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may be, in accordance with the procedure set forth in part 4 of this title.

[35 FR 10009, June 18, 1970, as amended at 36 FR 7206, Apr. 15, 1971; 38 FR 10009, Apr. 23, 1973]

§ 23.13 Consultation.

Whenever the lands included in a permit, lease, or contract are under the jurisdiction of an agency other than the Department of the Interior or under the jurisdiction of a bureau of the Department of the Interior other than the Bureau of Land Management, the mining supervisor or the district manager, as appropriate, shall consult the authorized officer of such agency before taking any final action under §§ 23.7, 23.8, 23.10 (c) and (d) (2) and (3), and 23.11(c).

PART 24—DEPARTMENT OF THE INTERIOR FISH AND WILDLIFE POLICY: STATE-FEDERAL RELATIONSHIPS

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AUTHORITY: 43 U.S.C. 1201.

SOURCE: 48 FR 11642, Mar. 18, 1983, unless otherwise noted.

§ 24.1 Introduction.

(a) In 1970, the Secretary of the Interior developed a policy statement on intergovernmental cooperation in the preservation, use and management of fish and wildlife resources. The purpose of the policy (36 FR 21034, Nov. 3, 1971) was to strengthen and support the missions of the several States and the Department of the Interior respecting fish and wildlife. Since development of the policy, a number of Congressional enactments and court decisions have addressed State and Federal responsibilities for fish and wildlife with the general effect of expanding Federal jurisdiction over certain species and uses of fish and wildlife traditionally managed by the States. In some cases, this expansion of jurisdiction has established overlapping authorities, clouded agency jurisdictions and, due to differing agency interpretations and accountabilities, has contributed to confusion and delays in the implementation of management programs. Nevertheless, Federal authority exists for specified purposes while State authority regarding fish and resident wildlife remains the comprehensive backdrop applicable in the absence of specific, overriding Federal law.

(b) The Secretary of the Interior reaffirms that fish and wildlife must be maintained for their ecological, cultural, educational, historical, aesthetic, scientific, recreational, economic, and social values to the people of the United States, and that these resources are held in public trust by the Federal and State governments for the benefit of present and future generations of Americans. Because fish and wildlife are fundamentally dependent upon habitats on private and public lands managed or subject to administration by many Federal and State agencies, and because provisions for the protection, maintenance and enhancement of fish and wildlife and the regulation for their use are established in many laws and regulations involving a multitude of Federal and State administrative structures, the effective stewardship of fish and wildlife requires the cooperation of the several States and the Federal Government.

(c) It is the intent of the Secretary to strengthen and support, to the maximum legal extent possible, the missions of the States[1] and the Department of the Interior to conserve and manage effectively the nation's fish and wildlife. It is, therefore, important that a Department of the Interior Fish and Wildlife Policy be implemented to coordinate and facilitate the efforts of

[1] "States" refers to all of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, the Commonwealth of Northern Mariana Islands and other territorial possessions, and the constituent units of government upon which these entities may have conferred authorities related to fish and wildlife matters.

Federal and State agencies in the attainment of this objective.

§ 24.2 Purpose.

(a) The purpose of the Department of the Interior Fish and Wildlife Policy is to clarify and support the broad authorities and responsibilities of Federal[2] and State agencies responsible for the management of the nation's fish and wildlife and to identify and promote cooperative agency management relationships which advance scientifically-based resource management programs. This policy is intended to reaffirm the basic role of the States in fish and resident wildlife management, especially where States have primary authority and responsibility, and to foster improved conservation of fish and wildlife.

(b) In developing and implementing this policy, this Department will be furthering the manifest Congressional policy of Federal-State cooperation that pervades statutory enactments in the area of fish and wildlife conservation. Moreover, in recognition of the scope of its activities in managing hundreds of millions of acres of land within the several States, the Department of the Interior will continue to seek new opportunities to foster a ''good neighbor'' policy with the States.

§ 24.3 General jurisdictional principles.

(a) In general the States possess broad trustee and police powers over fish and wildlife within their borders, including fish and wildlife found on Federal lands within a State. Under the Property Clause of the Constitution, Congress is given the power to ''make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.'' In the exercise of power under the Property Clause, Congress may choose to preempt State management of fish and wildlife on Federal lands and, in circumstances where the exercise of power under the Commerce Clause is available, Congress may choose to establish restrictions on the taking of fish and wildlife whether or not the activity occurs on Federal lands, as well as to establish restrictions on possessing, transporting, importing, or exporting fish and wildlife. Finally, a third source of Federal constitutional authority for the management of fish and wildlife is the treaty making power. This authority was first recognized in the negotiation of a migratory bird treaty with Great Britain on behalf of Canada in 1916.

(b) The exercise of Congressional power through the enactment of Federal fish and wildlife conservation statutes has generally been associated with the establishment of regulations more restrictive than those of State law. The power of Congress respecting the taking of fish and wildlife has been exercised as a restrictive regulatory power, except in those situations where the taking of these resources is necessary to protect Federal property. With these exceptions, and despite the existence of constitutional power respecting fish and wildlife on Federally owned lands, Congress has, in fact, reaffirmed the basic responsibility and authority of the States to manage fish and resident wildlife on Federal lands.

(c) Congress has charged the Secretary of the Interior with responsibilities for the management of certain fish and wildlife resources, e.g., endangered and threatened species, migratory birds, certain marine mammals, and certain aspects of the management of some anadromous fish. However, even in these specific instances, with the limited exception of marine mammals, State jurisdiction remains concurrent with Federal authority.

§ 24.4 Resource management and public activities on Federal lands.

(a) The four major systems of Federal lands administered by the Department of the Interior are lands administered by the Bureau of Reclamation, Bureau of Land Management, units of the National Wildlife Refuge System and national fish hatcheries, and units of the National Park System.

(b) The Bureau of Reclamation withdraws public lands and acquires non-

[2] Hereinafter, the Bureau of Reclamation, Bureau of Land Management, Fish and Wildlife Service, and National Park Service will be referred to collectively as ''Federal agencies.''

Federal lands for construction and operation of water resource development projects within the 17 Western States. Recreation and conservation or enhancement of fish and wildlife resources are often designated project purposes. General authority for Reclamation to modify project structures, develop facilities, and acquire lands to accommodate fish and wildlife resources is given to the Fish and Wildlife Coordination Act of 1946, as amended (16 U.S.C. 661–667e). That act further provides that the lands, waters and facilities designated for fish and wildlife management purposes, in most instances, should be made available by cooperative agreement to the agency exercising the administration of these resources of the particular State involved. The Federal Water Project Recreation Act of 1965, as amended, also directs Reclamation to encourage non-Federal public bodies to administer project land and water areas for recreation and fish and wildlife enhancement. Reclamation withdrawal, however, does not enlarge the power of the United States with respect to management of fish and resident wildlife and, except for activities specified in Section III.3 above, basic authority and responsibility for management of fish and resident wildlife on such lands remains with the State.

(c) BLM-administered lands comprise in excess of 300 million acres that support significant and diverse populations of fish and wildlife. Congress in the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) directed that non-wilderness BLM lands be managed by the Secretary under principles of multiple use and sustained yield, and for both wilderness and non-wilderness lands explicitly recognized and reaffirmed the primary authority and responsibility of the States for management of fish and resident wildlife on such lands. Concomitantly, the Secretary of the Interior is charged with the responsibility to manage non-wilderness BLM lands for multiple uses, including fish and wildlife conservation. However, this authority to manage lands for fish and wildlife values is not a preemption of State jurisdiction over fish and wildlife. In exercising this responsibility the Secretary is empowered to close areas to hunting, fishing or trapping for specified reasons viz., public safety, administration, or compliance with provisions of applicable law. The closure authority of the Secretary is thus a power to close areas to particular activities for particular reasons and does not in and of itself constitute a grant of authority to the Secretary to manage wildlife or require or authorize the issuance of hunting and/or fishing permits or licenses.

(d) While the several States therefore possess primary authority and responsibility for management of fish and resident wildlife on Bureau of Land Management lands, the Secretary, through the Bureau of Land Management, has custody of the land itself and the habitat upon which fish and resident wildlife are dependent. Management of the habitat is a responsibility of the Federal Government. Nevertheless, Congress in the Sikes Act has directed the Secretary of the Interior to cooperate with the States in developing programs on certain public lands, including those administered by BLM and the Department of Defense, for the conservation and rehabilitation of fish and wildlife including specific habitat improvement projects.

(e) Units of the National Wildlife Refuge System occur in nearly every State and constitute Federally owned or controlled areas set aside primarily as conservation areas for migratory waterfowl and other species of fish or wildlife. Units of the system also provide outdoor enjoyment for millions of visitors annually for the purpose of hunting, fishing and wildlife-associated recreation. In 1962 and 1966, Congress authorized the use of National Wildlife Refuges for outdoor recreation provided that it is compatible with the primary purposes for which the particular refuge was established. In contrast to multiple use public lands, the conservation, enhancement and perpetuation of fish and wildlife is almost invariably the principal reason for the establishment of a unit of the National Wildlife Refuge System. In consequence, Federal activity respecting management of migratory waterfowl and other wildlife residing on units of the National Wildlife Refuge System

involves a Federal function specifically authorized by Congress. It is therefore for the Secretary to determine whether units of the System shall be open to public uses, such as hunting and fishing, and on what terms such access shall be granted. However, in recognition of the existing jurisdictional relationship between the States and the Federal Government, Congress, in the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd), has explicitly stated that nothing therein shall be construed as affecting the authority of the several States to manage fish and resident wildlife found on units of the system. Thus, Congress has directed that, to the maximum extent practicable, such public uses shall be consistent with State laws and regulations. Units of the National Wildlife Refuge System, therefore, shall be managed, to the extent practicable and compatible with the purposes for which they were established, in accordance with State laws and regulations, comprehensive plans for fish and wildlife developed by the States, and Regional Resource Plans developed by the Fish and Wildlife Service in cooperation with the States.

(f) Units of the National Park System contain natural, recreation, historic, and cultural values of national significance as designated by Executive and Congressional action. Specific enabling legislation has authorized limited hunting, trapping or fishing activity within certain areas of the system. As a general rule, consumptive resource utilization is prohibited. Those areas which do legislatively allow hunting, trapping, or fishing, do so in conformance with applicable Federal and State laws. The Superintendent may, in consultation with the appropriate State agency, fix times and locations where such activities will be prohibited. Areas of the National Park System which permit fishing generally will do so in accordance with applicable State and Federal Laws.

(g) In areas of exclusive Federal jurisdiction, State laws are not applicable. However, every attempt shall be made to consult with the appropriate States to minimize conflicting and confusing regulations which may cause undue hardship.

(h) The management of habitat for species of wildlife, populations of wildlife, or individual members of a population shall be in accordance with a Park Service approved Resource Management Plan. The appropriate States shall be consulted prior to the approval of management actions, and memoranda of understanding shall be executed as appropriate to ensure the conduct of programs which meet mutual objectives.

(i) Federal agencies of the Department of the Interior shall:

(1) Prepare fish and wildlife management plans in cooperation with State fish and wildlife agencies and other Federal (non-Interior) agencies where appropriate. Where such plans are prepared for Federal lands adjoining State or private lands, the agencies shall consult with the State or private landowners to coordinate management objectives;

(2) Within their statutory authority and subject to the management priorities and strategies of such agencies, institute fish and wildlife habitat management practices in cooperation with the States to assist the States in accomplishing their fish and wildlife resource plans;

(3) Provide for public use of Federal lands in accordance with State and Federal laws, and permit public hunting, fishing and trapping within statutory and budgetary limitations and in a manner compatible with the primary objectives for which the lands are administered. The hunting, fishing, and trapping, and the possession and disposition of fish, game, and fur animals, shall be conducted in all other respects within the framework of applicable State and Federal laws, including requirements for the possession of appropriate State licenses or permits.

(4) For those Federal lands that are already open for hunting, fishing, or trapping, closure authority shall not be exercised without prior consultation with the affected States, except in emergency situations. The Bureau of Land Management may, after consultation with the States, close all or any portion of public land under its jurisdiction to public hunting, fishing, or trapping for reasons of public safety, administration, or compliance with

provisions of applicable law. The National Park Service and Fish and Wildlife Service may, after consultation with the States, close all or any portion of Federal land under their jurisdictions, or impose such other restrictions as are deemed necessary, for reasons required by the Federal laws governing the management of their areas; and

(5) Consult with the States and comply with State permit requirements in connection with the activities listed below, except in instances where the Secretary of the Interior determines that such compliance would prevent him from carrying out his statutory responsibilities:

(i) In carrying out research programs involving the taking or possession of fish and wildlife or programs involving reintroduction of fish and wildlife;

(ii) For the planned and orderly removal of surplus or harmful populations of fish and wildlife except where emergency situations requiring immediate action make such consultation and compliance with State regulatory requirements infeasible; and

(iii) In the disposition of fish and wildlife taken under paragraph (i) (5)(i) or (i) (5)(ii) of this section.

§ 24.5 International agreements.

(a) International conventions have increasingly been utilized to address fish and wildlife issues having dimensions beyond national boundaries. The authority to enter into such agreements is reserved to the President by and with the advice and consent of the Senate. However, while such agreements may be valuable in the case of other nations, in a Federal system such as ours sophisticated fish and wildlife programs already established at the State level may be weakened or not enhanced.

(b) To ensure that effective fish and wildlife programs already established at the State level are not weakened, the policy of the Department of the Interior shall be to recommend that the United States negotiate and accede to only those international agreements that give strong consideration to established State programs designed to ensure the conservation of fish and wildlife populations.

(c) It shall be the policy of the Department to actively solicit the advice of affected State agencies and to recommend to the U.S. Department of State that representatives of such agencies be involved before and during negotiation of any new international conventions concerning fish and wildlife.

§ 24.6 Cooperative agreements.

(a) By reason of the Congressional policy (e.g., Fish and Wildlife Coordination Act of 1956) of State-Federal cooperation and coordination in the area of fish and wildlife conservation, State and Federal agencies have implemented cooperative agreements for a variety of fish and wildlife programs on Federal lands. This practice shall be continued and encouraged. Appropriate topics for such cooperative agreements include but are not limited to:

(1) Protection, maintenance, and development of fish and wildlife habitat;

(2) Fish and wildlife reintroduction and propagation;

(3) Research and other field study programs including those involving the taking or possession of fish and wildlife;

(4) Fish and wildlife resource inventories and data collection;

(5) Law enforcement;

(6) Educational programs;

(7) Toxicity/mortality investigations and monitoring;

(8) Animal damage management;

(9) Endangered and threatened species;

(10) Habitat preservation;

(11) Joint processing of State and Federal permit applications for activities involving fish, wildlife and plants;

(12) Road management activities affecting fish and wildlife and their habitat;

(13) Management activities involving fish and wildlife; and,

(14) Disposition of fish and wildlife taken in conjunction with the activities listed in this paragraph.

(b) The cooperating parties shall periodically review such cooperative agreements and adjust them to reflect changed circumstances.

§ 24.7 Exemptions.

(a) Exempted from this policy are the following:

(1) The control and regulation by the United States, in the area in which an international convention or treaty applies, of the taking of those species and families of fish and wildlife expressly named or otherwise covered under any international treaty or convention to which the United States is a party;

(2) Any species of fish and wildlife, control over which has been ceded or granted to the United States by any State; and

(3) Areas over which the States have ceded exclusive jurisdiction to the United States.

(b) Nothing in this policy shall be construed as affecting in any way the existing authorities of the States to establish annual harvest regulations for fish and resident wildlife on Federal lands where public hunting, fishing or trapping is permitted.

PART 26—GRANTS TO STATES FOR ESTABLISHING YOUTH CONSERVATION CORPS PROGRAMS

Sec.

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AUTHORITY: Sec. 4, 86 Stat. 1320, as amended, 88 Stat. 1067 (16 U.S.C. 1704)

SOURCE: 43 FR 41004, Sept. 13, 1978, unless otherwise noted.

§ 26.1 Introduction.

(a) The Youth Conservation Corps (YCC) is a program of summer employment for young men and women, aged 15 through 18, who work, earn, and learn together by doing projects which further the development and conservation of the natural resources of the United States. The corps is open to youth of both sexes, and youth of all social, economic, and racial classifications who are permanent residents of the United States, its territories, possessions, trust territories or commonwealths.

(b) The Youth Conservation Corps Act of 1970 (Pub. L. 91–378) provided for a 3-year pilot program to be carried out on lands and waters under the jurisdiction of the Secretary of Agriculture or the Secretary of the Interior. Public Law 92–597 amended the 1970 Act to include a pilot program (beginning in fiscal year 1974) of grants to States to assist them in meeting the cost of Youth Conservation Corps projects on non-Federal public lands and waters within the States. Public Law 93–408 made the Youth Conservation Corps program permanent.

§ 26.2 Definitions.

(a) Terms used in these Regulations are defined as follows:

(1) *Act*. The Youth Conservation Corps Act of 1970. Public Law 91–378, as amended.

(2) *Secretaries*. The Secretaries of Agriculture and the Interior, or their designated representatives, who jointly administer the grant program. Within the Department of Agriculture, the YCC program is administered by the Forest Service; within the Department of the Interior it is administered by the Office of Youth Programs.

(3) *States*. Any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(4) *Grant*. Money or property provided in lieu of money, paid or furnished by the Secretaries pursuant to the Act to a State to carry out a YCC program on non-Federal public lands and waters. The amount of any grant shall be determined jointly by the Secretaries, except that no grant for any project may exceed 80 per centum of the cost (as determined by the Secretaries) of said project.

(5) *Grantee*. Any State which is a recipient of a Federal grant for the operation of a YCC program.

(6) *Subgrantee*. Any public organization, municipality, county, or agency which administers non-Federal public