration for the lease.

[See main volume for text of (c) and (d)]

(e) The interest of a lessee of property leased under this section may be taxed by State or local governments. A lease under this section shall provide that, if and to the extent that the leased property is later made taxable by State or local governments under an Act of Congress, the lease shall be renegotiated.

(f) Notwithstanding clause (3) of subsection (a), real property and associated personal property, which have been determined excess as the result of a defense installation realignment or closure, may be leased to State or local governments pending final disposition of such property if—

(1) the Secretary concerned determines that such action would facilitate State or local economic adjustment efforts, and

(2) the Administrator of General Services concurs in the action.

As amended Oct. 7, 1975, Pub.L. 94-107, Title VI, § 607(7), 89 Stat. 566; Sept. 14, 1976, Pub.L. 94-412, Title V, § 501(b), 90 Stat. 1258; Dec. 12, 1980, Pub.L. 96-513, Title V, § 511(92), 94 Stat. 2928.

References in Text. Section 3 of the Federal Property and Administrative Services Act of 1949, referred to in subsec. (a)(3), is classified to section 472 of Title 40, Public Buildings, Property, and Works.

Section 321 of the Act entitled "An Act making appropriations for the Legislative Branch of the Government for the fiscal year ending June 30, 1933, and for other purposes", referred to in subsec. (b)(4), is classified to section 303b of Title 40, Public Buildings, Property, and Works.

1980 Amendment. Subsec. (a)(3), Pub.L. 96-513, § 511(92)(A), substituted "section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472)" for "section 472 of title 40".

Subsec. (b)(4), Pub.L. 96-513, § 511(92)(B), substituted "section 321 of the Act entitled 'An Act making appropriations for the Legislative Branch of the Government for the fiscal year ending June 30, 1933, and for other purposes', approved June 30, 1932 (40 Stat. 303b)," for "section 303b of title 40".

Subsec. (e). Pub.L. 96-513, § 511(92)(C), substituted "Act" for "act".

Subsec. (f). Pub.L. 96-513, § 511(92)(D) substituted "the Secretary" for "The Secretary" and "the Administrator of General Services" for "The Administrator of the General Services Administration".

1976 Amendment. Subsec. (b)(4), Pub.L. 94-412 struck out par. (4) which required leases of nonexcess property of a military department include a provision making the lease revocable during a national emergency declared by the President, and redesignated par. (5) as (4).

1975 Amendment. Subsec. (f). Pub.L. 94-107 added subsec. (f).

Subsec. (b)(5), Pub.L. 94-412 redesignated par. (5) as (4).

Savings Provision. Amendment by Pub.L. 94-412 not to affect any action taken or proceeding pending at the time of amendment, see section 101 of Pub.L. 94-412, set out as a note to section 101 of Title 50, War and National Defense.