

104TH CONGRESS
1ST SESSION

S. 428

To improve the management of land and water for fish and wildlife purposes,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 16 (legislative day, JANUARY 30), 1995

Mr. ROTH (for himself, Mr. BAUCUS, Mr. BIDEN, Mrs. BOXER, Mr. FEINGOLD, Mr. DODD, Mr. HARKIN, Mr. JEFFORDS, Mr. KERRY, Mr. LAUTENBERG, Mr. LEAHY, Mr. LIEBERMAN, Mrs. MURRAY, Mr. PELL, and Mr. WELLSTONE) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To improve the management of land and water for fish
and wildlife purposes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fish and Wildlife Man-
5 agement Act of 1995”.

6 **SEC. 2. FISH AND WILDLIFE COORDINATION.**

7 (a) IN GENERAL.—The Fish and Wildlife Coordina-
8 tion Act (16 U.S.C. 661 et seq.) is amended to read as
9 follows:

1 **“SECTION 1. SHORT TITLE.**

2 “This Act may be cited as the ‘Fish and Wildlife Co-
3 ordination Act’.

4 **“SEC. 2. DEFINITIONS.**

5 “In this Act (unless the context otherwise requires):

6 “(1) SECRETARY.—The term ‘Secretary’ means
7 the Secretary of the Interior.

8 “(2) WILDLIFE AND WILDLIFE RESOURCES.—
9 The terms ‘wildlife’ and ‘wildlife resources’ include
10 birds, fish, mammals, and all other classes of wild
11 animals and all types of aquatic and land vegetation
12 on which wildlife is dependent.

13 **“SEC. 3. ASSISTANCE TO AND COOPERATION WITH FED-
14 ERAL AND STATE AGENCIES.**

15 “(a) PURPOSES.—The purposes of this section are
16 to—

17 “(1) recognize the vital contribution of wildlife
18 resources to the United States and the increasing
19 public interest and significance of the resources be-
20 cause of expansion of the national economy and
21 other factors; and

22 “(2) provide that wildlife conservation shall re-
23 ceive equal consideration and be coordinated with
24 other features of water resources development pro-
25 grams through the effectual and harmonious plan-
26 ning, development, maintenance, and coordination of

1 wildlife conservation and rehabilitation for the pur-
2 poses of this Act in the United States and the terri-
3 tories and possessions of the United States.

4 “(b) ASSISTANCE AND COOPERATION.—The Sec-
5 retary may—

6 “(1) provide assistance to, and cooperate with,
7 Federal, State, and public or private agencies and
8 organizations in—

9 “(A) the development, protection, rearing,
10 and stocking of all species of wildlife, wildlife
11 resources, and the habitat of wildlife;

12 “(B) controlling losses of wildlife, wildlife
13 resources, and the habitat of wildlife from dis-
14 ease or other causes;

15 “(C) minimizing damage from overabun-
16 dant species;

17 “(D) providing public shooting and fishing
18 areas, including easements across public land
19 for access to the land; and

20 “(E) carrying out other measures nec-
21 essary to carry out this Act;

22 “(2) make surveys and investigations of the
23 wildlife of the public domain, including land and
24 water or interests in land or water acquired or con-
25 trolled by any agency of the United States; and

1 “(3) accept donations of land and contributions
2 of funds in furtherance of this Act.

3 **“SEC. 4. CONSULTATIONS AND REPORTS PRIOR TO IM-**
4 **POUNDMENT, DIVERSION, OR CONTROL OF**
5 **WATER.**

6 “(a) CONSULTATIONS BETWEEN AGENCIES.—Except
7 as provided in subsection (h), whenever it is proposed or
8 authorized that the water of any stream or other body of
9 water shall be impounded or diverted, the channel of the
10 water shall be deepened, or the stream or other body of
11 water shall be otherwise controlled or modified for any
12 purpose, including navigation and drainage, by an agency
13 of the United States, or by a public or private agency
14 under Federal permit or license, the agency first shall con-
15 sult with the Director of the United States Fish and Wild-
16 life Service of the Department of the Interior, and with
17 the head of the agency having jurisdiction over the wildlife
18 resources of the particular State in which the impound-
19 ment, diversion, or other control facility is to be con-
20 structed. The consultation shall be made for the purpose
21 of the conservation of wildlife resources by preventing loss
22 of and damage to the resources and providing for the de-
23 velopment and improvement of the resources in connection
24 with the water resources development.

25 “(b) REPORTS AND RECOMMENDATIONS.—

1 “(1) IN GENERAL.—In furtherance of the pur-
2 poses described in subsection (a), the reports and
3 recommendations of the Secretary on the wildlife as-
4 pects of a project described in the subsection, and
5 any report of the head of the State agency having
6 jurisdiction over the wildlife resources of the State,
7 based on surveys and investigations conducted by
8 the United States Fish and Wildlife Service and the
9 State agency for the purpose of determining the pos-
10 sible damage to wildlife resources and for the pur-
11 pose of determining means and measures that
12 should be adopted to prevent the loss of or damage
13 to the wildlife resources and to provide concurrently
14 for the development and improvement of the re-
15 sources, shall be made an integral part of any report
16 prepared or submitted by an agency of the Federal
17 Government responsible for engineering surveys and
18 construction of the project when the report is pre-
19 sented to Congress or to any agency or person hav-
20 ing the authority or the power, by administrative ac-
21 tion or otherwise—

22 “(A) to authorize the construction of 1 or
23 more water resources development projects; or

24 “(B) to approve a report on the modifica-
25 tion or supplementation of a plan for a project

1 authorized before August 12, 1958, to which
2 this Act applies.

3 “(2) RECOMMENDATIONS.—Recommendations
4 of the Secretary under paragraph (1) shall—

5 “(A) be as specific as practicable with re-
6 spect to features recommended for wildlife con-
7 servation and development, land to be utilized
8 or acquired for the wildlife conservation and de-
9 velopment, and the results expected; and

10 “(B) describe the damage to wildlife attrib-
11 utable to the project and the measures proposed
12 for mitigating or compensating for the damage.

13 “(3) CONSIDERATION OF REPORTS AND REC-
14 OMMENDATIONS.—A reporting officer in a project
15 report of a Federal agency shall give full consider-
16 ation to the report and recommendations of the Sec-
17 retary and to any report of the State agency on the
18 wildlife aspects of the project. The plan for the
19 project shall include such justifiable means and
20 measures for wildlife purposes as the reporting agen-
21 cy determines should be adopted to obtain maximum
22 overall project benefits.

23 “(c) MODIFICATION OF PROJECTS.—

24 “(1) IN GENERAL.—Except as provided in para-
25 graph (2), a Federal agency that is authorized to

1 construct or operate a water control project may
2 modify or add to the structure or operation of the
3 project, the construction of which has not been sub-
4 stantially completed as of August 12, 1958, and ac-
5 quire land in accordance with section 5, in order to
6 accommodate the means and measures for the con-
7 servation of wildlife resources as an integral part of
8 the project.

9 “(2) OLDER PROJECTS.—In the case of a
10 project authorized by a specific Act of Congress be-
11 fore August 12, 1958—

12 “(A) the modification or land acquisition
13 shall be compatible with the purposes for which
14 the project was authorized;

15 “(B) the cost of the modification or land
16 acquisition, as a means or measure to prevent
17 loss of and damage to wildlife resources to the
18 extent justifiable, shall be an integral part of
19 the cost of the project; and

20 “(C)(i) the cost of the modification or land
21 acquisition for the development or improvement
22 of wildlife resources may be included to the ex-
23 tent justifiable; and

24 “(ii) an appropriate share of the cost of
25 the project may be allocated for the purpose de-

1 scribed in clause (i) with a finding as to the
2 part of the allocated cost, if any, to be reim-
3 bursed by non-Federal interests.

4 “(d) PROJECT COSTS.—The cost of planning for, and
5 the construction or installation and maintenance of, the
6 means and measures adopted to carry out the conservation
7 purposes of this section shall constitute an integral part
8 of the cost of each project, except that the cost attrib-
9 utable to the development and improvement of wildlife
10 shall not extend beyond the cost necessary for—

11 “(1) land acquisition;

12 “(2) a facility specifically recommended in a
13 water resources development project report;

14 “(3) modification of the project; and

15 “(4) modification of project operations, which
16 shall not include the operation of wildlife facilities.

17 “(e) TRANSFER OF FUNDS.—In the case of construc-
18 tion by a Federal agency, the agency may transfer to the
19 United States Fish and Wildlife Service, out of appropria-
20 tions or other funds made available for investigations, en-
21 gineering, or construction, such funds as may be necessary
22 to conduct all or part of the investigations required to
23 carry out this section.

24 “(f) ESTIMATION OF WILDLIFE BENEFITS OR
25 LOSSES.—In addition to other requirements, there shall

1 be included in any report submitted to Congress support-
2 ing a recommendation for authorization of a new project
3 for the control or use of water as described in this section
4 (including any new division of the project or new supple-
5 mental work on the project) an estimation of the wildlife
6 benefits or losses to be derived from the project, includ-
7 ing—

8 “(1) the benefit to be derived from measures
9 recommended specifically for the development and
10 improvement of wildlife resources;

11 “(2) the cost of providing wildlife benefits (in-
12 cluding the cost of additional facilities to be installed
13 or land to be acquired specifically for that particular
14 phase of wildlife conservation relating to the develop-
15 ment and improvement of wildlife);

16 “(3) the part of the cost of any joint-use facility
17 allocated to wildlife; and

18 “(4) the part of the costs, if any, to be reim-
19 bursed by non-Federal interests.

20 “(g) APPLICABILITY TO PROJECTS.—This section
21 shall be applicable with respect to any project for the con-
22 trol or use of water as described in this section, or any
23 unit of such a project authorized before or after August
24 12, 1958, for planning or construction, but shall not be
25 applicable with respect to any project or unit of a project

1 authorized before August 12, 1958, if the construction of
2 the particular project or unit of the project has been sub-
3 stantially completed as of that date. For the purpose of
4 this subsection, a project or unit of a project shall be con-
5 sidered to be substantially completed when 60 percent or
6 more of the estimated construction cost has been obligated
7 for expenditure.

8 “(h) EXEMPT PROJECTS AND ACTIVITIES.—This Act
9 shall not be applicable to—

10 “(1) a project for the impoundment of water if
11 the maximum surface area of the impoundment is
12 less than 10 acres; or

13 “(2) an activity for, or in connection with, a
14 program primarily for land management and use
15 carried out by a Federal agency with respect to Fed-
16 eral land under the jurisdiction of the agency.

17 **“SEC. 5. PROVISION FOR WILDLIFE AFTER IMPOUNDMENT,**
18 **DIVERSION, OR CONTROL OF WATER.**

19 “(a) CONSERVATION, MAINTENANCE, AND MANAGE-
20 MENT OF WILDLIFE RESOURCES.—Except as provided in
21 section 4(h), whenever the water of any stream or other
22 body of water is impounded or diverted, the channel of
23 the water is deepened, or the stream or other body of
24 water is otherwise controlled or modified for any purpose,
25 including navigation and drainage, by an agency of the

1 United States, adequate provision, consistent with the pri-
2 mary purposes of the impoundment, diversion, or other
3 control, shall be made for the use of the water (together
4 with any area of land, water, or interest in land or water
5 acquired or administered by a Federal agency in connec-
6 tion with the activity) for the conservation, maintenance,
7 and management of wildlife resources of the land and
8 water, and wildlife habitat on the land and water, includ-
9 ing the development and improvement of the wildlife re-
10 sources pursuant to section 4.

11 “(b) USE AND AVAILABILITY OF WATER, LAND, AND
12 INTERESTS.—

13 “(1) IN GENERAL.—The use of the water, land,
14 or interest in water or land for wildlife conservation
15 purposes under subsection (a) shall be in accordance
16 with a general plan approved jointly by—

17 “(A) the head of the particular agency
18 having primary jurisdiction;

19 “(B) the Secretary; and

20 “(C) the head of the agency having juris-
21 diction over the wildlife resources of the par-
22 ticular State in which the water and area de-
23 scribed in subsection (a) lies.

24 “(2) NATIONAL MIGRATORY BIRD PROGRAM.—

25 The water, land, or interest described in paragraph

1 (1) shall be made available, without cost, for admin-
2 istration by—

3 “(A) the State agency, if the management
4 of the water, land, or interest relates to the
5 conservation of wildlife other than migratory
6 birds; or

7 “(B) the Secretary, for administration in
8 such manner as the Secretary considers advis-
9 able, if the particular water, land, or interest
10 has value in carrying out the national migratory
11 bird management program of the Department
12 of the Interior.

13 “(3) LAND UNDER JURISDICTION OF SEC-
14 RETARY OF AGRICULTURE.—Nothing in this section
15 shall affect the authority of the Secretary of Agri-
16 culture to cooperate with States or to make land
17 available to States with respect to the management
18 of wildlife and wildlife habitat on land under the ju-
19 risdiction of the Secretary of Agriculture.

20 “(c) ACQUISITION OF LAND, WATER, AND INTER-
21 ESTS.—

22 “(1) IN GENERAL.—Subject to paragraph (2),
23 if consistent with this Act and the reports and find-
24 ings of the Secretary prepared in accordance with
25 section 4, land, water, and interests in land or water

1 may be acquired by Federal construction agencies
2 for the wildlife conservation and development pur-
3 poses of this Act in connection with a project to the
4 extent reasonably needed to preserve and ensure for
5 the public benefit the wildlife potentials of the par-
6 ticular project area.

7 “(2) REPORT TO CONGRESS.—Before land,
8 water, or an interest in land or water is acquired for
9 the purpose described in paragraph (1), the probable
10 extent of the acquisition shall be set forth, along
11 with other data necessary for project authorization,
12 in a report submitted to Congress. In the case of a
13 project authorized prior to August 12, 1958, no
14 property described in the preceding sentence shall be
15 acquired unless specifically authorized by Congress,
16 if specific authority for the acquisition is rec-
17 ommended by the construction agency.

18 “(d) USE OF ACQUIRED LAND, WATER, AND INTER-
19 ESTS.—Land, water, or an interest in land or water ac-
20 quired for the purposes of this section shall continue to
21 be used for the purposes, and shall not become the subject
22 of an exchange or other transaction if the exchange or
23 other transaction would defeat such an initial purpose of
24 the acquisition of the land, water, or interest.

1 “(e) AVAILABILITY OF LAND FOR WATER RE-
2 SOURCES DEVELOPMENT PURPOSES.—Notwithstanding
3 any other law, Federal land acquired or withdrawn for
4 Federal water resources development purposes and made
5 available to States or to the Secretary for wildlife manage-
6 ment purposes shall be made available for the purposes
7 in accordance with this Act.

8 “(f) NATIONAL FOREST LAND.—Except in the case
9 of land acquired to carry out the national migratory bird
10 management program of the Department of the Interior,
11 any land acquired pursuant to this section by a Federal
12 agency within the exterior boundaries of a national forest
13 shall, on acquisition, be added to and become national for-
14 est land, and shall be administered as a part of the forest
15 within which the land is situated, subject to all laws appli-
16 cable to land acquired under the Act of March 1, 1911
17 (36 Stat. 961, chapter 186).

18 **“SEC. 6. ADMINISTRATIVE PROVISIONS.**

19 “(a) IN GENERAL.—Subject to subsections (b)
20 through (d), such land, water, or interest in land or water,
21 as is made available to the Secretary to carry out this Act,
22 pursuant to sections 3 and 5 or pursuant to any other
23 authorization, shall be administered directly by the Sec-
24 retary or in accordance with cooperative agreements en-
25 tered into pursuant to section 3 and in accordance with

1 such rules and regulations for the conservation, mainte-
2 nance, and management of wildlife, wildlife resources, and
3 wildlife habitat as may be issued by the Secretary in ac-
4 cordance with general plans approved jointly by the Sec-
5 retary and the head of the agency having primary jurisdic-
6 tion over the land, water, or interest in land or water.

7 “(b) CONSISTENCY WITH STATE LAWS.—The rules
8 and regulations issued under subsection (a) shall be con-
9 sistent with the laws for the protection of fish and game
10 of the States in which the land, water, or interest in land
11 or water is situated.

12 “(c) NATIONAL MIGRATORY BIRD MANAGEMENT
13 PROGRAM.—

14 “(1) AVAILABILITY OF LAND.—Subject to para-
15 graph (2), land that has value to the national migra-
16 tory bird management program of the Department
17 of the Interior may, pursuant to general plans, be
18 made available without cost directly to the State
19 agency having control over wildlife resources, if the
20 Secretary and the State agency jointly determine
21 that the availability without cost to the State agency
22 would be in the public interest.

23 “(2) REVERSION TO SECRETARY.—The Sec-
24 retary shall have the right to assume the manage-
25 ment and administration of the land for the national

1 migratory bird management program if the Sec-
2 retary determines that the State agency has with-
3 drawn from or otherwise relinquished the manage-
4 ment and administration.

5 **“SEC. 7. INVESTIGATIONS AS TO EFFECT OF SEWAGE AND**
6 **INDUSTRIAL WASTES.**

7 “(a) IN GENERAL.—The Secretary, acting through
8 the Director of the United States Fish and Wildlife Serv-
9 ice and the Director of the United States Bureau of Mines,
10 may—

11 “(1) make such investigations as the Secretary
12 considers necessary to determine the effect of do-
13 mestic sewage, mine, petroleum, and industrial
14 wastes, erosion, silt, and other polluting substances
15 on wildlife; and

16 “(2) report to Congress concerning the inves-
17 tigation, including making recommendations for al-
18 leviating dangerous and undesirable effects of the
19 polluting substances.

20 “(b) CONTENTS OF INVESTIGATIONS.—The inves-
21 tigation shall include—

22 “(1) the determination of standards of water
23 quality for the maintenance of wildlife;

24 “(2) the study of methods of abating and pre-
25 venting pollution, including methods for the recovery

1 of useful or marketable products and byproducts of
2 wastes; and

3 “(3) the collation and distribution of data on
4 the progress and results of the investigations for the
5 use of Federal, State, municipal, and private agen-
6 cies, individuals, organizations, or enterprises.

7 **“SEC. 8. MAINTENANCE OF ADEQUATE WATER LEVELS IN**
8 **UPPER MISSISSIPPI RIVER.**

9 “In managing facilities (including locks, dams, and
10 pools) in the Mississippi River between Rock Island, Illi-
11 nois, and Minneapolis, Minnesota, administered by the
12 Army Corps of Engineers of the Department of the Army,
13 the Department shall—

14 “(1) give full consideration and recognition to
15 the needs of fish and other wildlife resources and the
16 habitat of the fish and wildlife resources dependent
17 on the river, without increasing additional liability to
18 the Federal Government; and

19 “(2) to the maximum extent possible without
20 causing damage to levee and drainage districts, adja-
21 cent railroads and highways, farm land, and dam
22 structures, generally operate and maintain pool lev-
23 els as though navigation was carried on throughout
24 the year.

1 **“SEC. 9. PENALTIES.**

2 “A person who violates this Act (including a rule or
3 regulation issued under this Act) shall be guilty of a mis-
4 demeanor and on conviction of the misdemeanor shall be
5 fined not more than \$500 or imprisoned for not more than
6 1 year, or both.

7 **“SEC. 10. APPLICABILITY.**

8 “This Act shall not apply to the Tennessee Valley Au-
9 thority.

10 **“SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

11 “There are authorized to be appropriated such sums
12 as are necessary to carry out this Act and regulations is-
13 sued under this Act, including the construction of such
14 facilities, buildings, and other improvements as are nec-
15 essary for economical administration of land, water, and
16 interests in land or water made available to the Secretary
17 under this Act, and the employment in the city of Wash-
18 ington, District of Columbia, and elsewhere of such per-
19 sons and means as the Secretary may consider necessary
20 for the administration.”.

21 (b) CONFORMING AMENDMENT.—The first section of
22 Public Law 85–624 (16 U.S.C. 661 note) is amended to
23 read as follows: “That this Act may be cited as the ‘Fish
24 and Wildlife Coordination Amendments Act of 1958’.”.

1 **SEC. 3. GAME MANAGEMENT SUPPLY DEPOTS.**

2 The second sentence of the Joint Resolution entitled
3 “A Joint Resolution providing for the establishment of a
4 game management supply depot and laboratory, and for
5 other purposes”, approved June 24, 1936 (16 U.S.C.
6 667), is amended to read as follows:

7 **“SEC. 2. APPROPRIATIONS FOR GAME MANAGEMENT SUP-**
8 **PLY DEPOTS.**

9 “(a) IN GENERAL.—Appropriations made for the ad-
10 ministration, protection, maintenance, control, improve-
11 ment, and development of wildlife sanctuaries, reserva-
12 tions, and refuges under the control of the Secretary of
13 the Interior shall be available for the purchase, transpor-
14 tation, and handling of supplies and materials for distribu-
15 tion at cost from game management supply depots main-
16 tained by the Department of the Interior to specified
17 projects.

18 “(b) CHARGING OF COSTS.—

19 “(1) IN GENERAL.—Transfers between the ap-
20 propriations for the purposes described in subsection
21 (a) are authorized in order that the cost of supplies
22 and materials, and transportation and handling of
23 supplies and materials, drawn from central ware-
24 houses so maintained may be charged to the particu-
25 lar project benefited.

1 “(2) SUPPLIES AND MATERIALS THAT REMAIN
2 AVAILABLE.—Such supplies and materials referred
3 to in paragraph (1) as remain in game management
4 supply depots at the end of any fiscal year shall be
5 continuously available for issuance during subse-
6 quent fiscal years and shall charged for by such
7 transfers of funds between the appropriations for the
8 then current fiscal year without decreasing in any
9 way the appropriations made for that fiscal year.

10 “(c) LIMITATION.—Supplies and materials shall not
11 be purchased under this section solely for the purpose of
12 increasing the value of storehouse stock beyond the rea-
13 sonable requirements for a fiscal year.”.

14 **SEC. 4. MANAGEMENT OF WILDLIFE REFUGE LAND.**

15 Section 4 of the National Wildlife Refuge System Ad-
16 ministration Act of 1966 (16 U.S.C. 668dd) is amended
17 by adding at the end the following:

18 “(j) MANAGEMENT OF CERTAIN LAND.—Notwith-
19 standing any other provision of this Act, a portion of the
20 Arctic National Wildlife Refuge in Alaska comprising ap-
21 proximately 1,559,538 acres, as generally depicted on a
22 map entitled ‘Arctic National Wildlife Refuge—1002
23 Area. Alternative E—Wilderness Designation, October 28,
24 1991’, and available for inspection in the offices of the

1 Secretary of the Interior, is designated as a component
2 of the National Wilderness Preservation System.”.

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