

Calendar No. 692

107TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 107-304

NORTH AMERICAN WETLANDS CONSERVATION REAUTHORIZATION ACT

—————
OCTOBER 8, 2002.—Ordered to be printed
—————

Mr. JEFFORDS, from the Committee on Environment and Public
Works, submitted the following

REPORT

[to accompany H.R. 3908]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (H.R. 3908), to reauthorize the North American Wetlands Conservation Act, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

GENERAL STATEMENT AND BACKGROUND

Wetlands are among the world's most biologically productive environments. They provide critical habitat for numerous species of fish and wildlife, and are particularly important to the life cycles of migratory birds and the majority of economically important fish species.

Wetlands serve as natural flood control basins and water filters, and their removal or degradation has severe negative effects on water quality.

Beginning in the 1930's, alarming declines in migratory bird populations created a realization that wetland conservation needed to be improved, and within the last 30 years many Federal, State, and private programs have been created to reduce wetland loss. Recognizing the importance of wetland and migratory bird conservation to Americans and that a collaborative international approach to habitat conservation was required, Congress enacted the North American Wetlands Conservation Act (NAWCA) in 1989.

NAWCA provides a funding mechanism for cooperative public-private wetland conservation efforts throughout North America which support the goals of the North American Waterfowl Management Plan. Funding for NAWCA projects is drawn from four sources: interest from short-term investment of the Federal Aid in Wildlife Restoration Fund under the Pittman-Robertson Act; fines and forfeitures imposed for violations of the Migratory Bird Treaty Act; a portion of the Sport Fish Restoration Fund; and discretionary appropriations. Under current law, NAWCA specifies that 50 to 70 percent of the funds available from Pittman-Robertson interest, fines and forfeitures, and appropriations be spent on projects within Canada and Mexico. The remaining 30 to 50 percent must be spent on projects in the United States.

In fiscal years 2000 and 2001, \$114.8 million was available for projects from these sources. During this timeframe, 237 projects were funded with \$404.7 million in partner support. At the same time an additional 135 projects with \$91.4 million in available partner support went unutilized because of the lack of NAWCA funding. Since the first wetlands grants were awarded in 1991, 881 projects have been funded at a Federal cost of approximately \$460 million matched by over \$1.3 billion in partner contributions. This has resulted in the protection, restoration, or enhancement of approximately 8.3 million acres of wetlands and associated habitat in the U.S. and Canada. In Mexico, over 444,000 acres have benefited.

OBJECTIVES OF THE LEGISLATION

The purpose of H.R. 3908 is to reauthorize the North American Wetlands Conservation Act, increase the authorization levels and for other purposes.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

This Section states that this Act may be cited as the “North American Wetlands Conservation Reauthorization Act”.

Sec. 2. Amendment of the North American Wetlands Conservation Act

This Section states that the text amends the North American Wetlands Conservation Act (16 U.S.C. 4404 et seq.).

Sec. 3. Findings and Statement of Purpose

This Section changes the term “wetlands and other habitats” to “wetlands and associated habitats” and “other habitats for migratory birds” to “habitats associated with wetland ecosystems” where those terms appear in Section 2, Findings and the Statement of Purpose, of NAWCA.

These changes ensure that funds from NAWCA are used to protect, enhance, and restore wetland habitats; however, it is expected that associated habitat types will be present in approved wetland projects. Using NAWCA funds, especially for permanent protection of large contiguous tracts of multiple habitat types, is essential to the protection of surrounding lands and directly benefits the physical and biological health of wetland ecosystems. The purpose of

NAWCA and its wetland conservation projects is wetlands and wetland-associated migratory birds.

Sec. 4. Definition of Wetlands Conservation Project

This Section makes changes to the definition of the term “wetlands conservation project” in Section 3 of NAWCA to clarify that any property acquired for such a project must be wetland and associated habitat, and that any restoration, management and enhancement activities that are part of such projects must occur in wetland ecosystems and associated habitat.

Again, this change is not intended to exclude other habitat types present within a project; however, the wetland ecosystems are intended as the primary emphasis. Further, a project that protects upland habitat surrounding a marsh or other type of wetland can be just as essential and beneficial to the conservation of wetlands as a project that protects wetlands themselves. Therefore, this change is not intended to categorically exclude projects that protect associated upland habitat from eligibility for funding under NAWCA.

Sec. 5. Reauthorization

This Section authorizes appropriations for Fiscal Years (FY) 2003 through 2007. Authorized amounts begin at \$55 million in fiscal year 2003 and increase \$5 million per year to \$75 million in fiscal year 2007.

Sec. 6. Allocation

This Section changes the allocation of funds to Canada and Mexico under Section 6(b) of NAWCA from 50 to 70 percent of the available funds to 30 to 60 percent and from 30 to 50 percent of the available funds to the U.S. to 40 to 70 percent.

Appropriations for NAWCA have increased substantially since first enacted. This increases the requirement for matching funds from United States sources to Canada. While the increased funding has been supporting worthwhile efforts for wetland restoration throughout the North American continent, the requirements for matching U.S.—based funds have increased the obligation on non-profit organizations to a point that may exceed their ability to secure the matching funds required by law. Changing the international allocation within NAWCA is not intended to abandon or reduce the U.S. commitment to the protection of internationally shared resources.

Sec. 7. Clarification of Non-Federal Share of the Cost of Approved Wetlands Conservation Projects

This Section amends Section 8(a) of NAWCA to clarify that the non-Federal share of funds applied toward approved wetland conservation projects will be derived from United States sources and, at a minimum, equal the Federal contribution available from the sources listed in Section 7 of NAWCA. If the projects are conducted on Federal lands, no match is required. No non-Federal match is required for any Federal funds other than those listed in Section 7 of H.R. 3908.

Sec. 8. Technical Correction

This Section makes technical corrections to NAWCA:

Sec. 9. Chesapeake Bay Initiative

This Section extends the authorization of the Chesapeake Bay Initiative Act of 1998 from 2003 to 2008.

ROLLCALL VOTES

The Committee on Environment and Public Works met to consider H.R. 3908 on September 26, 2002. The committee agreed to an amendment by Senators Jeffords, Smith and Crapo by voice vote. Later that day the committee met again to complete action on the bill and voted to report H.R. 3908, as amended, by voice vote.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee makes evaluation of the regulatory impact of the reported bill.

The bill does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the committee finds that H.R. 3908 would impose no Federal intergovernmental unfunded mandates on State, local, or tribal governments.

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:

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 2, 2002.

Hon. JAMES M. JEFFORDS, *Chairman,*
Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2897, the Marine Turtle Conservation Act of 2002.

The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3908, the North American Wetlands Conservation Reauthorization Act.

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

Sincerely,

DAN L. CRIPPEN.

H.R. 3908, North American Wetlands Conservation Reauthorization Act, as ordered reported by the Senate Committee on Environment and Public Works on September 26, 2002

Summary

H.R. 3908 would reauthorize funding for projects carried out under the North American Wetlands Conservation Act (NAWCA) and the Chesapeake Bay Initiative Act. The legislation would authorize the appropriation of \$340 million over the 2003–2007 period for activities under those acts (including \$53 million authorized to be appropriated under current law). Assuming appropriation of the authorized amounts, CBO estimates that implementing H.R. 3908 would cost \$167 million over the 2003–2007 period and an additional \$123 million in later years. H.R. 3908 would not affect direct spending or revenues.

H.R. 3908 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.

Estimated Cost to the Federal Government

The estimated budgetary impact of H.R. 3908 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

By Fiscal Year, in Millions of Dollars

	2003	2004	2005	2006	2007
SPENDING SUBJECT TO APPROPRIATION					
Wetlands Spending Under Current Law:					
Authorization Level ¹	53	0	0	0	0
Estimated Outlays	37	28	21	14	3
Proposed Changes:					
Authorization Level	5	63	68	73	78
Estimated Outlays	1	19	35	50	62
Wetlands Spending Under H.R. 3908					
Authorization Level ¹	58	63	68	73	78
Estimated Outlays	38	47	56	64	65

¹The 2003 level is the amount authorized under current law.

Basis of Estimate

For this estimate, CBO assumes that H.R. 3908 will be enacted early in fiscal year 2003 and that authorized amounts will be provided as specified in the legislation. Estimates of outlays are based on historic spending patterns for the affected programs.

H.R. 3908 would authorize the appropriation of \$325 million over the 2003–2007 period (including \$50 million authorized to be appropriated under current law) for the U.S. Fish and Wildlife Service (USFWS) to implement NAWCA. We estimate that, under H.R. 3908, the agency would spend \$155 million over the 2003–2007 period and \$120 million in later years for a variety of activities to benefit wetlands in North America, including matching grants, cooperative projects, and land acquisition. We also estimate that other provisions of this legislation, which would amend the allocation and cost-sharing provisions of NAWCA, would not have any significant effect on spending for wetlands conservation.

H.R. 3908 also would authorize the appropriation of \$18 million over the 2003–2008 period (including \$3 million authorized to be appropriated under current law) for the Department of the Interior and the Environmental Protection Agency to provide financial and technical assistance to certain local governments under the Chesapeake Bay Initiative Act. We estimate that implementing this provision would cost \$12 million over the 2003–2007 period, with an additional \$3 million being spent in 2008.

Intergovernmental and Private-Sector Impact

H.R. 3908 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on State, local, or tribal governments. State and local governments that receive funds authorized by this act would benefit from provisions that would increase the authorized amounts and allocate a higher proportion of the funds to domestic projects.

Previous CBO Estimate

On April 25, 2002, CBO transmitted a cost estimate for H.R. 3908 as ordered reported by the House Committee on Resources on April 24, 2002. Both versions would authorize the same level of funding for activities under NAWAC, and our estimates of Federal spending for such activities are the same. Our estimate of spending for the Senate Committee on Environment and Public Works' version of H.R. 3908 is higher because that version would authorize additional funding for Federal agencies to implement the Chesapeake Bay Initiative Act.

Estimate Prepared By: Federal Costs: Megan Carroll (226–2860); Impact on State, Local, and Tribal Governments: Marjorie Miller (225–3220); Impact on the Private Sector: Lauren Marks (226–2940).

Estimate Approved By: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

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:

NORTH AMERICAN WETLANDS CONSERVATION ACT

* * * * *

SEC. 2. FINDINGS AND STATEMENT OF PURPOSE.

(a) FINDINGS.—The Congress finds and declares that—

(1) the maintenance of healthy populations of migratory birds in North America is dependent on the protection, restoration, and management of wetland ecosystems [and other habitats] *and associated habitats* in Canada, as well as in the United States and Mexico;

* * * * *

(10) the 1988 amendments to the Fish and Wildlife Conservation Act of 1980 require the Secretary of the Interior to identify conservation measures to assure that nongame migratory bird species do not reach the point at which measures of the Endangered Species Act of 1973 are necessary;

* * * * *

(b) Purpose.—The purposes of this Act are to encourage partnership among public agencies and other interests—

(1) to protect, enhance, restore, and manage an appropriate distribution and diversity of wetland ecosystems [and other habitats for migratory birds] *and habitats associated with wetlands ecosystems* and other fish and wildlife in North America;

(2) to maintain current or improved distributions of *wetland associated* migratory bird populations; and

(3) to sustain an abundance of waterfowl and other *wetland associated* migratory birds consistent with the goals of the North American Waterfowl Management Plan, *the United States Shorebird Conservation Plan, the North American Waterbird Conservation Plan, the Partners In Flight Conservation Plans*, and the international obligations contained in the migratory bird treaties and conventions and other agreements with Canada, Mexico, and other countries.

SEC. 3. DEFINITIONS.

For the purposes of this Act:

(1) * * *

(2) The term “appropriate Committees” means the Committee on Environment and Public Works of the United States Senate and the Committee on Merchant Marine and Fisheries of the United States House of Representatives Committee on Resources of the House of Representatives .

* * * * *

(5) The term “migratory birds” means all wild birds native to North America that are in an unconfined state and that are protected under the Migratory Bird Treaty Act, including ducks, geese, and swans of the family Anatidae, species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and species defined as nongame under the Fish and Wildlife Conservation Act of 1973 (16 U.S.C. 1531 et seq.) and the Fish and Wildlife Conservation Act of 1980 (16 U.S.C. 2901 2912).

(6) The term "Plan" means the North American Waterfowl Management Plan signed by the Minister of Environment for Canada and the Secretary of the Interior for the United States in May 1986, and by the Secretary of Sedesol for Mexico in 1994, and subsequent dates.

* * * * *

(9) The term "wetlands conservation project" means—

(A) the obtaining of a real property interest in lands or waters, including water rights, of a wetland ecosystem and associated habitat if the obtaining of such interest is subject to terms and conditions that will ensure that the real property will be administered for the long-term conservation of such lands and waters and the migratory birds and other fish and wildlife dependent thereon;

(B) the restoration, management, or enhancement of wetland ecosystems [and other habitat] and associated habitat for migratory birds and other fish and wildlife species if such restoration, management, or enhancement is conducted on lands and waters that are administered for the long-term conservation of such lands and waters and the migratory birds and other fish and wildlife dependent thereon; and

* * * * *

SEC. 4. ESTABLISHMENT OF NORTH AMERICAN WETLANDS CONSERVATION COUNCIL.

(a) Council Membership.—(1) There shall be established a North American Wetlands Conservation Council (hereinafter in this Act referred to as the "Council") which shall consist of nine members who may not receive compensation as members of the Council. Of the Council members—

(A) * * *

(B) one shall be the Secretary of the Board of the National Fish and Wildlife Foundation appointed pursuant to section [3(2)(B)] 3(g)(2)(B) of the National Fish and Wildlife Foundation Establishment Act (16 U.S.C. 3702);

* * * * *

(c) Ex Officio Council Members.—The Secretary is authorized and encouraged to include as ex officio nonvoting members of the [Commission] Council representatives of—

(1) * * *

* * * * *

SEC. 5. APPROVAL OF WETLANDS CONSERVATION PROJECTS.

(a) Consideration by the Council.—The Council shall recommend wetlands conservation projects to the Migratory Bird Conservation Commission based on consideration of—

(1) * * *

* * * * *

(5) the extent to which any wetlands conservation project would aid the conservation of migratory nongame birds, other fish and wildlife and species that are listed, or are candidates

to be listed, as threatened and endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

* * * * *

(b) RECOMMENDATIONS TO THE MIGRATORY BIRD CONSERVATION COMMISSION.—The Council shall submit to the Migratory Bird Conservation Commission [by January 1 of each year] *each year*, a description, including estimated costs, of the wetlands conservation projects which the Council has considered under subsection (a) of this section and which it recommends, in order of priority, that the Migratory Bird Conservation Commission approve for Federal funding under this Act and section 3(b) of the Act of September 2, 1937 (16 U.S.C. 669b(b)), as amended by this Act. * * *

* * * * *

(d) COUNCIL REPRESENTATION ON MIGRATORY BIRD CONSERVATION COMMISSION.—The Chairman of the Council shall select [one Council member] *2 Council members* of the United States citizenship to serve with the Chairman as ex officio members of the Migratory Bird Conservation Commission for the purposes of considering and voting upon wetlands conservation projects recommended by the Council.

* * * * *

(f) Notification of Appropriate Committees.—The Migratory Bird Conservation Commission shall submit annually to the appropriate Committees a report including a list and description of the wetlands conservation projects approved by the Migratory Bird Conservation Commission for Federal funding under subsection [(d)] (e) of this section in order of priority; the amounts and sources of Federal and non-Federal funding for such projects; a justification for the approval of such projects and the order of priority for funding such projects; a list and description of the wetlands conservation projects which the Council recommended, in order of priority that the Migratory Bird Conservation Commission approve for Federal funding; and a justification for any rejection or re-ordering of the priority of wetlands conservation projects recommended by the Council that was based on factors other than the criteria of section 5(a) of this Act.

* * * * *

SEC. 7. AMOUNTS AVAILABLE TO CARRY OUT THIS ACT.

(a) * * *

* * * * *

(c) Authorization of Appropriations.—In addition to the amounts made available under subsections (a) and (b) of this section, there are authorized to be appropriated to the Department of the Interior for purposes of allocation under section 8 of this Act [not to exceed \$50,000,000 for each of fiscal years 1999 through 2003] *not to exceed—*

- (1) \$55,000,000 for fiscal year 2003;
- (2) \$60,000,000 for fiscal year 2004;
- (3) \$65,000,000 for fiscal year 2005;
- (4) \$70,000,000 for fiscal year 2006; and

(5) \$75,000,000 for fiscal year 2007.

* * * * *

SEC. 8. ALLOCATION OF AMOUNTS AVAILABLE TO CARRY OUT THIS ACT.

(a) Allocations.—Of the sums available to the Secretary for any fiscal year under this Act and section 3(b) of the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669b(b)), as amended by this Act—

(1) such percentage of that sum [(but at least 50 per centum and not more than 70 per centum thereof)] (*but at least 30 percent and not more than 60 percent*) as is considered appropriate by the Secretary, which can be matched with non-Federal moneys in accordance with the requirements of subsection (b) of this section, less such amount (but not more than 4 [per centum] percent of such percentage) considered necessary by the Secretary to defray the costs of administering this Act during such fiscal year, shall be allocated by the Secretary to carry out approved wetlands conservation projects in Canada and Mexico in accordance with section 6(b) of this Act; and

(2) the remainder of such sum after paragraph (1) is applied [(but at least 30 per centum and not more than 50 per centum thereof)] (*but at least 40 percent and not more than 70 percent*), which can be matched with non-Federal moneys in accordance with the requirements of subsection (b) of this section, shall be allocated by the Secretary to carry out approved wetlands conservation projects in the United States in accordance with section 6(a) of this Act.

[(b) Federal Contribution for Projects.—The Federal moneys allocated under subsection (a) of this section for any fiscal year to carry out approved wetlands conservation projects shall be used for the payment of not to exceed 50 per centum of the total United States contribution to the costs of such projects, or may be used for payment of 100 per centum of the costs of such projects located on Federal lands and waters, including the acquisition of inholdings within such lands and waters.]

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

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

(3) The non-Federal share of the United States contribution to the costs of such projects may not be derived from Federal grant programs. In the case of a project carried out in Mexico, the non-Federal share of the United States contribution to the costs of the project may include cash contributions

from non-United States sources that are used to pay costs of the project.

* * * * *

SEC. 10. REPORT TO CONGRESS.

The Secretary shall report to the appropriate Committees on the implementation of this Act. The report shall include—

(1) a biennial assessment of—

(A) * * *

* * * * *

(C) the status of efforts to establish agreements with nations in the [western hemisphere pursuant to section 17 of this Act] *Western Hemisphere pursuant to section 16*; and

(D) wetlands conservation projects funded under this Act, listed and identified by type, conservation mechanism (such as acquisition, easement, or lease), location, and duration[.]; and

* * * * *

SEC. 16. OTHER AGREEMENTS.

(a) The Secretary shall undertake with the appropriate officials of nations in the [western hemisphere] *Western Hemisphere* to establish agreements, modeled after the Plan or the Agreement, for the protection of migratory birds identified in section 13(a)(5) of the Fish and Wildlife Conservation Act of 1980 (16 U.S.C. 2912(a)). When any such agreements are reached, the Secretary shall make recommendations to the appropriate Committees on legislation necessary to implement the agreements.

* * * * *

SECTION 112 OF THE ACT OF NOVEMBER 16, 1990

(Public Law 101-593)

AN ACT To direct the Secretary of the Interior to convey all interest of the United States in a fish hatchery to the State of South Carolina, and for other purposes.

SEC. 112. NORTH AMERICAN WETLANDS CONSERVATION ACT AMENDMENTS.

The North American Wetlands Conservation Act (Public Law 101 233) is amended—

(1) in section 4(a)(1)(A) by inserting after “Service” [and before the period], who shall be the responsible Federal official for ensuring Council compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)”;

MIGRATORY BIRD TREATY REFORM

(Public Law 105-312)

An Act to clarify restrictions under the Migratory Bird Treaty Act on baiting and to facilitate acquisition of migratory bird habitat, and for other purposes.

* * * * *

SEC. 502. CHESAPEAKE BAY GATEWAYS AND WATERTRAILS.

(a) * * *

* * * * *

(c) Authorization of Appropriations.--There is authorized to be appropriated to carry out this section \$3,000,000 for each of fiscal years 1999 through **[2003]** 2008.

* * * * *

