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WILDLIFE AND SPORT FISH RESTORATION PROGRAMS IMPROVEMENT ACT OF 2000

OCTOBER 10 (legislative day, SEPTEMBER 22), 2000.—Ordered to be printed

Mr. SMITH of New Hampshire, from the Committee on Environment and Public Works, submitted the following

REPORT

[to accompany H.R. 3671]

together with

MINORITY VIEWS

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill to amend the Acts popularly known as the Pittman-Robertson Wildlife Restoration Act and the Dingell-Johnson Sport Fish Restoration Act to enhance the funds available for grants to States for fish and wildlife conservation projects and increase opportunities for recreational hunting, bow hunting, trapping, archery, and fishing by eliminating opportunities for waste, fraud, abuse, maladministration, and unauthorized expenditures for administration and execution of those Acts, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

GENERAL BACKGROUND

The Pittman-Robertson Act and the Dingell-Johnson Act (later called the Wallop-Breaux Act), authorized in 1937 and 1950, respectively, created user-pay benefit trust funds. Together, these programs are called the Sport Fish and Wildlife Restoration pro-

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grams and are known more generally as the Federal Aid program. The Pittman-Robertson program is funded through an 11 percent tax on sporting firearms, ammunition, and archery equipment, and a 10 percent tax on pistols and revolvers. The Wallop-Breaux program is funded through a 10 percent tax on fishing equipment, and a 3 percent tax on fish finders and electric trolling motors. Funds collected by these programs are distributed to the States by formulas established in law. Since its inception, the Pittman-Robertson Act has provided over $4 billion for State wildlife restoration projects; the Wallop-Breaux Act has provided over $3.6 billion for State sport fish projects. In fiscal year 2000, the States received a total of $434 million for the Pittman-Robertson and Wallop-Breaux programs.

The States are primarily responsible for managing the wildlife restoration and sport fish programs. They identify eligible projects and then pay for the projects up front. The projects must be directly related to wild and sport fish restoration efforts. Projects that are eligible for funding through the Pittman-Robertson and Wallop-Breaux programs include: acquisition and improvement of wildlife habitat; hunter education; wildlife population surveys; construction of facilities to improve public access; management of wildlife areas; fish stocking, boating and fishing access; and facility development and maintenance. States are reimbursed for up to 75 percent of the total cost of each project from the wildlife restoration and sport fish funds. To qualify for the funds, State game and fish departments are required to dedicate license fees paid by hunters to the administration of State fish and game departments. This provides a source of funding for the States to provide the non-Federal share of any grant.

The Fish and Wildlife Service administers the wildlife restoration and sport fish programs through the Division of Federal Aid. Under the Pittman-Robertson and Wallop-Breaux Acts, the Secretary of the Interior is authorized to use up to 8 percent of the funds that are collected under the Pittman-Robertson Act to administer the wildlife restoration program, and up to 6 percent of the funds collected under the Wallop-Breaux Act to administer the sport fish program. In fiscal year 1999, the programs received a total of approximately $377 million; the Fish and Wildlife Service used $33.6 million of the funds to administer the two programs, which was the maximum allowable amount.

Lands purchased with Pittman-Robertson funds are used for many wildlife-dependent recreation activities; each parcel is supposed to support multiple uses. Concerns have been raised recently, however, that the Fish and Wildlife Service is considering prohibiting the use of Pittman-Robertson lands for field trials. Field trials are dog competitions in which tests and training or related activities are conducted to improve the hunting abilities of, and identify those superior representatives of, the hunting breeds, as well as the skills of hunters. Field trials are a legitimate use of Pittman-Robertson funded lands, provided that the field trials are not inconsistent with the objectives and purposes of the Act.

Because wildlife conservation is the primary purpose of the Pittman-Robertson Act, only field trials that do not adversely affect wildlife or wildlife conservation objectives are viewed as an accept-

able use of Pittman-Robertson acquired lands. A type of field trial not generally appropriate for lands acquired with Pittman-Robertson funds would be one that requires significant manipulation of terrain, landscape, or vegetation, or intensive site management. Intensive site management in this context would include regular mowing, permanent stables, dog kennels, equipment storage areas or other infrastructure onsite, which would degrade the value of the land as wildlife habitat. Additionally, field trials proposed to be conducted during nesting or breeding seasons of the wildlife species for which the land was acquired would not be appropriate.

In contrast, field trials which require minimal manipulation of terrain, vegetation, or habitat would be appropriate if timed to avoid the breeding and nesting seasons of the species for which the land was acquired. Proposals for field trials which fall between these examples, or which would conflict with hunting seasons or other public uses, would require case-by-case evaluations and decisions.

GENERAL ACCOUNTING OFFICE INVESTIGATION

In December 1998, the Government Accounting Office (GAO) began an oversight review of the Fish and Wildlife Service's administration of the Federal Aid program. The GAO investigation found that the Fish and Wildlife Service, among other things, failed to maintain adequate controls over funds, expenditures, and grants; used administrative funds inconsistently among different FWS regional offices; and had conducted limited auditing of the use of funds. A 1993 investigation by the GAO found similar problems. At that time, the Fish and Wildlife Service indicated that it was taking steps to address the problems. The 1998 investigation revealed that the changes promised had not been implemented.

During the 1998 investigation, GAO raised significant concerns regarding the accountability, oversight, and control of the Federal Aid program. Among other things, GAO found that the Fish and Wildlife Service had created two new programs unrelated to the administration of the wildlife restoration and sport fish programs and was funding these new programs with Federal Aid program dollars. The two new programs were: the Administrative Grants program and the Director's Conservation Fund. The Administrative Grants program, which was supported by the States, was created to fund projects that would benefit a majority of the States. The Administrative Grants program was allegedly created with funds that were left over from the administration and execution of the Pittman-Robertson and Wallop-Breaux programs. However, the Pittman-Robertson and Wallop-Breaux Acts require that any funds not used for the administration of the programs within a 2-year period must be returned to the States. Proponents of the Administrative Grants program argued that this program effectively returned excess administrative funds to the States through additional regional restoration projects that benefited multiple States.

The second new program, the Director's Conservation Fund, was more controversial. The Director's Conservation Fund was created in 1994 for use exclusively by the Director of the Fish and Wildlife Service to make discretionary grants. The Conservation Fund withheld $1 million annually from the Federal Aid program for con-

servation grants selected by the Director of the Fish and Wildlife Service. The Fund has been used to award grants totaling over $3.8 million. The procedures for obtaining grants under this Fund are much less rigorous than those for obtaining funds under the programs set up under the Federal Aid program. Moreover, critics argue that the criteria used to select conservation projects are subjective. Also, GAO reported that the Fish and Wildlife Service did not follow the Office of Management and Budget's guidelines requiring agencies awarding grants to notify the public of funding priorities for discretionary grant programs.

The GAO investigation and subsequent oversight hearings in the Senate Committee on Environment and Public Works and the House Committee on Resources raised additional concerns about unnecessary foreign travel; poor record keeping; and poor oversight of regional offices. For example, the GAO report indicated that through mismanagement and inadequate internal controls, the Fish and Wildlife Service had maintained two sets of accounting books with a discrepancy of $108 million between them. Since the report was issued, the Fish and Wildlife Service has been able to account for all of the money. The Service's accounting records, however, raised questions about whether the administrative expenses were in fact legitimate. There was evidence, for example, that some of the administrative expenses claimed were attributable not to the Federal Aid program, but instead to other Fish and Wildlife Service functions and were reallocated to make up for shortfalls in annual appropriations to other programs. Further, questions were raised regarding whether certain expenses, such as reimbursements for certain foreign travel or training were justified, even within the Federal Aid program.

Objectives of Legislation

This legislation addresses the problems that were identified in the GAO report and subsequent Congressional oversight hearings by making three fundamental changes to the wildlife restoration and sport fish programs. These changes are intended to enhance accountability with the Fish and Wildlife Service with respect to the administration of the Federal Aid program; to provide further clarity regarding the use of administrative funds; and to provide additional flexibility to the States for regional conservation projects. First, the bill authorizes a fixed sum that the Secretary of Interior may set aside for administration of both the Pittman-Robertson and Wallop-Breaux programs. Second, the bill enumerates legitimate administrative costs and limits the use of Federal Aid to those expenses. Finally, the bill authorizes a new Multistate Conservation Grant program to allow for the use of some Federal Aid funds to be used for regional projects.

Section-By-Section Analysis

Section 1. Short title; table of contents

Section 1 contains the bill title and the table of contents.

TITLE I-WILDLIFE RESTORATION

Sec. 101. Expenditures for Administration

SUMMARY

Section 101(a) authorizes the Secretary of the Interior to use $9,500,000 million in fiscal year 2001 for the administration of the Pittman-Robertson Wildlife Restoration Act. In subsequent years, the funds available for administration of the Act are adjusted for cost-of-living increases in accordance with the Consumer Price Index for All Urban Consumers published by the Department of Labor. If the Secretary of the Interior does not use the authorized funds, the remaining amount is to be reallocated among the States.

Section 101(b) explicitly identifies 12 categories of appropriate administrative expenses. Among other things, these include personnel costs of employees directly administering the wildlife restoration program; costs associated with reviewing State comprehensive plans and projects; certain overhead costs; costs incurred in auditing State sport fish and wildlife conservation activities; necessary training of Federal and State personnel administering the Pittman Robertson Act; foreign travel; and relocation expenses. If the Secretary of the Interior determines that it is necessary to spend funds on an administrative expense that is not authorized, the Secretary is required to submit a letter to the Senate Committee on Environment and Public Works and the House Committee on Resources describing the expense. The Secretary of the Interior is required to wait 30 days before spending the money in order to give the committees time to review the appropriateness of the expenditure. In addition, the Secretary of the Interior is no longer authorized to supplement general appropriation funds with Pittman-Robertson funds for any department or agency within the Department of the Interior.

Section 101(d) directs the Inspector General of the Department of the Interior to contract out a biennial audit on the use of funds by the Secretary to administer the Pittman Robertson Act. The audit must be performed by an entity that is not associated with the Department of the Interior. The results of the audit are to be provided to the Secretary of the Interior, the Senate Committee on Environment and Public Works and the House Committee on Resources.

DISCUSSION

One of the most significant concerns raised by the GAO report was that the Fish and Wildlife Service was using administrative funds made available under the Pittman-Robertson program for a variety of activities that are not administrative in nature or not related to the program. For example, GAO found that funds were being spent on travel unrelated to the Federal Aid program and on unauthorized grants. In order to avoid this problem in the future, the bill authorizes 12 specific categories of expenses that are considered appropriate administrative costs. The manager's amendment also included a new provision that would allow the Secretary of the Interior to request authorization from the Senate Environment and Public Works Committee and the House Natural Re-

sources Committee to use Pittman Robertson funds for other legitimate administrative costs. This provision was added to address a concern raised by the Fish and Wildlife Service that the bill's list of 12 categories of administrative expenses may unintentionally exclude an otherwise appropriate type of administrative activity that has not yet been identified. The provision requires the Secretary to submit a letter to the committees describing the nature of the expense. If the committees do not reply within 30 days, the Administration has the authority to spend the additional funds. The Secretary of the Interior should not expend the funds for the purpose requested if the committees of jurisdiction object.

Several witnesses at the committee's July 19, 2000 hearing on H.R. 3671, as passed by the House, expressed concern that the bill did not provide adequate funding for the administration of the wildlife conservation and sport fish programs. The States, in particular, indicated that the authorized amounts were "not believed to adequately and effectively deliver apportioned funds to the States." As amended by the committee, the bill now authorizes $9,500,000 for the Pittman-Robertson Act and $9,500,000 for the Dingell-Johnson Sport Fish Restoration Act. Together, $19,000,000 is authorized for the administration of both programs. After extensive discussion with the Fish and Wildlife Service, it was determined that 120 full time employees were necessary to administer both programs (until recently, the programs were authorized to employ more than 150 full time employees). On average, the Fish and Wildlife Service estimated that each employee receives $78,800 per year in salary and benefits, and that the overhead cost per person is approximately $77,800. For 120 full time employees, the Federal Aid program needs approximately $19 million to effectively administer both programs.

To prevent future mismanagement of the Pittman-Robertson program, the Inspector General of the Department of the Interior is required to contract an entity to perform a biennial audit of the Federal Aid program. The findings have to be reported to the Senate Committee on Environment and Public Works and the House Natural Resources Committee.

Sec. 102. Firearm and Bow Hunter Education and Safety Program Grants

SUMMARY

Section 102 authorizes $7,500,000 from the Pittman-Robertson account to be distributed to the States in the form of grants for hunter, firearm, bow hunter, and archery education, safety and development programs. In addition, the funds can be used for the development and construction of firearm and archery ranges. Grants provided to the States under this section can not exceed 75 percent of the total cost of the activity. Any funds remaining at the end of the fiscal year are required to be reapportioned to the States.

DISCUSSION

Under current law, States may use, at their discretion, up to 50 percent of the revenues collected from handgun and archery equipment for hunter education and shooting range development. Con-

cerns have been raised, however, by several organizations that represent the hunting and angler community that several States have not been fully funding their safety and training programs, or using Federal funds to construct hunting and archery ranges. In a survey done by the International Association of Fish and Wildlife Agencies for fiscal year 1999, the 43 States who responded indicated that they spent in excess of $26 million on hunter safety and education; $18 million of this amount was funded with money from the Pittman-Robertson program. Many States reported that they were spending the maximum amount allowed on education and training. A number of States also spend funds from other sources on hunter education and training, as well as on the construction of hunting and archery ranges. To encourage States that are not maximizing the use of Pittman-Robertson funds, this provision requires States to spend a minimum of $7,500,000 million to enhance hunter and safety education.

Sec. 103. Multistate Conservation Grant Program

SUMMARY

Section 103 authorizes the Secretary to use $3,500,000 in Pittman-Robertson funds to issue grants for projects that benefit 26 States, a majority of the States in a Fish and Wildlife Service Region, or the regional association of State fish and game departments. The Secretary is required to choose projects from a list submitted by the International Association of Fish and Wildlife Service Agencies (International). The Secretary is only authorized to award grants to a State or group of States; the Fish and Wildlife Service for purposes of carrying out the National Survey of Fishing, Hunting, and Wildlife Associated Recreation; or nongovernmental organizations.

When preparing the list of projects, the International Association of Fish and Wildlife Agencies must consult with nongovernmental organizations representing conservation and sportsmen organizations, and industries that support or promote hunting, trapping, recreational shooting, bow hunting, or archery. The International then submits a list of proposed projects to the Chief of the Division of Federal Aid by October 1, of each fiscal year. The Chief of the Division of Federal Aid may only select projects for funding from the list received from the International. The Chief of the Division of Federal Aid is also required to publish the list in the Federal Register.

In order for a nongovernmental organization to receive funding for a project under the multistate grant program, the organization must certify that it does not promote or encourage opposition to regulated hunting or trapping. In addition, the organization cannot use a grant awarded under this section to support any activity, project or program that promotes or encourages opposition to regulated hunting or trapping. If the organization violates either of these conditions, it is subject to penalties under law and must return all funds received under this program.

Any funds remaining at the end of the fiscal year are required to be reapportioned to the States.

DISCUSSION

In 1994, the Office of Federal Aid established an Administrative Grant program that utilized administrative funds to support national fish and wildlife projects that provided collective benefits to at least 50 percent of the States. Although the program was extremely popular, it was questionable whether the Service had the authority to establish this type of grant program. The Fish and Wildife Service abolished the program in 1999 for this reason.

This bill authorizes a new multistate grant program that is substantially similar to the old Administrative Grant program and provides $3,500,000 for the new program. The Multistate grant program is expected to fund projects that benefit a majority of the States, such as the National Survey of Fishing, Hunting, and Wildlife Associated Recreation, Hooked on Fishing-Not on Drugs, and the National Outdoor Ethics Conference. This grant program will serve an important function because these projects, and others, are widely acknowledged to be necessary, but in most cases cannot be funded in a cost-effective manner by any one State.

The bill also recognizes that nongovernmental organizations, not just the States and the Fish and Wildlife Service, can play a valuable role in carrying out regional wildlife conservation projects. At the same time, however, the bill recognizes the legitimate concern of the user groups that pay the excise taxes that fund these programs that Pittman-Robertson dollars must not be used to promote or encourage anti-hunting or anti-trapping activities. For this reason, the bill expressly prohibits any nongovernmental organization from using funds under the Multistate Grant program to promote or encourage opposition to hunting or trapping. Similarly, the bill precludes an organization that itself promotes or encourages opposition to regulated hunting or trapping from receiving funds under this program. However, nothing in the bill precludes an organization from establishing an affiliate that is physically and financially separate and that does not oppose hunting or trapping from applying for a grant under this program.

TITLE II-SPORT FISH RESTORATION

Sec. 201. Expenditures for Administration

Section 201(a) authorizes the Secretary of the Interior to use $9,500,000 million in fiscal year 2001 for the administration of the Dingell-Johnson Sport Fish Restoration Act. In subsequent years, the funds available for administration of the Act are adjusted for cost-of-living increases in accordance with the Consumer Price Index for All Urban Consumers published by the Department of Labor. If the Secretary of the Interior does not use the authorized funds, the remaining amount is to be reallocated among the States.

Section 201(b) explicitly identifies 12 categories of appropriate administrative expenses. Among other things, these include personnel costs of employees directly administering the wildlife restoration program; costs associated with reviewing State comprehensive plans and projects; certain overhead costs; costs incurred in auditing State sport fish activities; necessary training of Federal and State personnel administering the Wallop-Breaux Act; foreign travel; and relocation expenses. If the Secretary of the Interior deter-

mines that it is necessary to spend funds on an administrative expense that is not authorized, the Secretary is required to submit a letter to the Senate Committee on Environment and Public Works and the House Committee on Resources describing the expense. The Secretary of the Interior is required to wait 30 days before spending the money in order to give the committees time to review the appropriateness of the expenditure. In addition, the Secretary of the Interior is no longer authorized to supplement general appropriation funds with Dingell-Johnson Sport Fish Restoration funds for any department or agency within the Department of the Interior.

Section 201(d) directs the Inspector General of the Department of the Interior to contract out a biennial audit on the use of funds by the Secretary to administer the Pittman Robertson Act. The audit must be performed by an entity that is not associated with the Department of the Interior. The results of the audit are to be provided to the Secretary of the Interior, the Senate Committee on Environment and Public Works and the House Committee on Resources.

Sec. 202. Multistate Conservation Grant Program

SUMMARY

Section 202 authorizes the Secretary to use $3,500,000 in Dingell-Johnson Sport Fish Restoration funds to issue grants for projects that benefit 26 States, a majority of the States in a Fish and Wildlife Service Region, or the regional association of State fish and game departments. The Secretary is required to choose projects from a list submitted by the International Association of Fish and Wildlife Service Agencies. The Secretary is only authorized to award grants to a State or group of States; the Fish and Wildlife Service for purposes of carrying out the National Survey of Fishing, Hunting, and Wildlife Associated Recreation; or nongovernmental organizations.

When preparing the list of projects, the International Association of Fish and Wildlife Agencies must consult with nongovernmental organizations representing conservation and sportsmen organizations, and industries that support or promote hunting, trapping, recreational shooting, bow hunting, or archery. The International then submits a list of proposed projects to the Chief of the Division of Federal Aid by October 1, of each fiscal year. The Chief of the Division of Federal Aid may only select projects for funding from the list received from the International. The Chief of the Division of Federal Aid is also required to publish the list in the Federal Register.

Any funds remaining at the end of the fiscal year are required to be reapportioned to the States.

This section also provides a total of $2,100,000 in funding for a variety of programs including: $200,000 each for the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, the Pacific States Marine Fisheries Commission, the Great Lakes Fisheries Commission; $400,000 for the Sport Fishing and Boating Partnership Council; and $900,000 for the construction and renovation of pump out stations and waste reception

facilities, coastal wetlands conservation grants under section 305 of the Coastal Wetlands Planning, Protection and Restoration Act, boating infrastructure grants under section 7404 of the Sportfishing and Boating Safety Act of 1998, and the National Outreach and Communications Programs established under section 8(d).

DISCUSSION

In 1994, the Office of Federal Aid established an Administrative Grant program that utilized administrative funds to support national fish and wildlife projects that provided collective benefits to at least 50 percent of the States. Although the program was extremely popular, it was questionable whether the Service had the authority to establish this type of grant program. The Fish and Wildife Service abolished the program in 1999 for this reason.

This bill authorizes a new multistate grant program that is substantially similar to the old Administrative Grant program and provides $3,500,000 for the new program. The Multistate grant program is expected to fund projects that benefit a majority of the States, such as the National Survey of Fishing, Hunting, and Wildlife Associated Recreation, Hooked on Fishing-Not on Drugs, and the National Outdoor Ethics Conference. This grant program will serve an important function because these projects, and others, are widely acknowledged to be necessary, but in most cases cannot be funded in a cost-effective manner by any one State.

The bill also recognizes that nongovernmental organizations, not just the States and the Fish and Wildlife Service, can play a valuable role in carrying out regional wildlife conservation projects. At the same time, however, the bill recognizes the legitimate concern of the user groups that pay the excise taxes that fund these programs that Dingell-Johnson Sports Fish Restoration dollars must not be used to promote or encourage anti-hunting or anti-trapping activities. For this reason, the bill expressly prohibits any nongovernmental organization from using funds under the Multistate Grant program to promote or encourage opposition to hunting or trapping. Similarly, the bill precludes an organization that itself promotes or encourages opposition to regulated hunting or trapping from receiving funds under this program. However, nothing in the bill precludes an organization from establishing an affiliate that is physically and financially separate and that does not oppose hunting or trapping from applying for a grant under this program.

TITLE III-WILDLIFE AND SPORT FISH RESTORATION PROGRAMS

Sec. 302. Implementation Report

SUMMARY

Section 302 requires the Secretary of the Interior to submit a report to Congress 3 years after the date of enactment on the implementation of the Act; disbursement of funds to the States; justification of Administrative expenses; and the findings of the audits. The report should also include information on the personnel reduction that has resulted as a result of compliance with the Act and rec-

ommendations on legislative changes that are needed to administer the program more effectively.

DISCUSSION

The report to Congress will make the Fish and Wildlife Service's administration of the Federal Aid program transparent to Congress, and will aid Congress in conducting oversight to prevent future mismanagement.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of the Standing Rules of the Senate, the committee makes the following evaluation of the regulatory impact of the reported bill. The reported bill will have no regulatory impact. This bill will not have any adverse impact on the personal privacy of any individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the committee finds that H.R. 3671 would impose no Federal intergovernmental unfunded mandates on State, local, or tribal governments. All of the bill's directives are imposed on Federal agencies. The bill does not directly impose any private sector mandates.

HEARINGS

On July 19, 2000, the Senate Committee on Environment and Public Works Subcommittee on Fisheries, Wildlife and Water held an oversight hearing to receive testimony on the Fish and Wildlife Service's administration of the Federal Aid program. Witnesses who testified were: The Honorable Jamie Clark, Director, U.S. Fish and Wildlife Service; Mr. Barry Hill, Associate Director for Energy, Resources, and Sciences, General Accounting Office; Mr. Max Peterson, Executive Vice President, International Association of Fish and Wildlife Agencies; Ms. Susan Lamson, Director of Conservation and Natural Resources, National Rifle Association; Mr. Mike Nussman, Vice President, American Sport Fishing Association; and Dr. Terry Riley, Director of Conservation, Wildlife Management Institute.

LEGISLATIVE HISTORY

On April 6, 2000, H.R. 3671, a bill to amend the Acts popularly known as the Pittman-Robertson Wildlife Restoration Act and the Dingell-Johnson Sports Fish Restoration Act was referred to the Senate Committee on Environment and Public Works. A hearing was held on this bill in the Subcommittee on Fisheries, Wildlife and Water on July 19, 2000. The Committee on Environment and Public Works held a business meeting to consider this bill on September 21 and 28, 2000. Senator Smith offered a manager's amendment in the nature of a substitute and a second degree amendment consisting of technical amendments. The manager's amendment and the second degree amendment were adopted by voice vote on September 21, 2000. On September 28, 2000, H.R. 3671, as amend-

ed, was favorably reported out of the committee by voice vote, with Senator Boxer recorded in opposition.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 4, 2000.

Hon. ROBERT C. SMITH, *Chairman,*
Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed revised cost estimate for H.R. 3671, the Wildlife and Sport Fish Restoration Programs Improvement Act of 2000. This supercedes our estimate of October 3, 2000, our previous estimate incorrectly stated that the legislation contained a private-sector mandate; this estimate corrects that mistake.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis, who can be reached at 226-2860.

Sincerely,

DAN L. CRIPPEN.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 3671, Wildlife and Sport Fish Restoration Programs, Improvement Act of 2000, as ordered reported by the Senate Committee on Environment and Public Works on September 28, 2000

CBO estimates that enacting H.R. 3671 would have no net impact on the Federal budget. Because the Act could affect the timing of outlays from direct spending authority, pay-as-you-go procedures would apply. We estimate, however, that the net impact on Federal spending would not be significant in any year. H.R. 3671 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on State, local, or tribal governments.

H.R. 3671 would amend the Federal Aid in Wildlife Restoration Act and the Federal Aid in Sport Fish Restoration Act to reduce the amounts that may be spent for administering grants for fish and wildlife restoration. Specifically, for each of the two grant programs carried out under these acts, the legislation would limit spending for administrative expenses to $9.5 million in 2001, and to that amount, adjusted for inflation, for each year thereafter.

Under existing law, the amounts set aside for such expenses are calculated as a percentage of total deposits to the two funds each year. The annual deposits consist of excise taxes (primarily on fishing and hunting equipment), import duties, and interest earnings.

All such amounts, including those used for administration, are available without appropriation in the year following deposit. The U.S. Fish and Wildlife Service, which oversees both programs, allocates 8 percent annually to administer the Federal aid-wildlife program ($17 million in 2000) and 6 percent to administer the sport fish program ($16 million in 2000). By capping administrative costs, the legislation would reduce such costs in the future, however, this savings would be offset by an equal amount of additional grant expenditures.

H.R. 3671 also would create a new program for hunting education and safety, to be funded with up to $7.5 million of each year's revenues. In addition, it would set aside up to $3.5 million from each of the two funds for multistate conservation grants. These new authorized expenditures would not increase the total amount of spending for fish and wildlife restoration but rather would offset funding for other existing grants.

On October 3, 2000, CBO transmitted a cost estimate for H.R. 3671 as ordered reported by the Senate Committee on Environment and Public Works on September 28, 2000. That estimate incorrectly stated that the act contains a private-sector mandate, as defined in UMRA. This revised estimate corrects that mistake.

On March 23, 2000, CBO transmitted a cost estimate for H.R. 3671 as ordered reported by the House Committee on Resources on March 15, 2000. The two versions of the legislation are similar, and the estimated effects on the Federal budget are the same. The House version of H.R. 3671 would, however, impose a private-sector mandate on the International Association of Fish and Wildlife Agencies. The cost of that mandate would not be significant. The Senate version does not contain any mandates.

The CBO staff contact for this estimate is Deborah Reis, who can be reached at 226–2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

MINORITY VIEWS OF SENATOR BOXER

H.R. 3671, the Wildlife and Sportfish Restoration Programs Improvement Act of 2000, is a generally positive bill that will likely improve the administration of the Federal Aid program. While the Federal Aid program's reputation has suffered from recent allegations regarding mismanagement, the program has a long history of making important and substantial contributions to the conservation of our nation's wildlife and wildlife habitat. I strongly support efforts to improve and promote this program.

I have had to withhold my support from H.R. 3671, however, because it includes an egregious provision that will do nothing to promote the success of the Federal Aid program, but that will blatantly violate the First Amendment's guarantee of free speech.

The provision that concerns me is part of the two multistate conservation grant programs. These programs provide grants to support projects that meet the purposes of the Federal Aid program, but that benefit several States rather than just a single State. To qualify for one of these grants, a project must meet certain requirements and must be included on a list of priority projects recommended by the International Association of Fish and Wildlife Agencies. The grant may not be used for a project that promotes or encourages opposition to regulated hunting, trapping, or fishing. Furthermore, the bill requires that the applicant organization certify that the organization itself does not in any way "promote or encourage opposition" to regulated hunting, trapping, or fishing.

Therefore, if an organization wants to submit an application for a perfectly worthy project, it is barred from doing so if it advocates a position that could be interpreted as opposition to regulated hunting, trapping, or fishing. For example, an organization could not submit a grant to restore habitat for migratory waterfowl if it has at any time advocated for restrictions on the use of steel-jaw leghold traps. If a pro-hunting organization submitted the identical grant proposal for a project on migratory waterfowl, however, that organization would be eligible for the Federal funds.

This provision is fundamentally offensive. It seeks to punish, through the withholding of a Federal benefit, organizations that oppose hunting, trapping, or fishing. In other words, this provision punishes organizations because of their beliefs and their related advocacy regarding important matters of public policy.

By doing so, I believe that the provision violates the First Amendment's protection of free speech. I understand that, in 1991, a divided Supreme Court upheld a Congressional restriction on the use of funds by family planning clinics, based, in part, on the clinics' advocacy of abortion rights (Rust v. Sullivan). In Rust v. Sullivan and other relevant cases, the Court has found that the government has the right to provide Federal funds for certain activities and prevent them from being used for others. I am not arguing with the idea that Federal Aid projects should be limited to activities that will not undermine or oppose regulated hunting, fishing, or trapping. In Rust v. Sullivan, however, the Court distinguished that limitations on Federal grant eligibility do not violate the First Amendment so long as they do not force a Federal grant recipient to give up other activities that are funded using non-Federal funds.

This bill would do just that. It would not only limit how an organization may use the Federal Aid funds, but it would also seek to limit how the organization uses any of its funds. I find this to be unacceptable.

Aside from questions of Constitutionality, the provision suffers from being extraordinarily vague. An organization is excluded from eligibility if it "promotes or encourages opposition to" regulated hunting, trapping, or fishing. Does this mean that an organization is disqualified because it has taken a single position, in a letter to Congress, that could be construed to oppose some form of hunting, trapping, or fishing? What if the organization generally supports hunting, but opposes a specific type of hunting? The language is sufficiently vague to make it nearly impossible for a potential applicant organization to interpret with any confidence. Despite this lack of precision, the bill includes a provision to penalize any organization that receives a grant, but is later deemed to have been ineligible because of its opposition to hunting, trapping, or fishing. The combination of vague guidelines and subsequent undefined "penalties" for failure to meet these guidelines is likely to prevent some organizations from ever applying for these grants.

The First Amendment to the Constitution provides that "Congress shall make no law . . . abridging the freedom of speech." Without question, this right to free speech is one of the defining features of our country. Indeed, it is a right that many people have given their lives to defend. While it may be worthwhile to pass legislation that improves management of the Federal Program, it is certainly not worth doing so at the expense of any American's First Amendment rights. Any organization that intends to use Federal Aid dollars for projects that promote the purposes of the Pittman-Robertson and Wallop-Breaux Acts should be eligible for those Federal dollars—regardless of what those organizations do, say, or think in any other context.

For this reason, I will work aggressively to delete this provision; and, if unsuccessful, will oppose the bill.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in *italic*, existing law in which no change is proposed is shown in roman:

ACT OF SEPTEMBER 2, 1937

(Chapter 899; 50 Stat. 917 et seq.)

(Popularly known as the "Federal Aid in Wildlife Restoration Act" and the "Pittman-Robertson Wildlife Restoration Act")

AN ACT To provide that the United States shall aid the States in wildlife-restoration projects, and for other purposes.

* * * * * * *

[SEC. 4. (a) So much, not to exceed 8 per centum, of the revenues (excluding interest accruing under section 3(b)) covered into said fund in each fiscal year as the Secretary of the Interior may estimate to be necessary for his expenses in the administration and execution of this Act and the Migratory Bird Conservation Act shall be deducted for that purpose, and such sum is authorized to be made available therefor until the expiration of the next succeeding fiscal year, and within sixty days after the close of such fiscal year the Secretary of the Interior shall apportion such part thereof as remains unexpended by him, if any, and make certificate thereof to the Secretary of the Treasury and to the State fish and game departments on the same basis and in the same manner as is provided as to other amounts authorized by this Act to be apportioned among the States for such current fiscal year. The Secretary of the Interior, after making the aforesaid deduction, shall apportion, except as provided in subsection (b) of this section, the remainder of the revenue in said fund for each fiscal year among the several States in the following manner: One-half in the ratio which the area of each State bears to the total area of all the States, and one-half in the ratio which the number of paid hunting-license holders of each State in the second fiscal year preceding the fiscal year for which such apportionment is made, as certified to said Secretary by the State fish and game departments, bears to the total number of paid hunting-license holders of all the States. Such apportionments shall be adjusted equitably so that no State shall receive less than one-half of 1 per centum nor more than 5 per centum of the total amount apportioned. The term fiscal year as used in this Act shall be a period of twelve consecutive months from October 1 through the succeeding September 30, except that the period for enumeration of paid hunting-license holders shall be a State's fiscal or license year.]

SEC. 4. ALLOCATION AND APPORTIONMENT OF AVAILABLE AMOUNTS.

(a) SET-ASIDE FOR ADMINISTRATIVE EXPENSES.—

(1) IN GENERAL.—

(A) SET-ASIDE.—For fiscal year 2001 and each fiscal year thereafter, of the revenues (excluding interest accruing under section 3(b)) covered into the fund for the fiscal year, the Secretary of the Interior may use not more than the available amount specified in subparagraph (B) for the fiscal year for administrative expenses incurred in implementation of this Act, in accordance with this subsection and section 9.

(B) AVAILABLE AMOUNTS.—The available amount referred to in subparagraph (A) is—

(i) for fiscal year 2001, $9,500,000; and

(ii) for fiscal year 2002 and each fiscal year thereafter, the sum of—

(I) the available amount for the preceding fiscal year; and

(II) the amount determined by multiplying—

(aa) the available amount for the preceding fiscal year; and

(bb) the change, relative to the preceding fiscal year, in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(2) PERIOD OF AVAILABILITY; APPORTIONMENT OF UNOBLIGATED AMOUNTS.—

(A) PERIOD OF AVAILABILITY.—For each fiscal year, the available amount under paragraph (1) shall remain available for obligation for use under that paragraph until the end of the fiscal year.

(B) APPORTIONMENT OF UNOBLIGATED AMOUNTS.—Not later than 60 days after the end of a fiscal year, the Secretary of the Interior shall apportion among the States any of the available amount under paragraph (1) that remains unobligated at the end of the fiscal year, on the same basis and in the same manner as other amounts made available under this Act are apportioned among the States for the fiscal year.

(b) APPORTIONMENT TO STATES.—"; and

(3) in subsection (b) (as designated by paragraph (2)), by striking "after making the aforesaid deduction, shall apportion, except as provided in subsection (b) of this section," and inserting "after deducting the available amount under subsection (a), the amount apportioned under subsection (c), any amount apportioned under section 8A, and amounts provided as grants under sections 10 and 11, shall apportion.

[(b)**]** *(c)* One-half of the revenues accruing to the fund under this Act each fiscal year (beginning with the fiscal year 1975) from any tax imposed on pistols, revolvers, bows, and arrows shall be apportioned among the States in proportion to the ratio that the population of each State bears to the population of all the States: *Provided*, That each State shall be apportioned not more than 3 per centum and not less than 1 per centum of such revenues and Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands shall each be apportioned one-sixth of 1 per centum of such revenues. For the purpose of this subsection, popu-

lation shall be determined on the basis of the latest decennial census for which figures are available, as certified by the Secretary of Commerce.

* * * * * * *

SEC. 8. (a) Maintenance of wildlife-restoration projects established under the provisions of this Act shall be the duty of the State in accordance with their respective laws. Beginning July 1, 1945, the term "wildlife-restoration project", as defined in section 2 of this Act, shall include maintenance of completed projects. Notwithstanding any other provisions of this Act, funds apportioned to a State under this Act may be expended by the State for management (exclusive of law enforcement and public relations) of wildlife areas and resources.

(b) Each State may use the funds apportioned to it under [section 4(b) of this Act] *section 4(c)* to pay up to 75 per centum of the costs of a hunter safety program and the construction, operation, and maintenance of public target ranges, as a part of such program. The non-Federal share of such costs may be derived from license fees paid by hunters, but not from other Federal grant programs. The Secretary shall issue not later than the 120th day after the effective date of this subsection such regulations as he deems advisable relative to the criteria for the establishment of hunter safety programs and public target ranges under this subsection.

* * * * * * *

[SEC. 9. Out of the deductions set aside for administering and executing this Act and the Migratory Bird Conservation Act, the Secretary of Agriculture is authorized to employ such assistants, clerks, and other persons in the city of Washington and elsewhere, to be taken from the eligible lists of the Civil Service; to rent or construct buildings outside of the city of Washington; to purchase such supplies, materials, equipment, office fixtures, and apparatus; and to incur such travel and other expenses, including purchase, maintenance, and hire of passenger-carrying motor vehicles, as he may deem necessary for carrying out the purposes of this Act.]

SEC. 9. REQUIREMENTS AND RESTRICTIONS CONCERNING USE OF AMOUNTS FOR ADMINISTRATIVE EXPENSES.

(a) AUTHORIZED ADMINISTRATIVE COSTS.—Except as provided in subsection (b), the Secretary of the Interior may use available amounts under section 4(a)(1) only for administrative expenses that directly support the implementation of this Act, consisting of—

(1) personnel costs of employees who directly administer this Act on a full-time basis;

(2) personnel costs of employees who directly administer this Act on a part-time basis for at least 20 hours each week, not to exceed the portion of those costs incurred with respect to the work hours of an employee during which the employee directly administers this Act, as those hours are certified by the supervisor of the employee;

(3) support costs directly associated with personnel costs authorized under paragraphs (1) and (2), excluding costs associated with staffing and operation of regional offices of the

United States Fish and Wildlife Service and the Department of the Interior other than for the purposes of this Act;

(4) costs of determining under section 6(a) whether State comprehensive plans and projects are substantial in character and design;

(5) overhead costs, including the costs of general administrative services, that are directly attributable to administration of this Act and are based on—

(A) actual costs, as determined by a direct cost allocation methodology approved by the Director of the Office of Management and Budget for use by Federal agencies; and

(B) in the case of costs that are not determinable under subparagraph (A), an amount per full-time equivalent employee authorized under paragraphs (1) and (2) that does not exceed the amount charged or assessed for costs per full-time equivalent employee for any other division or program of the United States Fish and Wildlife Service;

(6) costs incurred in auditing, every 5 years, the wildlife and sport fish activities of each State fish and game department and the use of funds under section 6 by each State fish and game department;

(7) costs of audits under subsection (d);

(8) costs of necessary training of Federal and State full-time personnel who administer this Act to improve administration of this Act;

(9) costs of travel to States, territories, and Canada by personnel who—

(A) administer this Act on a full-time basis for purposes directly related to administration of State programs or projects; or

(B) administer grants under section 6, 10, or 11;

(10) costs of travel by personnel outside the United States (except travel to Canada) that relates directly to administration of this Act and that is approved directly by the Assistant Secretary for Fish and Wildlife and Parks;

(11) relocation expenses for personnel who, after relocation, will administer this Act on a full-time basis for at least 1 year, as certified by the Director of the United States Fish and Wildlife Service at the time at which the relocation expenses are incurred; and

(12) costs to audit, evaluate, approve, disapprove, and advise concerning grants under section 6, 10, or 11.

(b) REPORTING OF OTHER USES.—If the Secretary of the Interior determines that available amounts under section 4(a)(1) should be used for an administrative expense other than an administrative expense described in subsection (a), the Secretary—

(1) shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Resources of the House of Representatives a report describing the administrative expense; and

(2) may use any such available amounts for the administrative expense only after the end of the 30-day period beginning on the date of submission of the report under paragraph (1).

(c) RESTRICTION ON USE TO SUPPLEMENT GENERAL APPROPRIATIONS.—The Secretary of the Interior shall not use available amounts under section 4(a)(1) to supplement the funding of any function for which general appropriations are made for the United States Fish and Wildlife Service or any other entity of the Department of the Interior.

(d) AUDIT REQUIREMENT.—

(1) IN GENERAL.—The Inspector General of the Department of the Interior shall procure the performance of biennial audits, in accordance with generally accepted accounting principles, of expenditures and obligations of amounts used by the Secretary of the Interior for administrative expenses incurred in implementation of this Act.

(2) AUDITOR.—

(A) IN GENERAL.—An audit under this subsection shall be performed under a contract that is awarded under competitive procedures (as defined in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)) by a person or entity that is not associated in any way with the Department of the Interior (except by way of a contract for the performance of an audit).

(B) SUPERVISION OF AUDITOR.—The auditor selected under subparagraph (A) shall report to, and be supervised by, the Inspector General of the Department of the Interior, except that the auditor shall submit a copy of the biennial audit findings to the Secretary of the Interior at the time at which the findings are submitted to the Inspector General of the Department of the Interior.

(3) REPORT TO CONGRESS.—The Inspector General of the Department of the Interior shall promptly report to the Committee on Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate on the results of each audit under this subsection.

SEC. 10. FIREARM AND BOW HUNTER EDUCATION AND SAFETY PROGRAM GRANTS.

(a) IN GENERAL.—Of the revenues covered into the fund for a fiscal year, $7,500,000 shall be apportioned among the States in the manner specified in section 4(b) by the Secretary of the Interior and used to make grants to the States to be used for—

(1) the enhancement of hunter education programs, hunter and sporting firearm safety programs, and hunter development programs;

(2) the enhancement of interstate coordination and development of hunter education and shooting range programs;

(3) the enhancement of bow hunter and archery education, safety, and development programs; and

(4) the enhancement of construction or development of firearm shooting ranges and archery ranges, and the updating of safety features of firearm shooting ranges and archery ranges.

(b) COST SHARING.—The Federal share of the cost of any activity carried out with a grant under this section shall not exceed 75 percent of the total cost of the activity.

(c) PERIOD OF AVAILABILITY; REAPPORTIONMENT.—

(1) PERIOD OF AVAILABILITY.—A grant under this section shall remain available only for the fiscal year for which the grant is made.

(2) REAPPORTIONMENT.—At the end of the period of availability under paragraph (1), the Secretary of the Interior shall apportion any grant funds that remain available among the States in the manner specified in section 4(b) for use by the States in accordance with this section.

SEC. 11. MULTISTATE CONSERVATION GRANT PROGRAM.

(a) IN GENERAL.—

(1) AMOUNT FOR GRANTS.—Not more than $3,500,000 of the revenues covered into the fund for a fiscal year shall be available to the Secretary of the Interior for making multistate conservation project grants in accordance with this section.

(2) PERIOD OF AVAILABILITY; APPORTIONMENT.—

(A) PERIOD OF AVAILABILITY.—A grant under this subsection shall remain available only for the fiscal year for which the grant is made and the following fiscal year.

(B) APPORTIONMENT.—At the end of the period of availability under subparagraph (A), the Secretary of the Interior shall apportion any grant funds that remain available among the States in the manner specified in section 4(b) for use by the States in the same manner as funds apportioned under section 4(b).

(b) SELECTION OF PROJECTS.—

(1) STATES OR ENTITIES TO BE BENEFITED.—A project shall not be eligible for a grant under this section unless the project will benefit—

(A) at least 26 States;

(B) a majority of the States in a region of the United States Fish and Wildlife Service; or

(C) a regional association of State fish and game departments.

(2) USE OF SUBMITTED PRIORITY LIST OF PROJECTS.—The Secretary of the Interior may award grants under this section only for projects identified on a priority list of wildlife restoration projects described in paragraph (3).

(3) PRIORITY LIST OF PROJECTS.—A priority list referred to in paragraph (2) is a priority list of projects that the International Association of Fish and Wildlife Agencies—

(A) prepares through a committee comprised of the heads of State fish and game departments (or their designees), in consultation with—

(i) nongovernmental organizations that represent conservation organizations;

(ii) sportsmen organizations; and

(iii) industries that support or promote hunting, trapping, recreational shooting, bow hunting, or archery;

(B) approves by vote of a majority of the heads of State fish and game departments (or their designees); and

(C) not later than October 1 of each fiscal year, submits to the Chief of the Division of Federal Aid.

(4) PUBLICATION.—The Chief of the Division of Federal Aid shall publish in the Federal Register each priority list submitted under paragraph (3)(C).

(c) ELIGIBLE GRANTEES.—

(1) IN GENERAL.—The Secretary of the Interior may make a grant under this section only to—

(A) a State or group of States;

(B) the United States Fish and Wildlife Service for the purpose of carrying out the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation; and

(C) subject to paragraph (2), a nongovernmental organization.

(2) NONGOVERNMENTAL ORGANIZATIONS.—

(A) IN GENERAL.—Any nongovernmental organization that applies for a grant under this section shall submit with the application to the International Association of Fish and Wildlife Agencies a certification that the organization—

(i) does not promote or encourage opposition to the regulated hunting or trapping of wildlife; and

(ii) will use any funds awarded under this section in compliance with subsection (d).

(B) PENALTIES FOR CERTAIN ACTIVITIES.—Any nongovernmental organization that is found to promote or encourage opposition to the regulated hunting or trapping of wildlife or that does not use funds in compliance with subsection (d) shall return all funds received under this section and be subject to any other penalties under law.

(d) USE OF GRANTS.—A grant under this section shall not be used for an activity, project, or program that promotes or encourages opposition to the regulated hunting or trapping of wildlife.

SEC. [10] *12*. The Secretary of Agriculture[1] is authorized to make rules and regulations for carrying out the provisions of this Act.

* * * * * * *

ACT OF AUGUST 9, 1950

(Chapter 658; 64 Stat. 430 et seq.)

(Popularly known as the "Federal Aid in Fish Restoration Act", the "Fish Restoration and Management Projects Act", and the "Dingell-Johnson Sport Fish Restoration Act")

AN ACT To provide that the United States shall aid the States in fish restoration and management projects, and for other purposes.

* * * * * * *

SEC. 4. (a) * * *

* * * * * * *

[1] Reorganization Plan No. II of 1939, transferred functions of the Secretary of Agriculture relating to conservation of wildlife, game, and migratory birds to the Secretary of the Interior.

[(d) Of the balance of each such annual appropriation remaining after the distribution and use under subsections (a), (b), and (c), respectively, so much, not to exceed 6 per centum of such balance, as the Secretary of the Interior may estimate to be necessary for his or her expenses in the conduct of necessary investigations, administration, and the execution of this Act, for an outreach and communications program and for aiding in the formulation, adoption, or administration of any compact between two or more States for the conservation and management of migratory fishes in marine or freshwaters, shall be deducted for that purpose, and such sum is authorized to be made available until the expiration of the next succeeding fiscal year. Of the sum available to the Secretary of the Interior under this subsection for any fiscal year, up to $2,500,000 may be used for the National Outreach and Communications program under section 8(d) in addition to the amount available for that program under subsection (c). No funds available to the Secretary under this subsection may be used to replace funding traditionally provided through general appropriations, nor for any purposes except those purposes authorized by this Act. The Secretary shall publish a detailed accounting of the projects, programs, and activities funded under this subsection annually in the Federal Register.]

(d) SET-ASIDE FOR ADMINISTRATIVE EXPENSES.—

(1) IN GENERAL.—

(A) SET-ASIDE.—For fiscal year 2001 and each fiscal year thereafter, of the balance of each such annual appropriation remaining after the distribution and use under subsections (a), (b), and (c) and section 14, the Secretary of the Interior may use not more than the available amount specified in subparagraph (B) for the fiscal year for administrative expenses incurred in implementation of this Act, in accordance with this subsection and section 9.

(B) AVAILABLE AMOUNTS.—The available amount referred to in subparagraph (A) is—

(i) for fiscal year 2001, $9,500,000; and

(ii) for fiscal year 2002 and each fiscal year thereafter, the sum of—

(I) the available amount for the preceding fiscal year; and

(II) the amount determined by multiplying—

(aa) the available amount for the preceding fiscal year; and

(bb) the change, relative to the preceding fiscal year, in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(2) PERIOD OF AVAILABILITY; APPORTIONMENT OF UNOBLIGATED AMOUNTS.—

(A) PERIOD OF AVAILABILITY.—For each fiscal year, the available amount under paragraph (1) shall remain available for obligation for use under that paragraph until the end of the fiscal year.

(B) APPORTIONMENT OF UNOBLIGATED AMOUNTS.—Not later than 60 days after the end of a fiscal year, the Sec-

retary of the Interior shall apportion among the States any of the available amount under paragraph (1) that remains unobligated at the end of the fiscal year, on the same basis and in the same manner as other amounts made available under this Act are apportioned among the States under subsection (e) for the fiscal year.

(e) The Secretary of the Interior, after the distribution, transfer, use, and deduction under subsections (a), (b), (c), and (d), respectively *and after deducting amounts used for grants under section 14,* shall apportion the remainder of each such annual appropriation among the several States in the following manner: 40 per centum in the ratio which the area of each State including coastal and Great Lakes waters (as determined by the Secretary of the Interior) bears to the total area of all the States, and 60 per centum in the ratio which the number of persons holding paid licenses to fish for sport or recreation in the State in the second fiscal year preceding the fiscal year for which such apportionment is made, as certified to said Secretary by the State fish and game departments, bears to the number of such persons in all the States. Such apportionments shall be adjusted equitably so that no State shall receive less than 1 per centum nor more than 5 per centum of the total amount apportioned. Where the apportionment to any State under this section is less than $4,500 annually, the Secretary of the Interior may allocate not more than $4,500 of said appropriation to said State to carry out the purposes of this Act when said State certifies to the Secretary of the Interior that it has set aside not less than $1,500 from its fish-and-game funds or has made, through its legislature, an appropriation in this amount for said purposes.

* * * * * * *

[SEC. 9. Out of the deductions set aside for administering and executing this Act the Secretary of the Interior is authorized to employ such assistants, clerks, and other persons in the District of Columbia and elsewhere, to be taken from the eligible lists of the civil service; to rent or construct buildings outside of the District of Columbia; to purchase such supplies, materials, equipment, office fixtures, and apparatus; and to incur such travel and other expenses, including publication of technical and administrative reports, purchase, maintenance, and hire of passenger-carrying motor vehicles, as he may deem necessary for carrying out the provisions of this Act.]

SEC. 9. REQUIREMENTS AND RESTRICTIONS CONCERNING USE OF AMOUNTS FOR ADMINISTRATIVE EXPENSES.

(a) AUTHORIZED ADMINISTRATIVE COSTS.—Except as provided in subsection (b), the Secretary of the Interior may use available amounts under section 4(d) only for administrative expenses that directly support the implementation of this Act, consisting of—

(1) personnel costs of employees who directly administer this Act on a full-time basis;

(2) personnel costs of employees who directly administer this Act on a part-time basis for at least 20 hours each week,

not to exceed the portion of those costs incurred with respect to the work hours of an employee during which the employee directly administers this Act, as those hours are certified by the supervisor of the employee;

(3) support costs directly associated with personnel costs authorized under paragraphs (1) and (2), excluding costs associated with staffing and operation of regional offices of the United States Fish and Wildlife Service and the Department of the Interior other than for the purposes of this Act;

(4) costs of determining under section 6(a) whether State comprehensive plans and projects are substantial in character and design;

(5) overhead costs, including the costs of general administrative services, that are directly attributable to administration of this Act and are based on—

(A) actual costs, as determined by a direct cost allocation methodology approved by the Director of the Office of Management and Budget for use by Federal agencies; and

(B) in the case of costs that are not determinable under subparagraph (A), an amount per full-time equivalent employee authorized under paragraphs (1) and (2) that does not exceed the amount charged or assessed for costs per full-time equivalent employee for any other division or program of the United States Fish and Wildlife Service;

(6) costs incurred in auditing, every 5 years, the wildlife and sport fish activities of each State fish and game department and the use of funds under section 6 by each State fish and game department;

(7) costs of audits under subsection (d);

(8) costs of necessary training of Federal and State full-time personnel who administer this Act to improve administration of this Act;

(9) costs of travel to States, territories, and Canada by personnel who—

(A) administer this Act on a full-time basis for purposes directly related to administration of State programs or projects; or

(B) administer grants under section 6 or 14;

(10) costs of travel by personnel outside the United States (except travel to Canada) that relates directly to administration of this Act and that is approved directly by the Assistant Secretary for Fish and Wildlife and Parks;

(11) relocation expenses for personnel who, after relocation, will administer this Act on a full-time basis for at least 1 year, as certified by the Director of the United States Fish and Wildlife Service at the time at which the relocation expenses are incurred; and

(12) costs to audit, evaluate, approve, disapprove, and advise concerning grants under section 6 or 14.

(b) REPORTING OF OTHER USES.—If the Secretary of the Interior determines that available amounts under section 4(d) should be used for an administrative expense other than an administrative expense described in subsection (a), the Secretary—

(1) shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Resources of the House of Representatives a report describing the administrative expense; and

(2) may use any such available amounts for the administrative expense only after the end of the 30-day period beginning on the date of submission of the report under paragraph (1).

(c) RESTRICTION ON USE TO SUPPLEMENT GENERAL APPROPRIATIONS.—The Secretary of the Interior shall not use available amounts under section 4(d) to supplement the funding of any function for which general appropriations are made for the United States Fish and Wildlife Service or any other entity of the Department of the Interior.

(d) AUDIT REQUIREMENT.—

(1) IN GENERAL.—The Inspector General of the Department of the Interior shall procure the performance of biennial audits, in accordance with generally accepted accounting principles, of expenditures and obligations of amounts used by the Secretary of the Interior for administrative expenses incurred in implementation of this Act.

(2) AUDITOR.—

(A) IN GENERAL.—An audit under this subsection shall be performed under a contract that is awarded under competitive procedures (as defined in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)) by a person or entity that is not associated in any way with the Department of the Interior (except by way of a contract for the performance of an audit).

(B) SUPERVISION OF AUDITOR.—The auditor selected under subparagraph (A) shall report to, and be supervised by, the Inspector General of the Department of the Interior, except that the auditor shall submit a copy of the biennial audit findings to the Secretary of the Interior at the time at which the findings are submitted to the Inspector General of the Department of the Interior.

(3) REPORT TO CONGRESS.—The Inspector General of the Department of the Interior shall promptly report to the Committee on Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate on the results of each audit under this subsection.

* * * * * * *

[SEC. 13. The effective date of this Act shall be July 1, 1950.]

SEC. 14. MULTISTATE CONSERVATION GRANT PROGRAM.

(a) IN GENERAL.—

(1) AMOUNT FOR GRANTS.—Of the balance of each annual appropriation made under section 3 remaining after the distribution and use under subsections (a), (b), and (c) of section 4 in a fiscal year, not more than $3,500,000 shall be available to the Secretary of the Interior for making multistate conservation project grants in accordance with this section.

(2) PERIOD OF AVAILABILITY; APPORTIONMENT.—

(A) PERIOD OF AVAILABILITY.—A grant under this subsection shall remain available only for the fiscal year for which the grant is made and the following fiscal year.

(B) APPORTIONMENT.—At the end of the period of availability under subparagraph (A), the Secretary of the Interior shall apportion any grant funds that remain available among the States in the manner specified in section 4(e) for use by the States in the same manner as funds apportioned under section 4(e).

(b) SELECTION OF PROJECTS.—

(1) STATES OR ENTITIES TO BE BENEFITED.—A project shall not be eligible for a grant under this section unless the project will benefit—

(A) at least 26 States;

(B) a majority of the States in a region of the United States Fish and Wildlife Service; or

(C) a regional association of State fish and game departments.

(2) USE OF SUBMITTED PRIORITY LIST OF PROJECTS.—The Secretary of the Interior may award grants under this section only for projects identified on a priority list of sport fish restoration projects described in paragraph (3).

(3) PRIORITY LIST OF PROJECTS.—A priority list referred to in paragraph (2) is a priority list of projects that the International Association of Fish and Wildlife Agencies—

(A) prepares through a committee comprised of the heads of State fish and game departments (or their designees), in consultation with—

(i) nongovernmental organizations that represent conservation organizations;

(ii) sportsmen organizations; and

(iii) industries that fund the sport fish restoration programs under this Act;

(B) approves by vote of a majority of the heads of State fish and game departments (or their designees); and

(C) not later than October 1 of each fiscal year, submits to the Chief of the Division of Federal Aid.

(4) PUBLICATION.—The Chief of the Division of Federal Aid shall publish in the Federal Register each priority list submitted under paragraph (3)(C).

(c) ELIGIBLE GRANTEES.—

(1) IN GENERAL.—The Secretary of the Interior may make a grant under this section only to—

(A) a State or group of States;

(B) the United States Fish and Wildlife Service for the purpose of carrying out the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation; and

(C) subject to paragraph (2), a nongovernmental organization.

(2) NONGOVERNMENTAL ORGANIZATIONS.—

(A) IN GENERAL.—Any nongovernmental organization that applies for a grant under this section shall submit with the application to the International Association of

Fish and Wildlife Agencies a certification that the organization—

(i) does not promote or encourage opposition to the regulated taking of fish; and

(ii) will use any funds awarded under this section in compliance with subsection (d).

(B) PENALTIES FOR CERTAIN ACTIVITIES.—Any nongovernmental organization that is found to promote or encourage opposition to the regulated taking of fish or that does not use funds in compliance with subsection (d) shall return all funds received under this section and be subject to any other penalties under law.

(d) USE OF GRANTS.—A grant under this section shall not be used for an activity, project, or program that promotes or encourages opposition to the regulated taking of fish.

(e) FUNDING FOR OTHER ACTIVITIES.—Of the balance of each annual appropriation made under section 3 remaining after the distribution and use under subsections (a), (b), and (c) of section 4 for each fiscal year and after deducting amounts used for grants under subsection (a), $2,100,000 shall be made available for—

(1) the Atlantic States Marine Fisheries Commission;

(2) the Gulf States Marine Fisheries Commission;

(3) the Pacific States Marine Fisheries Commission;

(4) the Great Lakes Fisheries Commission;

(5) the Sport Fishing and Boating Partnership Council established by the United States Fish and Wildlife Service;

(6) construction and renovation of pumpout stations and waste reception facilities under the Clean Vessel Act of 1992 (33 U.S.C. 1322 note; subtitle F of title V of Public Law 102–587);

(7) coastal wetlands conservation grants under section 305 of the Coastal Wetlands Planning, Protection and Restoration Act (16 U.S.C. 3954);

(8) boating infrastructure grants under section 7404 of the Sportfishing and Boating Safety Act of 1998 (16 U.S.C. 777g–1); and

(9) the National Outreach and Communications Program established under section 8(d).

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TITLE 26—U.S. CODE—INTERNAL REVENUE CODE

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Sec. 9504. Aquatic Resources Trust Fund

(a) CREATION OF TRUST FUND—

(1) IN GENERAL.—There is hereby established in the Treasury of the United States a trust fund to be known as the "Aquatic Resources Trust Fund".

(2) Accounts in Trust Fund The Aquatic Resources Trust Fund shall consist of—

(A) a Sport Fish Restoration Account, and

(B) a Boat Safety Account.

Each such Account shall consist of such amounts as may be appropriated, credited, or paid to it as provided in this section, section 9503(c)(4), section 9503(c)(5), or section 9602(b).

(b) SPORT FISH RESTORATION ACCOUNT—

(1) TRANSFER OF CERTAIN TAXES TO ACCOUNT.—There is hereby appropriated to the Sport Fish Restoration Account amounts equivalent to the following amounts received in the Treasury on or after October 1, 1984—

(A) the taxes imposed by section 4161(a) (relating to sport fishing equipment), and

(B) the import duties imposed on fishing tackle under heading 9507 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) and on yachts and pleasure craft under chapter 89 of the Harmonized Tariff Schedule of the United States.

(2) EXPENDITURES FROM ACCOUNT.—Amounts in the Sport Fish Restoration Account shall be available, as provided by appropriation Acts, for making expenditures—

(A) to carry out the purposes of the Act entitled "An Act to provide that the United States shall aid the States in fish restoration and management projects, and for other purposes", approved August 9, 1950 [(as in effect on the date of the enactment of the TEA 21 Restoration Act)] *(as in effect on the date of enactment of the Wildlife and Sport Fish Restoration Programs Improvement Act of 2000)*,

(B) to carry out the purposes of section 7404(d) of the Transportation Equity Act for the 21st Century (as in effect on the date of the enactment of the TEA 21 Restoration Act), and

(C) to carry out the purposes of the Coastal Wetlands Planning, Protection and Restoration Act (as in effect on the date of the enactment of the TEA 21 Restoration Act).

Amounts transferred to such account under section 9503(c)(5) may be used only for making expenditures described in subparagraph (B) of this paragraph.

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