

COASTAL WETLANDS PLANNING, PROTECTION AND RESTORATION ACT

Acronym: CWPPRA

Citation: 16 U.S.C. §§ 3951-3956 (2002).

Legislative Purpose:

The Act provides for the protection and restoration projects in coastal wetlands areas, especially Louisiana.

Summary:

The CWPPRA establishes the Louisiana Coastal Wetlands Conservation and Restoration Task Force, consisting of the Secretaries of the Army, Commerce, Interior, and Agriculture, the Administrator of the EPA, and the Governor of Louisiana. The Task Force is charged with establishing a priority list of projects designed to restore coastal wetlands, based on the cost-effectiveness of the projects in creating restoring, protecting, or enhancing the long-term conservation of coastal wetlands. The Task Force is directed to integrate the Corps of Engineers Coastal Wetlands projects and Louisiana Projects into the priority list.

The restoration plans are to include:

- ~ identification of the priority coastal wetlands in need of restoration,
- ~ a detailed description of, and justification for, each proposed restoration project,
- ~ the proposed activities of the project and the benefits to be realized,
- ~ an estimated timetable of the project and a cost estimate,
- ~ identification of the Task Force member who is to undertake the project,
- ~ consultations with the public regarding the need for such a plan, and
- ~ evaluation of each restoration project in arresting wetlands loss in Louisiana.

The State of Louisiana must also develop a coastal wetlands conservation plan that identifies the entire coastal area in Louisiana that contains coastal wetlands, designates a single state agency with the responsibility for implementing and enforcing the plan, and identifies the measures the state shall take to achieve no net loss of wetlands. The state must also establish a system to account for the gains and losses in coastal wetlands, provide assurances that the personnel and finances exist to implement the plan, and review regulatory programs to encourage private wetlands owners to maintain these lands as wetlands. If the plan is modified by the State of Louisiana, then any modifications, like the original plan, must be approved by the Federal members of the Task Force.

The CWPPRA also establishes a matching grant program to states that carry out coastal wetlands conservation projects, administered by the director of the Fish and Wildlife Service, for projects designed to ensure the long-term conservation of wetlands within the state of award. The funds for projects under this Act are limited to \$70 million, with \$2.5 million allocated for a study of the status of wetlands in Texas. The Act directs that up to \$15 million shall be available to the Secretary of the Interior to carry out wetlands conservation projects in coastal wetland ecosystems in any coastal state. The Act also calls for a study of diverting part of the Mississippi River into the Atchafalaya River Basin.

TITLE 16. CONSERVATION

CHAPTER 59A. WETLANDS

16 USCS §§ 3951-3954 (2002) .

§ 3951. Definitions

As used in this title, the term--

- (1) "Secretary" means the Secretary of the Army;
- (2) "Administrator" means the Administrator of the Environmental Protection Agency;
- (3) "development activities" means any activity, including the discharge of dredged or fill material, which results directly in a more than de minimus change in the hydrologic regime, bottom contour, or the type, distribution or diversity of hydrophytic vegetation, or which impairs the flow, reach, or circulation of surface water within wetlands or other waters;
- (4) "State" means the State of Louisiana;
- (5) "coastal State" means a State of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes; for the purposes of this title, the term also includes Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands, and American Samoa;
- (6) "coastal wetlands restoration project" means any technically feasible activity to create, restore, protect, or enhance coastal wetlands through sediment and freshwater diversion, water management, or other measures that the Task Force finds will significantly contribute to the long-term restoration or protection of the physical, chemical and biological integrity of coastal wetlands in the State of Louisiana, and includes any such activity authorized under this title or under any other provision of law, including, but not limited to, new projects, completion or expansion of existing or on-going projects, individual phases, portions, or components of projects and operation, maintenance and rehabilitation of completed projects; the primary purpose of a "coastal wetlands restoration project" shall not be to provide navigation, irrigation or flood control benefits;
- (7) "coastal wetlands conservation project" means--
 - (A) the obtaining of a real property interest in coastal lands or waters, 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 hydrology, water quality and fish and wildlife dependent thereon; and
 - (B) the restoration, management, or enhancement of coastal wetlands ecosystems if such restoration, management, or enhancement is conducted on coastal lands and waters that are administered for the long-term conservation of such lands and waters and the hydrology, water quality and fish and wildlife dependent thereon;
- (8) "Governor" means the Governor of Louisiana;
- (9) "Task Force" means the Louisiana Coastal Wetlands Conservation and Restoration Task Force which shall consist of the Secretary, who shall serve as chairman, the Administrator, the Governor, the Secretary of the Interior, the Secretary of Agriculture and the Secretary of Commerce; and
- (10) "Director" means the Director of the United States Fish and Wildlife Service.

§ 3952. Priority Louisiana coastal wetlands restoration projects

(a) Priority project list.

(1) Preparation of list. Within forty-five days after the date of enactment of this title [enacted Nov. 29, 1990], the Secretary shall convene the Task Force to initiate a process to identify and prepare a list of coastal wetlands restoration projects in Louisiana to provide for the long-term conservation of such wetlands and dependent fish and wildlife populations in order of priority, based on the cost-effectiveness of such projects in creating, restoring, protecting, or enhancing coastal wetlands, taking into account the quality of such coastal wetlands, with due allowance for small-scale projects necessary to demonstrate the use of new techniques or materials for coastal wetlands restoration.

(2) Task force procedures. The Secretary shall convene meetings of the Task Force as appropriate to ensure that the list is produced and transmitted annually to the Congress as required by this subsection. If necessary to ensure transmittal of the list on a timely basis, the Task Force shall produce the list by a majority vote of those Task Force members who are present and voting; except that no coastal wetlands restoration project shall be placed on the list without the concurrence of the lead Task Force member that the project is cost effective and sound from an engineering perspective. Those projects which potentially impact navigation or flood control on the lower Mississippi River System shall be constructed consistent with section 304 of this Act [*16 USC § 3953*].

(3) Transmittal of list. No later than one year after the date of enactment of this title, the Secretary shall transmit to the Congress the list of priority coastal wetlands restoration projects required by paragraph (1) of this subsection. Thereafter, the list shall be updated annually by the Task Force members and transmitted by the Secretary to the Congress as part of the President's annual budget submission. Annual transmittals of the list to the Congress shall include a status report on each project and a statement from the Secretary of the Treasury indicating the amounts available for expenditure to carry out this title.

(4) List of contents.

(A) Area identification; project description. The list of priority coastal wetlands restoration projects shall include, but not be limited to--

(i) identification, by map or other means, of the coastal area to be covered by the coastal wetlands restoration project; and

(ii) a detailed description of each proposed coastal wetlands restoration project including a justification for including such project on the list, the proposed activities to be carried out pursuant to each coastal wetlands restoration project, the benefits to be realized by such project, the identification of the lead Task Force member to undertake each proposed coastal wetlands restoration project and the responsibilities of each other participating Task Force member, an estimated timetable for the completion of each coastal wetlands restoration project, and the estimated cost of each project.

(B) Pre-plan. Prior to the date on which the plan required by subsection (b) of this section becomes effective, such list shall include only those coastal wetlands restoration projects that can be substantially completed during a five-year period commencing on the date the project is placed on the list.

(C) Subsequent to the date on which the plan required by subsection (b) of this section becomes effective, such list shall include only those coastal wetlands restoration projects that have been identified in such plan.

(5) Funding. The Secretary shall, with the funds made available in accordance with section 306 of this title [*16 USC § 3955*], allocate funds among the members of the Task Force based on the need for such

funds and such other factors as the Task Force deems appropriate to carry out the purposes of this subsection.

(b) Federal and State project planning.

(1) Plan preparation. The Task Force shall prepare a plan to identify coastal wetlands restoration projects, in order of priority, based on the cost-effectiveness of such projects in creating, restoring, protecting, or enhancing the long-term conservation of coastal wetlands, taking into account the quality of such coastal wetlands, with due allowance for small-scale projects necessary to demonstrate the use of new techniques or materials for coastal wetlands restoration. Such restoration plan shall be completed within three years from the date of enactment of this title.

(2) Purpose of the plan. The purpose of the restoration plan is to develop a comprehensive approach to restore and prevent the loss of, coastal wetlands in Louisiana. Such plan shall coordinate and integrate coastal wetlands restoration projects in a manner that will ensure the long-term conservation of the coastal wetlands of Louisiana.

(3) Integration of existing plans. In developing the restoration plan, the Task Force shall seek to integrate the "Louisiana Comprehensive Coastal Wetlands Feasibility Study" conducted by the Secretary of the Army and the "Coastal Wetlands Conservation and Restoration Plan" prepared by the State of Louisiana's Wetlands Conservation and Restoration Task Force.

(4) Elements of the plan. The restoration plan developed pursuant to this subsection shall include--

(A) identification of the entire area in the State that contains coastal wetlands;

(B) identification, by map or other means, of coastal areas in Louisiana in need of coastal wetlands restoration projects;

(C) identification of high priority coastal wetlands restoration projects in Louisiana needed to address the areas identified in subparagraph (B) and that would provide for the long-term conservation of restored wetlands and dependent fish and wildlife populations;

(D) a listing of such coastal wetlands restoration projects, in order of priority, to be submitted annually, incorporating any project identified previously in lists produced and submitted under subsection (a) of this section;

(E) a detailed description of each proposed coastal wetlands restoration project, including a justification for including such project on the list;

(F) the proposed activities to be carried out pursuant to each coastal wetlands restoration project;

(G) the benefits to be realized by each such project;

(H) an estimated timetable for completion of each coastal wetlands restoration project;

(I) an estimate of the cost of each coastal wetlands restoration project;

(J) identification of a lead Task Force member to undertake each proposed coastal wetlands restoration project listed in the plan;

(K) consultation with the public and provision for public review during development of the plan; and

(L) evaluation of the effectiveness of each coastal wetlands restoration project in achieving long-term solutions to arresting coastal wetlands loss in Louisiana.

(5) Plan modification. The Task Force may modify the restoration plan from time to time as necessary to carry out the purposes of this section.

(6) Plan submission. Upon completion of the restoration plan, the Secretary shall submit the plan to the Congress. The restoration plan shall become effective ninety days after the date of its submission to the

Congress.

(7) Plan evaluation. Not less than three years after the completion and submission of the restoration plan required by this subsection and at least every three years thereafter, the Task Force shall provide a report to the Congress containing a scientific evaluation of the effectiveness of the coastal wetlands restoration projects carried out under the plan in creating, restoring, protecting and enhancing coastal wetlands in Louisiana.

(c) Coastal wetlands restoration project benefits. Where such a determination is required under applicable law, the net ecological, aesthetic, and cultural benefits, together with the economic benefits, shall be deemed to exceed the costs of any coastal wetlands restoration project within the State which the Task Force finds to contribute significantly to wetlands restoration.

(d) Consistency.

(1) In implementing, maintaining, modifying, or rehabilitating navigation, flood control or irrigation projects, other than emergency actions, under other authorities, the Secretary, in consultation with the Director and the Administrator, shall ensure that such actions are consistent with the purposes of the restoration plan submitted pursuant to this section.

(2) At the request of the Governor of the State of Louisiana, the Secretary of Commerce shall approve the plan as an amendment to the State's coastal zone management program approved under section 306 of the Coastal Zone Management Act of 1972 (*16 U.S.C. 1455*).

(e) Funding of wetlands restoration projects. The Secretary shall, with the funds made available in accordance with this title, allocate such funds among the members of the Task Force to carry out coastal wetlands restoration projects in accordance with the priorities set forth in the list transmitted in accordance with this section. The Secretary shall not fund a coastal wetlands restoration project unless that project is subject to such terms and conditions as necessary to ensure that wetlands restored, enhanced or managed through that project will be administered for the long-term conservation of such lands and waters and dependent fish and wildlife populations.

(f) Cost-sharing.

(1) Federal share. Amounts made available in accordance with section 306 of this title [*16 USC § 3955*] to carry out coastal wetlands restoration projects under this title shall provide 75 percent of the cost of such projects.

(2) Federal share upon conservation plan approval. Notwithstanding the previous paragraph, if the State develops a Coastal Wetlands Conservation Plan pursuant to this title, and such conservation plan is approved pursuant to section 304 of this title [*16 USC § 3953*], amounts made available in accordance with section 306 of this title [*16 USC § 3955*] for any coastal wetlands restoration project under this section shall be 85 percent of the cost of the project. In the event that the Secretary, the Director, and the Administrator jointly determine that the State is not taking reasonable steps to implement and administer a conservation plan developed and approved pursuant to this title, amounts made available in accordance with section 306 of this title [*16 USC § 3955*] for any coastal wetlands restoration project shall revert to 75 percent of the cost of the project. Provided, however, that such reversion to the lower cost share level shall not occur until the Governor has been provided notice of, and opportunity for hearing on, any such

determination by the Secretary, the Director, and Administrator, and the State has been given ninety days from such notice or hearing to take corrective action.

(3) Form of State share. The share of the cost required of the State shall be from a non-Federal source. Such State share shall consist of a cash contribution of not less than 5 percent of the cost of the project. The balance of such State share may take the form of lands, easements, or right-of-way, or any other form of in-kind contribution determined to be appropriate by the lead Task Force member.

(4) Paragraphs (1), (2), (3), and (5) of this subsection shall not affect the existing cost-sharing agreements for the following projects: Caernarvon Freshwater Diversion, Davis Pond Freshwater Diversion, and Bonnet Carre Freshwater Diversion.

(5) Federal share in calendar years 1996 and 1997. Notwithstanding paragraphs (1) and (2), upon approval of the conservation plan under section 304 [33 USC § 3953] and a determination by the Secretary that a reduction in the non-Federal share is warranted, amounts made available in accordance with section 306 [33 USC § 3955] to carry out coastal wetlands restoration projects under this section in calendar years 1996 and 1997 shall provide 90 percent of the cost of such projects.

§ 3953. Louisiana coastal wetlands conservation planning

(a) Development of conservation plan.

(1) Agreement. The Secretary, the Director, and the Administrator are directed to enter into an agreement with the Governor, as set forth in paragraph (2) of this subsection, upon notification of the Governor's willingness to enter into such agreement.

(2) Terms of agreement.

(A) Upon receiving notification pursuant to paragraph (1) of this subsection, the Secretary, the Director, and the Administrator shall promptly enter into an agreement (hereafter in this section referred to as the "agreement") with the State under the terms set forth in subparagraph (B) of this paragraph.

(B) The agreement shall--

(i) set forth a process by which the State agrees to develop, in accordance with this section, a coastal wetlands conservation plan (hereafter in this section referred to as the "conservation plan");

(ii) designate a single agency of the State to develop the conservation plan;

(iii) assure an opportunity for participation in the development of the conservation plan, during the planning period, by the public and by Federal and State agencies;

(iv) obligate the State, not later than three years after the date of signing the agreement, unless extended by the parties thereto, to submit the conservation plan to the Secretary, the Director, and the Administrator for their approval; and

(v) upon approval of the conservation plan, obligate the State to implement the conservation plan.

(3) Grants and assistance. Upon the date of signing the agreement--

(A) the Administrator shall, in consultation with the Director, with the funds made available in accordance with section 306 of this title [16 USC § 3955], make grants during the development of the conservation plan to assist the designated State agency in developing such plan. Such grants shall not exceed 75 percent of the cost of developing the plan; and

(B) the Secretary, the Director, and the Administrator shall provide technical assistance to the State to assist it in the development of the plan.

(b) Conservation plan goal. If a conservation plan is developed pursuant to this section, it shall have a goal of achieving no net loss of wetlands in the coastal areas of Louisiana as a result of development activities initiated subsequent to approval of the plan, exclusive of any wetlands gains achieved through implementation of the preceding section of this title.

(c) Elements of conservation plan. The conservation plan authorized by this section shall include--

- (1) identification of the entire coastal area in the State that contains coastal wetlands;
- (2) designation of a single State agency with the responsibility for implementing and enforcing the plan;
- (3) identification of measures that the State shall take in addition to existing Federal authority to achieve a goal of no net loss of wetlands as a result of development activities, exclusive of any wetlands gains achieved through implementation of the preceding section of this title;
- (4) a system that the State shall implement to account for gains and losses of coastal wetlands within coastal areas for purposes of evaluating the degree to which the goal of no net loss of wetlands as a result of development activities in such wetlands or other waters has been attained;
- (5) satisfactory assurances that the State will have adequate personnel, funding, and authority to implement the plan;
- (6) a program to be carried out by the State for the purpose of educating the public concerning the necessity to conserve wetlands;
- (7) a program to encourage the use of technology by persons engaged in development activities that will result in negligible impact on wetlands; and
- (8) a program for the review, evaluation, and identification of regulatory and nonregulatory options that will be adopted by the State to encourage and assist private owners of wetlands to continue to maintain those lands as wetlands.

(d) Approval of conservation plan.

(1) In general. If the Governor submits a conservation plan to the Secretary, the Director, and the Administrator for their approval, the Secretary, the Director, and the Administrator shall, within one hundred and eighty days following receipt of such plan, approve or disapprove it.

(2) Approval criteria. The Secretary, the Director, and the Administrator shall approve a conservation plan submitted by the Governor, if they determine that--

- (A) the State has adequate authority to fully implement all provisions of such a plan;
- (B) such a plan is adequate to attain the goal of no net loss of coastal wetlands as a result of development activities and complies with the other requirements of this section; and
- (C) the plan was developed in accordance with terms of the agreement set forth in subsection (a) of this section.

(e) Modification of conservation plan.

(1) Noncompliance. If the Secretary, the Director, and the Administrator determine that a conservation plan submitted by the Governor does not comply with the requirements of subsection (d) of this section, they shall submit to the Governor a statement explaining why the plan is not in compliance and how the plan should be changed to be in compliance.

(2) Reconsideration. If the Governor submits a modified conservation plan to the Secretary, the Director, and the Administrator for their reconsideration, the Secretary, the Director, and Administrator shall have

ninety days to determine whether the modifications are sufficient to bring the plan into compliance with requirements of subsection (d) of this section.

(3) Approval of modified plan. If the Secretary, the Director, and the Administrator fail to approve or disapprove the conservation plan, as modified, within the ninety-day period following the date on which it was submitted to them by the Governor, such plan, as modified, shall be deemed to be approved effective upon the expiration of such ninety-day period.

(f) Amendments to conservation plan. If the Governor amends the conservation plan approved under this section, any such amended plan shall be considered a new plan and shall be subject to the requirements of this section; except that minor changes to such plan shall not be subject to the requirements of this section.

(g) Implementation of conservation plan. A conservation plan approved under this section shall be implemented as provided therein.

(h) Federal oversight.

(1) Initial report to Congress. Within one hundred and eighty days after entering into the agreement required under subsection (a) of this section, the Secretary, the Director, and the Administrator shall report to the Congress as to the status of a conservation plan approved under this section and the progress of the State in carrying out such a plan, including and [an] accounting, as required under subsection (c) of this section, of the gains and losses of coastal wetlands as a result of development activities.

(2) Report to Congress. Twenty-four months after the initial one hundred and eighty day period set forth in paragraph (1), and at the end of each twenty-four-month period thereafter, the Secretary, the Director, and the Administrator shall, report to the Congress on the status of the conservation plan and provide an evaluation of the effectiveness of the plan in meeting the goal of this section.

§ 3954. National coastal wetlands conservation grants

(a) Matching grants. The Director shall, with the funds made available in accordance with the next following section of this title, make matching grants to any coastal State to carry out coastal wetlands conservation projects from funds made available for that purpose.

(b) Priority. Subject to the cost-sharing requirements of this section, the Director may grant or otherwise provide any matching moneys to any coastal State which submits a proposal substantial in character and design to carry out a coastal wetlands conservation project. In awarding such matching grants, the Director shall give priority to coastal wetlands conservation projects that are--

(1) consistent with the National Wetlands Priority Conservation Plan developed under section 301 of the Emergency Wetlands Resources Act (*16 U.S.C. 3921*); and

(2) in coastal States that have established dedicated funding for programs to acquire coastal wetlands, natural areas and open spaces. In addition, priority consideration shall be given to coastal wetlands conservation projects in maritime forests on coastal barrier islands.

(c) Conditions. The Director may only grant or otherwise provide matching moneys to a coastal State for purposes of carrying out a coastal wetlands conservation project if the grant or provision is subject to terms

and conditions that will ensure that any real property interest acquired in whole or in part, or enhanced, managed, or restored with such moneys will be administered for the long-term conservation of such lands and waters and the fish and wildlife dependent thereon.

(d) Cost-sharing.

(1) Federal share. Grants to coastal States of matching moneys by the Director for any fiscal year to carry out coastal wetlands conservation projects shall be used for the payment of not to exceed 50 percent of the total costs of such projects: except that such matching moneys may be used for payment of not to exceed 75 percent of the costs of such projects if a coastal State has established and is using one of the following for the purpose of acquiring coastal wetlands, other natural areas or open spaces:

(A) a trust fund from which the principal is not spent; or

(B) a fund derived from a dedicated recurring source of monies including, but not limited to, real estate transfer fees or taxes, cigarette taxes, tax check-offs, or motor vehicle license plate fees.

(2) Form of State share. The matching moneys required of a coastal State to carry out a coastal wetlands conservation project shall be derived from a non-Federal source.

(3) In-kind contributions. In addition to cash outlays and payments, in-kind contributions of property or personnel services by non-Federal interests for activities under this section may be used for the non-Federal share of the cost of those activities.

(e) Partial payments.

(1) The Director may from time to time make matching payments to carry out coastal wetlands conservation projects as such projects progress, but such payments, including previous payments, if any, shall not be more than the Federal pro rata share of any such project in conformity with subsection (d) of this section.

(2) The Director may enter into agreements to make matching payments on an initial portion of a coastal wetlands conservation project and to agree to make payments on the remaining Federal share of the costs of such project from subsequent moneys if and when they become available. The liability of the United States under such an agreement is contingent upon the continued availability of funds for the purpose of this section.

(f) Wetlands assessment. The Director shall, with the funds made available in accordance with the next following section of this title, direct the U.S. Fish and Wildlife Service's National Wetland Inventory to update and digitize wetlands maps in the State of Texas and to conduct an assessment of the status, condition, and trends of wetlands in that State.