

# Evolution of the Wild and Scenic Rivers Act: A History of Substantive Amendments 1968-2013

*A Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council  
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Jackie Diedrich (U.S. Forest Service, retired) and Cassie Thomas completed the original section-by-section description of the substantive amendments to the Wild and Scenic Rivers Act. The initial historical research was conducted by Adam David Miller, while he was a law student at the Vermont Law School. We thank Adam for his outstanding contributions to this paper.

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## **Acronyms and Abbreviations**

|                        |   |
|------------------------|---|
| <b>§</b>               | Section   |
| <b>1968 Act</b>        | Original Wild and Scenic Rivers Act (October 2, 1968) prior to subsequent amendments        |
| <b>Act</b>             | Wild and Scenic Rivers Act with amendments (or, where necessary, “WSRA” to avoid confusion) |
| <b>ANILCA</b>          | Alaska National Interest Lands Conservation Act   |
| <b>ANCSA</b>           | Alaska Native Claims Settlement Act   |
| <b>CFR</b>             | United States Code of Federal Regulations   |
| <b>Cong. Rec.</b>      | Congressional Record  |
| <b>Cong.</b>           | United States Congress  |
| <b>CRMP</b>            | Comprehensive River Management Plan   |
| <b>DOI</b>             | United States Department of the Interior  |
| <b>FERC</b>            | Federal Energy Regulatory Commission  |
| <b>H. Rep.</b>         | United States House of Representatives Report   |
| <b>H.R.</b>            | United States House of Representatives Bill   |
| <b>House</b>           | United States House of Representatives  |
| <b>National System</b> | National Wild and Scenic Rivers System  |
| <b>NEPA</b>            | National Environmental Policy Act   |
| <b>No.</b>             | Number  |
| <b>P.L.</b>            | Public Law  |
| <b>S.</b>              | United States Senate Bill   |
| <b>S. Rep.</b>         | United States Senate Report   |
| <b>SMCRA</b>           | Surface Mining Control and Reclamation Act  |
| <b>U.S.</b>            | United States   |
| <b>U.S.C.</b>          | United States Code  |
| <b>WSR</b>             | Wild and Scenic River   |
| <b>WSRA</b>            | Wild and Scenic Rivers Act with Amendments (or, where necessary, “Act” to avoid confusion)  |

*Interagency Wild and Scenic Rivers Coordinating Council*

# Evolution of the Wild and Scenic Rivers Act: A History of Substantive Amendments 1968-2013

## Foreword

Since passage of the Wild and Scenic Rivers Act (Act or WSRA) in 1968, Congress has enacted a number of substantive amendments to the enabling legislation. These amendments have resolved ambiguities in the Act and also allowed the Act to evolve to better reflect the growing art and science of river protection. This paper is intended to help river managers and others understand the various amendments, including their legislative history.

## Introduction

The purpose of this paper is to increase understanding of the substantive amendments to the Act since its passage in 1968 by providing a historical accounting of Congress's intent. A river manager might decipher the changes through a careful review of the amendments as presented in the United States Code (16 U.S.C. § 1271-1287); however, this requires knowledge of the Act and a willingness to do considerable comparison. Such a review would, however, miss the reason for many of the changes, i.e., who proposed the various amendments and why. This paper adds the legislative history, thus creating a more complete summation of each substantive amendment.

This paper focuses on amendments to sections of the Act that affect all or multiple designated or study rivers. It does not discuss the exceptions to the Act's requirements that were included in river-specific designation legislation.<sup>1</sup> In addition, this paper purposely excludes non-substantive changes, such as the addition of contemporary names of congressional committees and federal agencies,

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<sup>1</sup> Examples of river-specific designation language include, but are not limited to:

- P.L. 106-20 (Sudbury, Assabet and Concord WSR) – Management “in accordance with the plan entitled ‘Sudbury, Assabet and Concord Wild and Scenic River Study, River Conservation Plan,’ dated March 16, 1995. The plan is deemed to satisfy the requirement for a comprehensive management plan under subsection (d) of this section.”
- P.L. 95-625 (Skagit WSR) – “Ripraping related to natural channels with natural rock along the shorelines of the Skagit segment to preserve and protect agricultural land shall not be considered inconsistent with the values for which such segment is designated.”

clerical corrections including renumbering, and the numerous amendments that added a river to the National Wild and Scenic Rivers System (National System) or authorized a river for study through subsections 3(a) and 5(a), respectively.

The format of this paper is as follows:

- Section Heading of the Act.
- Amendments – A description of changes to a section.<sup>2</sup>
- Legislative History – A description of the process by which the desired changes became law. Please note, the general legislative history is provided only once for each public law and referred to for other sections also amended by the law.
- Intent – An explanation of the intent of the amendment as reported in the Congressional Record.

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<sup>2</sup> A brief explanation of the amendments to the 1968 Act is presented by public law and chronologically in Appendix A.



## **Amendments to Section 2(a)(ii) – State-Administered Components**

### ***Public Law 95-625 – National Parks and Recreation Act of 1978 (November 10, 1978)***

#### **Amendments**

- Provided for expenditure of funds by the United States (U.S.) for administration and management of federally owned lands within state-administered, federally designated rivers. The 1968 Act directed such rivers to be administered “without expense to the United States.”
- Required that the Federal Energy Regulatory Commission (FERC) be notified upon application from a state governor for a river’s inclusion in the National System and publication of the application in the *Federal Register*.
- Clarified that funds available to states under the Land and Water Conservation Fund Act of 1965 or other laws do not count as an expense to the United States.
- Clarified that federally owned lands within the boundaries of any 2(a)(ii) river are not transferred to, or to be administered by, the state.

#### **Legislative History**

P.L. 95-625, the National Parks and Recreation Act of 1978, was an omnibus bill. The language relevant to WSRs, including the technical amendments of the Act, originated in H.R. 12536. This bill was passed by the House on October 4, 1978, and, through substitution, combined with S. 791, a Senate bill initially authorizing an increase in appropriations for the acquisition of lands and interests in lands within the Sawtooth National Recreation Area.<sup>3</sup>

In an explanation of the section of H.R. 12536 that addressed WSRs, its principal author, Representative Phillip Burton (California), stated the bill “would make the largest additions to the Wild and Scenic Rivers System since its inception in 1968” and authorize other rivers for study. He described the technical amendments as “intended to assist in the expansion of the Wild and Scenic Rivers System and to encourage state governments to participate in this program.”<sup>4</sup>

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<sup>3</sup> 124 Cong. Rec. 36922 (1978).

<sup>4</sup> Staff of the House Subcommittee on National Parks and Insular Affairs, 95th Cong., Legislative History of the National Parks and Recreation Act of 1978. (Comm. Print 1978)

The majority of the rivers authorized for study in H.R. 12536 were initially proposed by the Department of the Interior (DOI) in a draft bill based on the recommendations of the Interdepartmental Study Group on Wild and Scenic Rivers. “This group was established following passage of the 1968 Act for the purpose of coordinating and reviewing required studies, and to identify additional rivers which appear to have outstanding resources sufficient for addition to subsection 5(a) . . . .”<sup>5</sup>

Section 761 of H.R. 12536 (incorporated as Section 761 of P.L. 95-625) permitted the use of federal funds to manage federal lands within state-administered, federally designated WSRs.

## **Intent**

The 1968 Act required state-administered, federally designated WSRs to be administered “without expense to the United States.” This amendment, which provided for the expenditure of funds by the U.S. for administration and management of federally owned lands within state-administered, federally designated WSRs, was included to eliminate objections by the DOI regarding the inclusion of “certain Oregon rivers into the National System as State-administered rivers.” According to discussions in the House in 1971, Tom McCall, the Governor of Oregon, requested the DOI to include several rivers in the National System as state-administered, federally designated rivers as per subsection 2(a)(ii) of the Act. The DOI objected on the grounds that too much federal land bordered the proposed rivers. It argued that subsection 2(a)(ii) prohibited expenditure of federal funds along such rivers, even if the funds went to manage federal lands. Therefore, if the rivers were designated, the federal lands could not be managed. This amendment was intended to eliminate this objection.<sup>6</sup>

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<sup>5</sup> Letter from Cecil D. Andrus, Secretary of the Interior, H.R. Rep. No. 95-1165, at 105-108 (1978).

<sup>6</sup> 124 Cong. Rec. 18876 (1978).

## **Amendments to Section 3 – Boundary, Classification and Plan Requirements**

### ***Public Law 95-625 – National Parks and Recreation Act of 1978 (November 10, 1978)***

#### **Amendments**

- Revised subsection 3(b), allowing a date for boundary establishment other than one year if it was included in the act adding a river to subsection 3(a).

#### **Legislative History**

Refer to the generic description of the legislative history of this public law in Section 2(a)(ii).

Subsection 766(a) of H.R. 12536 (incorporated as subsection 763(a) of P.L. 95-625) allowed an act adding a river to the National System to provide a specific date for boundary establishment.

#### **Intent**

In the House Committee on Interior and Insular Affairs' section-by-section analysis of H.R. 12536, the Committee explained that subsection 3(b) was amended “to provide that boundaries for the component Wild and Scenic Rivers may be set in accordance with authorization specified in the appropriate amendment to the act . . .”.<sup>7</sup> This amendment retains the original one-year time frame for boundary establishment while also providing an exception if an alternate date is specified in subsection 3(a).

### ***Public Law 99-590 (October 30, 1986)***

#### **Amendments**

- Revised subsection 3(b), eliminating the requirements for a “plan for necessary developments” and publication of the boundary (legal description), classification and plan in the *Federal Register*. The development plan was replaced by direction in new subsection 3(d)(1) to prepare a “comprehensive management plan” (CRMP). The requirement for the actual boundary, classification and plan to be published in the *Federal Register* was replaced

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<sup>7</sup> H.R. Rep. No. 95-1165, at 88 (1978).

by a requirement to publish only a notice of the availability of the boundaries, classification and subsequent boundary amendments in the *Federal Register*.<sup>8</sup>

- Added subsections 3(c) and 3(d).
  - Subsection 3(c) required the boundary map, description of classifications and subsequent boundary amendments to be available for public inspection at the administering agency’s national and local offices.
  - Subsection 3(d)(1) directed the federal agency charged with administration of a WSR to prepare a CRMP, specifying its contents, relationship to the agency’s broader land or resource management plan, and consultation and notice requirements.
  - Subsection 3(d)(2) provided 10 years from which to bring pre-1986 boundaries, classifications and plans into conformance with the direction in subsection 3(d)(1).

## **Legislative History**

P.L. 99-590 is a composite of various House and Senate bills that proposed designation of select rivers and authorized others for study. It was introduced as H.R. 4350 by Representative Bruce F. Vento (Minnesota) and sponsors of the original bills in the House. Of importance, this bill included a number of technical amendments “to clarify areas of interpretation and improve direction for the managing agencies.”<sup>9</sup> The report accompanying this bill further explained that these “minor but troubling technical deficiencies” created some difficulties in implementing the Act and had been “the subject of debate by various agencies and organizations for several years.”<sup>10</sup>

In a report to Representative Morris K. Udall (Arizona, Chairman, Committee on Interior and Insular Affairs) on H.R. 3934—a bill to designate the North Fork Kern River in California and which included “perfecting amendments to the Wild and Scenic Rivers Act”—Richard E. Lyng, the Secretary of Agriculture, provided additional background. He explained that the Administration transmitted a proposal similar to the generic amendments included in H.R. 3934 to the 98th Congress. These changes were proposed by a staff working group from the Departments of Agriculture and the Interior, which, in about 1980, began work on possible amendments to address

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<sup>8</sup> Inadvertently, the parenthetical direction for a boundary with an average of not more than 320 acres per river mile was struck. The desired language of “not more than 320 acres of land per mile *measured from the ordinary high water mark* on both sides of the river” (emphasis added) was reinstated by P.L. 100-534 (October 26, 1988).

<sup>9</sup> H.R. Rep. No. 99-503, at 2 (1986).

<sup>10</sup> H.R. Rep. No. 99-503, at 5 (1986).

“legal and management issues and opportunities that had arisen since the Act was originally passed in 1968.”<sup>11</sup>

The group’s recommendations “formed the basis for the Administration’s proposal.” Based on concerns expressed during the 98th Congress, meetings were held with congressional staff and interested parties to discuss controversial amendments. Secretary Lyng viewed the resulting technical amendments proposed initially in the 99th Congress—in H.R. 3934 and, subsequently, as H.R. 4350—as an improvement that would help in the management of WSRs. He strongly endorsed the measures.

The Senate considered the technical amendments proposed in H.R. 4350 through S. 2466, a bill proposed by Senator J. Bennett Johnston, Jr., (Louisiana) to designate Saline Bayou in Louisiana. The Senate Committee on Energy and Natural Resources amended this bill to include the generic amendments in H.R. 4350 and deemed the resulting bill sufficient to proceed without hearings, based on the House Record.<sup>12</sup> H.R. 4350 passed the House on April 8, 1986, and was amended twice by the Senate, with the House’s final concurrence on October 16, 1986.

Subsections 501(b)(1), 501(b)(2) and 501(b)(3) of P.L. 99-590, respectively, made the changes to the boundary and classification notification process and the planning requirements in Section 3.

## **Intent**

One of the recommended amendments to Section 3 was to clarify “the definition of the area encompassed by the boundaries of a designated river.”<sup>13</sup> Subsection 501(b)(1)(B) of P.L. 99-590 was intended to address any confusion about whether the river’s bed and banks should be counted toward the allowable acreage in the lateral corridor by adding as “measured from the ordinary high water mark” to the 320-acre-per-river-mile limitation in the 1968 Act. Inadvertently, passage of P.L. 99-590 eliminated all of the boundary acreage limitation language in subsection 3(b) rather than replace it with the new desired language. The desired wording was added two years later by P.L. 100-534 (October 26, 1988).

Relative to the other amendments to Section 3, the House Committee on Interior and Insular Affairs provided background, specifically:

“The Committee intends that publishing notice of the availability of boundaries and classifications and making maps and description available to that public will provide

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<sup>11</sup> H.R. Rep. No. 99-503, at 18 (1986).

<sup>12</sup> S. Rep. No. 99-419, at 4 (1986).

<sup>13</sup> H.R. Rep. No. 99-503, at 18 (1986).

the same level of public notice as was previously provided by publication of such information in the *Federal Register*.

The new provision for comprehensive plans is not intended to negate any existing river management plans, but that normal agency planning processes for adjacent lands will address river protection in conformity with the requirements for comprehensive plans.”<sup>14</sup>

Secretary Lyng also commented on the intent of the revised planning requirements. In his report on the technical amendments, he cited as an improvement the requirement for “comprehensive planning within 3 years” rather than the previous direction that a “plan for development” be prepared for each river.<sup>15</sup>

## ***Public Law 100-534 – West Virginia National Interest River Conservation Act of 1987 (October 26, 1988)***

### **Amendments**

- Added to subsection 3(b) the direction to establish detailed boundaries of an average of not more than 320 acres of land per river mile, measured from the ordinary high water mark on both sides of the river. Inadvertently, passage of P.L. 99-590 eliminated all of the boundary acreage limitation language in subsection 3(b) rather than replace it with the new desired language.

### **Legislative History**

P.L. 100-534 was initially introduced by Representative Nick J. Rahall (West Virginia) as H.R. 900 and included boundary modification and other direction for the New River Gorge National River; establishment of the Gauley River National Recreation Area;<sup>16</sup> and designation of the Meadow, Bluestone and Greenbrier Rivers into the National System. After its passage in the House (May 27, 1987), a similar bill, S. 1720, was introduced by Senator Jay Rockefeller (West Virginia), and a hearing was held on both bills by the Senate Subcommittee on Public Lands, National Parks and

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<sup>14</sup> H.R. Rep. No. 99-503, at 11 (1986).

<sup>15</sup> H.R. Rep. No. 99-503, at 18 (1986).

<sup>16</sup> Both the New River Gorge and Gauley Rivers were added to the National Park System but not to the National Wild and Scenic Rivers System.

Forests on April 19, 1988.<sup>17</sup> As a result of this hearing, and a series of public meetings held in West Virginia,<sup>18</sup> the final bill modified the boundary and provided other direction for the New River Gorge National River, established the Gauley River Recreation Area (including 5.5 miles of its tributary, the Meadow River), and designated the Bluestone as a component of the National System. Section 301 included the technical amendment to subsection 3(b) of the Act.

## **Intent**

As explained in the previous discussion of P.L. 99-590, the revised wording in subsection 501(b)(1)(B) was intended to address any confusion about whether the river's bed and its banks should be counted toward the allowable acreage in the lateral corridor by adding as "measured from the ordinary high water mark" to the 320-acre-per-river-mile limitation in the 1968 Act. Inadvertently, passage of P.L. 99-590 eliminated all of the boundary acreage limitation language in subsection 3(b) rather than replace it with the new desired language.

In codifying P.L. 99-590, staff of the House Office of the Law Revision Counsel realized the direction could not be effected because the "quoted parenthetical statement did not appear in the text." Rather than delete the entire acreage limitation language, they merely substituted the 1968 Act wording—"which boundaries shall include an average of not more than 320 acres per mile on both sides of the river"—as the probable intent of Congress based on their review of H.R. 4350, the genesis of P.L. 99-590. The substitution did not, however, include the intended clarifying language excluding the river's bed and banks from the acreage calculation. During the lag time between passage of P.L. 99-590 and the update of the U.S.C., the WSR-administering agencies interpreted the acreage limitation of subsection 3(b) to have been eliminated.

To remedy any confusion, subsection 3(b) was replaced in its entirety through P.L. 100-534. In its section-by-section analysis of H.R. 900, as amended, the 100<sup>th</sup> Congress's Senate Committee on Energy and Natural Resources explained that "a portion of section 3(b) was inadvertently deleted when Congress enacted several technical and conforming amendments to the Act in the 99th Congress."<sup>19</sup>

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<sup>17</sup> S. Rep. No. 100-481, at 9 (1988).

<sup>18</sup> 134 Cong. Rec. S. 15279 (1988).

<sup>19</sup> S. Rep. No. 100-481, at 14 (1988).

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## **Amendments to Section 4 – Study Report Requirements**

### ***Public Law 93-279 (May 10, 1974)***

#### **Amendments**

- Revised first paragraph of subsection 4(a), requiring the Secretary of the Interior, the Secretary of Agriculture or, in appropriate cases, the two Secretaries jointly to submit a study report for each river authorized for study by Congress to the President and transmittal of such reports by the President to Congress. This amendatory act also moved from subsection 5(b) to subsection 4(a) the 10-year study period for the 27 rivers included in the 1968 Act and the provision requiring the respective Secretary to give priority in the study of these rivers to those where the potential likelihood of developments would render them unsuitable for designation. It incorporated the existing second paragraph of subsection 4(a), which outlines the contents of the study report, with minor changes.

#### **Legislative History**

P.L. 93-279 began as an Administration proposal in the form of a draft bill submitted to Congress by Rogers C.B. Morton, the Secretary of the Interior. The bill proposed to increase the protection period in subsection 7(b)(i) to 10 years and raise the appropriation authorizations for the acquisition of lands and interests in lands in Section 17 (then Section 16). The Administration's bill was introduced (by request) by Senators Henry M. Jackson (Washington) and Paul J. Fannin (Arizona) as S. 921 and referred to the Senate Committee on Interior and Insular Affairs.<sup>20</sup>

At the hearing on this bill, Senator Mark O. Hatfield (Oregon) proposed to revise subsection 6(a) to allow lands owned by a state to be acquired by donation and exchange. At open markup, Senator Floyd K. Haskell (Colorado) proposed significant revision to subsection 4(a), the language of which was further shaped by the Senate Subcommittee on Public Lands. Senator James A. McClure (Idaho) suggested the language that required congressionally authorized study reports to be submitted to Congress by the President. The Senate Committee on Interior and Insular Affairs unanimously recommended enactment of S. 921, as amended, and the bill was passed by the Senate on September 24, 1973.<sup>21</sup>

The House amended S. 921 by substituting the text of H.R. 4864 (December 3, 1973). The House bill, introduced by Representative John P. Saylor (Pennsylvania), revised subsection 7(b)(i) to extend

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<sup>20</sup> S. Rep. No. 93-401, at 7 (1973).

<sup>21</sup> S. Rep. No. 93-401, at 6 (1973).

the protection period to 10 years and to require the appropriate Secretary to notify Congress in writing at least 180 days prior to publishing notice in the *Federal Register* in cases when the Secretary was recommending against inclusion of the study river in the National System. It expanded the definition of a scenic easement in subsection 15(c) (now 16(c)) to include more than the visible area, raised the appropriation authorizations for acquisition and included an expiration date.<sup>22</sup>

As a result of procedural matters, the generic amendments were added to H.R. 9492, a bill to add the Chattooga River to the National System, and passed by the Senate on March 22, 1974. The final bill included all of the provisions of S. 921 except the land exchange authority.<sup>23</sup> The exchange authority was subsequently added by P.L. 99-590 (October 30, 1986).

Subsection (b)(1) of P.L. 93-279 provided the substantive amendment to Section 4 of the Act, changing the way river study reports are submitted to Congress for review.

## **Intent**

This section was revised to require the President, and not the Secretaries, to report to Congress on each study river. Under the 1968 Act, the relevant Secretary could terminate a river study and remove its development moratorium protection at any time by publishing notice of his determination in the *Federal Register*.<sup>24</sup> In the Senate Report (No. 93-738) accompanying H.R. 9492, the Senate Committee on Interior and Insular Affairs provided an example of the recent receipt of two brief letters from the Secretary of the Interior that terminated the study of two rivers previously approved for study by Congress. The Secretary submitted no study report justifying his position, and under the construction of the 1968 Act, Congress was unable to evaluate the Secretary's determinations.<sup>25</sup> During hearings on the Senate version of the amendment (S. 921), it was also noted that long delays in completing the studies endangered the status of rivers and their eligibility for inclusion in the National System, but also left property owners unsure of the future status of their property.<sup>26</sup>

In its analysis of the amendment, the Senate Committee on Interior and Insular Affairs noted that the Wilderness Act stood in stark contrast to the WSRA on this point. Under the Wilderness Act, all studies that are commissioned must be reported to Congress, whether or not the recommendations are favorable. Protection of the studied areas, by a development moratorium mandated in the

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<sup>22</sup> H.R. Rep. No. 93-621, at 2-3 (1973).

<sup>23</sup> 120 Cong. Rec. 11397 (1974).

<sup>24</sup> 119 Cong. Rec. 39210 (1973).

<sup>25</sup> S. Rep. No. 93-738, at 9 (1974).

<sup>26</sup> S. Rep. No. 93-401, at 5 (1973).

Wilderness Act, cannot be removed until the reports are submitted and Congress renders a determination.<sup>27</sup>

This amendment was a compromise between the discretion given to the Secretaries under the 1968 Act and Congress's right to review all studies that they commission before protection of the river is removed. Under the amendment, all studies mandated by Congress, in the 1968 Act or in any subsequent act, must be completed and reviewed before the subject rivers are released from the protections in subsection 7(b).<sup>28</sup> In earlier versions of this amendment, a three-year study period was provided for subsequent studies. The final bill, however, was amended to reflect the recommendation of the House Committee on Interior and Insular Affairs "to place a time limitation for study in each bill which designates a new study river."<sup>29</sup>

Finally, transferring the responsibility for reporting to Congress from the Secretaries to the President was intended to expedite the study and review process. Senator McClure noted in the hearings on S. 921 that a similar provision in the Wilderness Act was effectively invoked by Congress when early delays threatened the implementation of that law. By amending the WSRRA to place reporting responsibility on the President, Congress intended to have a similar effect.<sup>30</sup>

## ***Public Law 93-621 (January 3, 1975)***

### **Amendments**

- Provided additional direction in subsection 4(a) for the study of the 27 study rivers included in the 1968 Act by designating the provision requiring the respective Secretary to give priority to these study rivers where the potential likelihood of developments would render them unsuitable for designation as subsection 4(a)(I). It also added a second subsection, 4(a)(ii), which elevated the priority of the 27 study rivers that possessed the greatest proportion of private land within the study area.

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<sup>27</sup> S. Rep. No. 93-738, at 9 (1974).

<sup>28</sup> S. Rep. No. 93-738, at 9 (1974).

<sup>29</sup> 120 Cong. Rec. 11398 (1974).

<sup>30</sup> S. Rep. No. 93-738, at 10 (1974).

## **Legislative History**

P.L. 93-621 originated in the Senate as S. 3022. This bill proposed to designate 23 additional rivers in 10 states for study, amend the Lower St. Croix River Act of 1972, and make other small changes.<sup>31</sup>

The Senate Report noted that 27 bills (54 rivers) had been introduced for study by various senators in the 93rd Congress. Notably, Senators Henry M. Jackson (Washington) and Paul J. Fannin (Arizona) introduced, by request, an Administration proposal to add 32 rivers. This bill, S. 3708, was the result of an interagency review to “determine which potential wild and scenic rivers should next be studied.” As a result of hearings on most of the proposed bills, the Senate Committee on Interior and Insular Affairs endorsed S. 3022, as amended, on September 10, 1974. This bill contained 23 river segments proposed by various senators and the Administration.<sup>32</sup>

The House disagreed with parts of S. 3022, and the Senate disagreed with the House amendments to it. Through a conference committee, the bill was revised to satisfy both chambers. The resulting bill, which became P.L. 93-621, included the nine rivers in common, 16 of the rivers in S. 3022 but omitted in the House, and four of the rivers in the House amendment but absent in S. 3022, for a total of 29 rivers in 13 states.<sup>33</sup>

The Senate bill set five years for the study of all but one river based on the Administration’s estimate of 18 months to complete a study. Given the number of rivers included in this bill, it was felt that a five-year study period allowed for adequate staggering. The Senate Committee on Interior and Insular Affairs recognized the discrepancy between the five-year study period and the three-year protection period added to subsection 7(b)(I) through P.L. 93-279 the previous year. They noted that the Chairman of the Senate Subcommittee on Public Lands was considering offering an amendment to correct this when the Senate considered S. 3022, as amended.<sup>34</sup> This matter was resolved in conference by allowing a subsequent act to provide a study period in excess of three years, and for that period to be substituted for the three-complete-fiscal-year protection period.<sup>35</sup>

The conference report included the Senate’s proposed language adding a second criterion to the study priority for the first 27 rivers. Through subsection (d) of P.L. 93-621, a new clause was added to subsection 4(a), directing the respective Secretary to advance the study of those rivers with the greatest proportion of private lands.

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<sup>31</sup> S. Rep. No. 93-1207, at 2 (1974).

<sup>32</sup> S. Rep. No. 93-1207, at 3-4 (1974).

<sup>33</sup> H.R. Rep. No. 93-1645, at 5 (1974).

<sup>34</sup> S. Rep. No. 93-1207, at 5-6 (1974).

<sup>35</sup> H.R. Rep. No. 93-1645, at 7 (1974).

## **Intent**

The purpose of this amendment was to “shorten the period of uncertainty landowners would experience when the rivers along which they live or work are designated for study under the Wild and Scenic Rivers Act.”<sup>36</sup> In the 1968 Act, the Secretary was charged only with prioritizing the study of rivers that were most likely to be harmed by future developments, which, if undertaken, would preclude the river’s inclusion in the National System. This amendment added a second criterion for determining priority; prompt attention was to be given to rivers that “possess the greatest proportion of private lands within their boundaries.” With this addition to subsection 4(a), Congress attempted to minimize the burden of delay on landowners within the study boundaries. Prioritizing studies on rivers with extensive private lands was intended to “reduce the period of uncertainty landowners would otherwise experience while the study is being conducted and the President’s recommendations determined.”<sup>37</sup>

## ***Public Law 94-486 (October 12, 1976)***

### **Amendments**

- Deleted the last sentence of subsection 4(b), eliminating the requirement to delay adding a river to the National System until the close of the full legislative session of a state(s) that began following the submission of the proposed addition to the President.

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<sup>36</sup> Implicit in this statement is that WSR designation would invariably lead to land acquisition. However, this assumption—which might have been valid in 1974—no longer holds true. At the time this amendment was being debated, acquisition of lands through eminent domain was perceived as one of the principal tools agencies would use to protect WSRs. However, it is clear from the limits placed on land acquisition in the Act that Congress never intended it to be the only tool available for the protection of land-based resources. In addition to the statutory constraints, political and institutional realities have also discouraged use of federal land acquisition. Thus, to protect river-related values, including resources influenced by land use outside the river’s boundaries, cooperative river-protection approaches are increasingly employed.

For more information about the use of eminent domain along WSRs, see *Wild and Scenic Rivers and the Use of Eminent Domain* (Interagency Wild and Scenic Rivers Coordinating Council 1998).

For more information about cooperative resource-protection approaches, see *Protecting Resource Values on Nonfederal Lands* (Interagency Wild and Scenic Rivers Coordinating Council 1996).

<sup>37</sup> S. Rep. No. 93-1207, at 6 (1974).

## **Legislative History**

P.L. 94-486 was the result of the combination of four previously introduced bills into an omnibus format as H.R. 15422. This bill proposed designation of the Flathead (Montana), Missouri (Montana) and Obed (Tennessee) Rivers into the National System and designation of the Housatonic River (Connecticut) for study. The three rivers proposed for addition to the National System were among the 27 authorized for study with the 1968 Act. H.R. 15422 passed the House on September 27, 1976, with the Senate agreeing to the House amendments.

The House Subcommittee on National Parks and Recreation added the amendment to delete the last sentence of subsection 4(b), thereby eliminating “a waiting period for State legislative review of studied rivers before Congress can act.”<sup>38</sup> The language of this amendment originated in Title V, Section 501 of H.R. 15422.

## **Intent**

According to H.R. Rep. No. 94-1657, this portion of subsection 4(b) was no longer necessary because the river studies were now to be conducted in accordance with the provisions of the National Environmental Policy Act of 1970 (NEPA). The House Committee on Interior and Insular Affairs noted that preparation of study reports under the NEPA would assure “full public review,” making the additional waiting period as required by the 1968 Act unnecessary.<sup>39</sup>

## ***Public Law 99-590 (October 30, 1986)***

### **Amendments**

- Added subsection 4(d), establishing generally a 1/4-mile boundary from the ordinary high water mark, with additional direction that this boundary need not limit the possible scope of the study report to address areas beyond 1/4 mile. It also established 1/4 mile as the boundary for congressionally designated rivers prior to boundary establishment as directed in subsection 3(b).

## **Legislative History**

Refer to the generic description of the legislative history of this public law in Section 3.

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<sup>38</sup> H.R. Rep. No. 94-1657, at 2 (1976).

<sup>39</sup> H.R. Rep. No. 94-1657, at 7 (1976).

Section 502 of P.L. 99-590 added new a subsection 4(d) to the Act.

## **Intent**

The 1968 Act did not establish any upland boundary for a congressionally authorized study. The intent of this new subsection was “to clarify the question of the extent of the boundaries for study rivers and newly designated rivers for the purposes of applying the protections of section 7(b) of the Wild and Scenic Rivers Act and section 522(e)(1) of the Surface Mining Control and Reclamation Act of 1977” (P.L. 95-87). The House Committee on Interior and Insular Affairs further explained that this new direction was not intended to limit the “reasonable scope” of a river study authorized by Congress.<sup>40,41</sup> Refer to Section 9 for an explanation of P.L. 95-87.

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<sup>40</sup> H.R. Rep. No. 99-503, at 11 (1986).

<sup>41</sup> Subsection 3(a) says “rivers and the land adjacent thereto,” subsection 5(a) says only “rivers.”

*Interagency Wild and Scenic Rivers Coordinating Council*



## **Amendments to Section 5 – Study Rivers**

### ***Public Law 93-279 (May 10, 1974)***

#### **Amendments**

- Deleted subsection 5(b) and redesignated subsections (c) and (d) as (b) and (c), respectively. The 10-year study period for the 27 rivers included in the 1968 Act and the provision requiring the respective Secretary to give priority in the study of these rivers to those where the potential likelihood of developments would render them unsuitable for designation was moved from subsection 5(b) to subsection 4(a).

#### **Legislative History**

Refer to the generic description of the legislative history of this public law in Section 4.

Subsection (b)(2) of P.L. 93-279 deleted subsection 5(b) and directed the renumbering of the remaining subsections.

#### **Intent**

Through this law, Congress consolidated direction for the study of the 27 rivers included in the 1968 Act in subsection 4(a).

### ***Public Law 93-621 (January 3, 1975)***

#### **Amendments**

- Inserted a new subsection (b) and redesignated subsections (b) and (c) as (c) and (d), respectively. The new subsection (b) identified the study period for the 29 rivers added for study by this legislation (American through Dolores).

#### **Legislative History**

Refer to the generic description of the legislative history of this public law in Section 4.

Section (b) of P.L. 93-621 established the study period and provided other direction for the 29 rivers authorized for study.

## **Intent**

Through this law, Congress amended subsection 5(a), adding 29 rivers for study. In new subsection 5(b) they specified the timing for completion of the study reports, other study-related direction and authorization of appropriations for conducting these studies.<sup>42</sup>

## ***Public Law 100-557 – Omnibus Oregon Wild and Scenic Rivers Act of 1988 (October 28, 1988)***

### **Amendments**

- Added a second paragraph specific to the study of a segment of the Klamath River in Oregon under subsection 5(d)(2) and redesignated the existing first paragraph as subsection 5(d)(1).

### **Legislative History**

P.L. 100-557, the Omnibus Oregon Wild and Scenic Rivers Act of 1988, originated in the Senate as S. 2148 and—along with its House companion bill, H.R. 4164—amended the Act to designate segments of 40 Oregon rivers as components of the National System and authorized the study of seven additional river segments.

### **Intent**

This legislation directed the DOI to study the (Upper) Klamath River through Section 5 and resulted in redesignation of subsection 5(d) into 5(d)(1) and 5(d)(2). Subsection 5(d)(1) retained in its entirety the direction in the 1968 Act requiring federal agencies to consider the potential for adding rivers to the National System through their planning processes. Subsection 5(d)(2) directed the study of the Upper Klamath by the DOI without invoking the protective provisions that would have taken effect had this study been authorized under subsection 5(a). This allowed a hydropower project licensing process to continue during the WSR study.<sup>43</sup>

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<sup>42</sup> Subsection 5(b) is often used to provide timing, direction and appropriations for congressionally designated studies.

<sup>43</sup> A segment of the Klamath River was among the list of the 7 rivers proposed in S. 2148 for study under subsection 5(a). The bill, however, included specific language for the Upper Klamath study river, directing: “That nothing in this Act, or any amendments thereto, shall be construed to affect or delay, or to interfere with the completion of, any studies or proceedings by any Department or agency of the United States which has jurisdiction over the Salt Caves Hydroelectric Project proposed by the City of Klamath Falls, Oregon.”

Recognizing the considerable investment by the city of Klamath Falls in pursuing this project, the Senate

## **Amendments to Section 6 – Acquisition Procedures and Limitations**

### ***Public Law 95-625 – National Parks and Recreation Act of 1978 (November 10, 1978)***

#### **Amendments**

- Revised subsection 6(g)(3), allowing for a different date to be specified by law in the definition of an improved property.

#### **Legislative History**

Refer to the generic description of the legislative history of this public law in Section 2(a)(ii).

Subsection 766(b) of H.R. 12536 (incorporated as subsection 763(b) of P.L. 95-625) allowed for a date for an improved property later than January 1, 1967.

#### **Intent**

Subsection 6(g)(1) allows the owner of any improved property acquired under the Act to use and occupy the property for noncommercial purposes for a period not to exceed 25 years. Subsection 6(g)(3) defines the term “improved property” and, in the 1968 Act, required such a property to have

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Committee on Energy and Natural Resources expressed their intent “that review of the Project by federal agencies—and issuance or denial of necessary project approvals—should not be affected or delayed by pendency of the wild and scenic river study.” Additionally, as noted in S. Rep. No. 100-570 at 13 (1988), the Committee expected the FERC to proceed with the license application “without delay or interruption” and the DOI “to prepare its study with a view toward more fully examining the Upper Klamath’s natural values.”

Senator Hatfield of Oregon remarked in session that the Salt Caves Hydropower Project was a subject of heated conflict among his constituents. The included language in Section 104 of P.L. 100-557 was an attempt to balance the interests of the two competing sides. The city of Klamath Falls had invested millions of dollars over many years as the sponsor of the project, and he felt they were entitled to the completion of the hydropower licensing process. At the same time, Senator Hatfield recognized the opinions expressed by many Oregonians about protecting the natural values of the last free-flowing stretch of the river. Therefore, the amendment was intended to allow for the Secretary of the Interior to conduct the wild and scenic river study concurrently with the FERC’s Environmental Impact Study as noted in 134 Cong. Rec. S. 15242 (1988). The congressionally authorized study was conducted by the Bureau of Land Management, with the National Park Service conducting a subsequent Section 2(a)(ii) assessment at the request of Governor Barbara Roberts of Oregon, and the river designated as a state-administered, federally designated wild and scenic river in 1994, prohibiting the development of the Salt Caves Hydropower Project.

been constructed prior to January 1, 1967. Through this amendment, Congress allowed properties that had been improved or constructed after January 1, 1967, to remain occupied after their acquisition, as specified by subsequent public law. In the House Committee on Interior and Insular Affairs' section-by-section analysis of H.R. 12536, the Committee explained that subsection 6(g)(3) was amended to provide "that the definition of an improved property may be specified as part of the appropriate amendment to the act."<sup>44</sup>

## ***Public Law 99-590 (October 30, 1986)***

### **Amendments**

- Added a second paragraph to subsection 6(a) as 6(a)(2). It allowed the respective Secretary to acquire a tract of land that lies within and partially outside the boundaries of a WSR. The provision specified the following limitations on such a purchase:
  - Consent of landowner is needed for purchase of the portion outside the boundary;
  - The land or interest acquired outside the boundary does not count against the 100-acre-per-mile fee title limitation of subsection 6(a)(1); and,
  - The lands or interest acquired outside the boundary must be disposed of consistent with existing authorities of law.
- Inserted a provision in redesignated subsection 6(a)(1), allowing lands owned by a state to be acquired by exchange in accordance with subsection 6(d).
- Clarified in subsection 6(b) that the curtailment of condemnation power in an area where 50 percent or more of the area is owned by federal or state government applies to the area owned in fee title outside the ordinary high water mark, i.e., exclusive of the river's bed and banks.

### **Legislative History**

Refer to the generic description of the legislative history of this public law in Section 3.

Section 504 of P.L. 99-590 made the changes to Section 6.

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<sup>44</sup> H.R. Rep. No. 95-1165, at 88 (1978).

## **Intent**

In the discussion of the technical amendments, Richard E. Lyng, the Secretary of Agriculture, described the proposed changes to subsection 6(a) as “permitting more effective land acquisition through purchase and exchange.”<sup>45</sup> The addition of an exchange provision for state lands was originally proposed by Senator Mark O. Hatfield (Oregon) during consideration of P.L. 93-279. Although not included in that public law, its intent is detailed in the Senate Report accompanying the bill.<sup>46</sup> Specifically, subsection 6(a) was expanded to allow acquisition of state lands in a WSR corridor through exchange for federal lands in other areas so states would not need to use limited land and water conservation funds to acquire lands in WSR corridors. It also provided a mechanism to acquire state lands in states where the statehood enabling act had been interpreted as prohibiting donation.<sup>47, 48</sup>

The added authority to purchase a tract of land partially within and partially outside the final boundary of a designated river through subsection 6(a)(2) was intended by the House Committee on Interior and Insular Affairs “to be used primarily in those situations where the whole tract acquisition is financially advantageous to the United States instead of paying such owners service fees.”<sup>49</sup> The final language of this subsection also makes clear that any lands acquired outside the boundary must be disposed of by sale, lease, or exchange. More specifically, the Senate Committee on Energy and

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<sup>45</sup> H.R. Rep. No. 99-503, at 18 (1986).

<sup>46</sup> S. Rep. No. 93-401.

<sup>47</sup> S. Rep. No. 93-401, at 4 (1974).

<sup>48</sup> The rationale for this amendment was first expressed by Senator Mark O. Hatfield (Oregon) in 1973 during consideration of P.L. 93-279. He was concerned that the Act’s prohibition on fee title condemnation of private lands on WSRs where public ownership was in excess of 50 percent would necessitate the state being asked to condemn lands with inappropriate developments and then donate such land to the federal government. If realized, this “state assistance to protect wild and scenic rivers may damage the States’ own park and recreation programs by reducing the States’ allocations of land and water conservation funds which otherwise would be employed for acquisition of State park lands.” As explained in footnote 36, the use of eminent domain on WSRs has been limited, with cooperative approaches to river protection developed through the CRMP.

For more information about the use of eminent domain along WSRs, see *Wild and Scenic Rivers and the Use of Eminent Domain* (Interagency Wild and Scenic Rivers Coordinating Council 1998).

For more information about cooperative resource-protection approaches, see *Protecting Resource Values on Nonfederal Lands* (Interagency Wild and Scenic Rivers Coordinating Council 1996).

<sup>49</sup> H.R. Rep. No. 99-503, at 11-12 (1986).

Natural Resources rejected the discretionary language in H.R. 4350, which required disposition only “if not needed for outdoor recreation, administrative, or other purposes in furtherance of this Act.”<sup>50</sup>

The amendment to subsection 6(b) of the Act was intended to clarify that “the scope of federal ownership restrictions . . . [referred] to lands in fee ownership outside the ordinary high water mark on both sides of the designated river.”<sup>51</sup> This change, consistent with the clarification to the river area in subsection 3(b), excludes the river’s bed and banks from the calculation of public ownership.

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<sup>50</sup> 132 Cong. Rec. 6623 (April 8, 1986). Refer to S. Rep. No. 99-419, at 11-12 (1986) for the “additional views” of Senator J. Bennett Johnston, Jr., (Louisiana) in his unsuccessful support of the language in H.R. 4350.

<sup>51</sup> H.R. Rep. No. 99-503, at 11-12 (1986).

## **Amendments to Section 7 – Restrictions on Water Resources Projects**

### ***Public Law 93-279 (May 10, 1974)***

#### **Amendments**

- Substituted a new subsection 7(b)(i) to extend the protection period from the potential adverse effects of water resources projects for the 27 study rivers included in the 1968 Act from five to 10 years, consistent with the 10-year study period, and to provide three complete fiscal years of protection for any river subsequently authorized for study by Congress. This amendatory act also provided an exception to this three-year protection period for a river found ineligible or unsuitable for the National System. In such a situation, the protection period under subsection 7(b)(i) terminates 180 days after the respective Secretary notifies the relevant Senate and House committees in writing, while Congress is in session, and then publishes a notice to that effect in the *Federal Register*. Such notice to Congress is to include a copy of the study report.
- Revised the former subsection 7(b)(ii)—now subsection 7(b)(iii)—to require submission of all study reports to the President and Congress. This amendatory act made the same change to subsection 4(a).

#### **Legislative History**

Refer to the generic description of the legislative history of this public law in Section 4.

Subsections (b)(3) and (b)(4) of P.L. 93-279 changed the reporting procedure for all rivers authorized for study by Congress, requiring every study report to be transmitted to the appropriate Senate and House committees regardless of its outcome. Prior to this amendment, the respective Secretary was required to submit a study report for only those rivers found eligible and suitable for inclusion in the National System.

#### **Intent**

Initially proposed by the Administration, the extension of the study protection period by five years was to allow completion of the study of the 27 rivers authorized by Congress in the 1968 Act. Without such an extension, it was felt that some water resources projects might be initiated that

would preclude Congress from considering the river as a potential addition to the National System.<sup>52</sup> “A sense of urgency” was expressed, since the protection in subsection 7(b)(i) expired on October 2, 1973, and the schedule provided by the Bureau of Outdoor Recreation (DOI) and the U.S. Forest Service (Department of Agriculture) estimated completion dates for most studies from three to five years.<sup>53</sup> Through this amendment, Congress also provided a three-year protection period for any studies authorized in the future.

The 180-day notice requirement for all congressionally authorized studies, initially proposed in H.R. 4864, required the responsible Secretary to notify the Senate and House committees in writing and include a copy of the study report for rivers found ineligible or unsuitable for the National System. This amendment was proposed by the House Committee on Interior and Insular Affairs to provide proper oversight of the respective Secretary’s determination as to whether a river was suitable for inclusion.<sup>54</sup> Under the 1968 Act a Secretary could terminate a study, and remove the development moratorium protection at any time, by publishing notice of his or her determination in the *Federal Register*.<sup>55</sup> This amendment assured that “Congress . . . will have an opportunity to review any negative findings before the moratorium is terminated with respect to an authorized study river.”<sup>56</sup>

The changes made to subsection 7(b)(ii)—now subsection 7(b)(iii)—were necessary to mirror the revision of subsection 4(a). Both subsections were modified to require submission of all study reports to the President and Congress.

## ***Public Law 93-621 (January 3, 1975)***

### **Amendments**

- Inserted a proviso in subsection 7(b)(i) allowing a subsequent act to provide a study period in excess of three years, and for that period to be substituted for the three-complete-fiscal year protection period.

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<sup>52</sup> 119 Cong. Rec. 39210 (1973).

<sup>53</sup> S. Rep. No. 93-401, at 3-4 (1974).

<sup>54</sup> H.R. Rep. No. 93-621, at 1-3 (1973).

<sup>55</sup> 119 Cong. Rec. 39210 (1973).

<sup>56</sup> H.R. Rep. No. 93-621, at 2-3 (1973).



## **Legislative History**

Refer to the generic description of the legislative history of this public law in Section 4.

Section (c) of P.L. 93-621 was necessary to remove any ambiguity between the study and protection periods.<sup>57</sup>

## **Intent**

This amendment makes the study and protection periods congruent.

## ***Public Law 99-590 (October 30, 1986)***

### **Amendments**

- Added subsection 7(b)(ii) and redesignated 7(b)(ii) as 7(b)(iii). The new subsection extended protection during the interim period between when a study is due and the date of its actual submission. It also substituted the base period for evaluating a study river's scenery, recreation, fish and wildlife values as the date of its designation for study in the second paragraph ("nothing contained . . ."), rather than "the date of approval of this chapter" (1968).
- Substituted in subsection 7(a) the base period for evaluating a WSR's scenery, recreation, fish and wildlife values as the date of its designation as a component of the National System in the second sentence ("nothing contained . . ."), rather than "the date of approval of this Act" (1968).

## **Legislative History**

Refer to the generic description of the legislative history of this public law in Section 3.

Section 505 of P.L. 99-590 amended subsection 7(b) so as to avoid any lapse in the protection periods.

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<sup>57</sup> H.R. Rep. No. 93-1645, at 7 (1974).

## **Intent**

Through the amendments to subsection 7(b), the time periods during which rivers authorized for study by Congress are protected was clarified—from the date of the study designation to three years for congressional consideration. The House Committee on Interior and Insular Affairs explained that its intent was to eliminate any question that river protections might lapse due to any delays in transmittal of a study report to Congress.<sup>58</sup>

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<sup>58</sup> H.R. Rep. No. 99-503, at 12 (1986).

## **Amendments to Section 8 – Withdrawal of Public Lands from Entry, Sale or Other Disposition**

### **Public Law 96-487 – Alaska National Interest Lands Conservation Act (December 2, 1980)**

#### **Amendments**

- Inserted a provision in subsection 8(b) withdrawing, subject to valid existing rights and valid native selection rights under the Alaska Native Claims Settlement Act (ANCSA),<sup>59</sup> all public lands within bed or banks, or that are within two miles from the bank of the river channel on both sides of the rivers designated for study under the Alaska National Interest Lands Conservation Act (ANILCA) from entry, sale, state selection, or other disposition under public land laws of the U.S. for periods specified in subsection 7(b).<sup>60</sup>

#### **Legislative History**

Refer to the generic description of the legislative history of this public law in Section 15.

The language of this amendment originated in subsection 503(e) of H.R. 39 and was included as subsection 606(c) in P.L. 96-487.

#### **Intent**

The legislative history does not include a specific discussion as to why the area in which all public lands were to be retained was expanded to two miles from the study river's banks. Presumably, however, Congress intended to protect river-related values during the study as explained in H.R. Rep. No. 96-97 for the two-mile area of mineral withdrawal: "The purpose of the 2-mile [mineral] withdrawal during the study is to insure only that activities on adjacent lands do not impair suitability of the river during the study period."<sup>61</sup>

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<sup>59</sup> P.L. 92-203, December 18, 1971.

<sup>60</sup> Section 604 of this public law amended subsection 5(a) of the Act, designating 12 rivers for study (numbers 77, Colville River, to 88, Koyuk River). All studies have been completed.

<sup>61</sup> H.R. Rep. No. 96-97, at 274 (1979).

## ***Public Law 97-465 (January 12, 1983)***

Pursuant to P.L. 97-465, commonly referred to as the Small Tracts Act, the Secretary of Agriculture may “resolve land disputes and management problems . . . by conveying through sale, exchange, or interchange, three categories of tracts of land: parcels encroached on, road rights-of-way, and mineral survey fractions.”<sup>62</sup> Section 7 of this law, however, prohibits the use of this authority to convey “federal lands within the National Wilderness Preservation System, National Wild and Scenic Rivers System, National Trails System, or National Monuments.” This prohibition applies only to the conveyance of property under the provisions of the Small Tracts Act. It does not limit the ability of the Secretary of Agriculture to utilize the exchange authority in subsection 6(d) of the WSRA.

## ***Public Law 99-590 (October 30, 1986)***

### **Amendments**

- Added second sentence to subsection 8(a), allowing disposal of public lands through the exchange provisions of subsection 6(d) and use of the lease provision of subsection 14(A)(a).

### **Legislative History**

Refer to the generic description of the legislative history of this public law in Section 3.

Section 506 of P. L. 99-590 amended subsection 8(a).

### **Intent**

The purpose of this amendment was to clarify, “that the authorities of section 6(d) and section 14A of the Act are not limited by the withdrawal of land from entry and disposition under the public land laws.”<sup>63</sup>

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<sup>62</sup> 36 C.F.R. § 254.30.

<sup>63</sup> H.R. Rep. No. 99-503, at 12 (1986).

## **Amendments to Section 9 – Federal Mining and Mineral Leasing Laws**

### ***Public Law 95-87 – Surface Mining Control and Reclamation Act of 1977 (August 3, 1977)***

P.L. 95-87, the Surface Mining Control and Reclamation Act of 1977 (SMCRA), regulates coal mining activity and directs the rehabilitation of abandoned mines to minimize and mitigate the adverse environmental and public health effects of mining operations. It is administered by the Office of Surface Mining, Reclamation and Enforcement in the DOI. Through SMCRA, Congress prohibited, subject to valid existing rights, surface coal mining operations on the lands specified in Title V subsection 522(e). Subsection 522(e)(1) prohibits such activity “on any lands within the boundaries of units of . . . the [National] Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act . . .”<sup>64</sup>

The Senate Committee on Energy and Natural Resources explains the basis for this prohibition in its report:

“ . . . the Committee has made a judgment that certain lands simply should not be subject to new surface coal mining operations. These include primarily and most emphatically those lands which cannot be reclaimed under the standards of this Act and the following areas dedicated by the Congress in trust for recreation and enjoyment of the American people: lands within the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the Wild and Scenic Rivers System, National Recreation Areas, the National Forests with certain exceptions, and areas which would adversely affect parks or National Register of Historic Sites.”<sup>65</sup>

Refer also to Section 4 and the discussion of the amendment in P.L. 99-590 to define the boundary for a congressionally authorized study river and an interim boundary for a designated WSR.

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<sup>64</sup> Full quote: “After the enactment of this Act and subject to valid existing rights no surface coal mining operations except those which exist on the date of enactment of this Act shall be permitted — (1) on any lands within the boundaries of units of the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act and National Recreation Areas designated by Act of Congress; . . .”

<sup>65</sup> S. Rep. No. 95-128, at 55 (1977).

## ***Public Law 96-487 – Alaska National Interest Lands Conservation Act (December 2, 1980)***

### **Amendments**

- Inserted a provision in subsection 9(b) withdrawing, subject to valid existing rights, all public lands within bed or banks, or that are within two miles from the bank of the river channel on both sides of the rivers designated for study under ANILCA from all forms of appropriations under the mining laws and operation of the mineral leasing laws during the periods specified in subsection 7(b).<sup>66</sup>
- ANILCA also expanded the withdrawal boundary for federal mining and mineral leasing laws to an area 1/2 mile from the bank on designated rivers classified as wild and located outside of national parks. Refer to Section 15.

### **Legislative History**

Refer to the generic description of the legislative history of this public law in section 15.

The language of this amendment originated in subsection 503(b) of H.R. 39 and was included as subsection 606(b) in P.L. 96-487.

### **Intent**

The House Committee on Interior and Insular Affairs explained that the withdrawal of public lands from mining and mineral leasing laws in an area extending two miles from the banks of the river channel is for the study period only (as governed by subsection 7(b) of the Act). They further stated: “The purpose of the 2-mile withdrawal during the study is to insure only that activities on adjacent lands do not impair suitability of the river during the study period.”<sup>67</sup>

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<sup>66</sup> Section 604 of this public law amended subsection 5(a) of the Act, designating 12 rivers for study (numbers 77, Colville River, to 88, Koyuk River). All studies have been completed.

<sup>67</sup> H.R. Rep. No. 96-97, at 274 (1979).

## **Amendments to Section 11 – Federal Assistance to States and Others**

### ***Public Law 99-590 (October 30, 1986)***

#### **Amendments**

- Struck out the last sentence of subsection 11(a) and replaced subsection 11(b) with subsections 11(b)(1) to 11(b)(4). In the 1968 Act the last sentence of subsection of 11(a) and the entirety of subsection 11(b) allowed the Secretary of the Interior, and the Secretaries of Agriculture, Health, Education and Welfare, respectively, to provide technical assistance and advice to, and cooperate with, states and others to establish wild, scenic and recreational river areas. The new subsection 11(b) significantly expanded as follows.
  - Subsection 11(b)(1) allowed the Secretary of the Interior, Secretary of Agriculture, or the head of any federal agency to assist, advise and cooperate with states and others to plan, protect and manage river resources within or outside a federally administered area and to WSRs and other rivers. Subsection 11(b)(1) also allowed limited financial or other assistance to encourage participation in acquisition, protection and management of river resources through written agreement.
  - Subsection 11(b)(2) allowed the Secretary of the Interior and the Secretary of Agriculture to use volunteer authorities for activities on federally owned lands and Section 6 of the Land and Water Conservation Fund Act of 1965 for activities on all other lands.
  - Subsection 11(b)(3) allowed the respective Secretary or head of any federal agency to utilize and make available federal facilities, equipment, tools and technical assistance to volunteers and volunteer organizations.
  - Subsection 11(b)(4) provided that no permit or other authorization under other federal law shall be conditioned on the existence of any agreement under Section 11.

#### **Legislative History**

Refer to the generic description of the legislative history of this public law in Section 3.

Section 508 of P.L. 99-590 significantly amended Section 11 to expand cooperative management and to provide for the use of volunteers.

## **Intent**

Section 11 was amended “. . . to expand the cooperative authorities of federal agencies with state, local and private entities in the planning, protection and management of river resources.”<sup>68</sup>

Additionally, through this amendment, the Secretaries of the Interior and Agriculture were encouraged to utilize various existing statutes to secure volunteer labor for river projects. The House Committee on Interior and Insular Affairs noted that similar provisions were included in the 1983 amendments to the National Trails System Act (P.L. 98-11).<sup>69</sup>

The Committee also noted that the changes in this section were “not intended to directly impact non-Federal lands within or outside of a federally administered area of a component of the wild and scenic river system or other rivers to which [the] section applies.” The scope of the amendment was intended only to allow federal technical assistance to states, local governments and private entities that seek assistance in managing river resources. The Committee clarified that the amendment imposes no “new Federal management authority on non-Federal lands as defined within this section.”<sup>70</sup>

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<sup>68</sup> H.R. Rep. No. 99-503, at 12 (1986).

<sup>69</sup> H.R. Rep. No. 99-503, at 12 (1986).

<sup>70</sup> H.R. Rep. No. 99-503, at 12 (1986).



## **Amendments to Section 12 – Management Policies**

### ***Public Law 95-625 – National Parks and Recreation Act of 1978 (November 10, 1978)***

#### **Amendments**

- Revised subsection 12(a), expanding the scope from rivers authorized for study under subsection 5(a) to include designated WSRs added to the National System under both subsections 2(a)(ii) and 3(a), and directed the Secretary of the Interior, the Secretary of Agriculture, or the head of any other federal department or agency to take action with respect to its management policies, regulations, contracts and plans as necessary to protect such rivers. Also added a provision allowing the Secretary of the Interior, the Secretary of Agriculture or the head of any other federal department or agency to enter into written cooperative agreements with state and local officials for planning, administration and management of federal lands within the boundary of a state-administered, federally designated WSR.

#### **Legislative History**

Refer to the generic description of the legislative history of this public law in Section 2(a)(ii).

Section 762 of H.R. 12536 (incorporated as Section 762 of PL 95-625) revised subsection 12(a) of the Act to expand the requirement to establish management policies to protect designated rivers added to the National System under both subsections 2(a)(ii) and 3(a).

#### **Intent**

This amendment directed the Secretary of the Interior, or the Secretary of Agriculture, or the head of any other federal department or agency to manage federal lands within a designated or congressionally authorized study river “in a manner consistent with the purposes of the act.” Further, federal agencies are directed, where appropriate, to enter into cooperative agreements with states to “manage Federal lands consistent with approved State river objectives.”<sup>71</sup>

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<sup>71</sup> H.R. Rep. No. 95-1166, at 88 (1978).

House discussions of H.R. 12536 provide some additional insight into the purpose of this amendment. Based on a question from Representative Al Ullman (Oregon),<sup>72</sup> Representative Phillip Burton (California), the principal author of the bill, explained that the intent of this amendment was to “apply the broad protections of the act to all rivers in the National System, including those administered by the states.” Representative Burton further clarified that, “Federal condemnation and use-restriction provisions of section 6 would not apply to state-administered rivers.”<sup>73</sup>

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<sup>72</sup> Concerns about management of 2(a)(ii) rivers were raised initially and repeatedly by Senator Mark O. Hatfield (Oregon). Section 763 of H.R. 12536, in fact, proposed the revision of 6(a) to include “donation *and exchange*” (emphasis added) as originally proposed in P.L. 93-279. This amendment was not implemented until P.L. 99-590 (1986).

<sup>73</sup> 124 Cong. Rec. 18876 (1978).

## **Amendments to Section 14A – Lease of Federal Lands**

### ***Public Law 95-625 – National Parks and Recreation Act of 1978 (November 10, 1978)***

#### **Amendments**

- Added a new provision regarding the lease of federally owned land or interest in land as subsection 14A. The new subsection 14A(a) provided the Secretary responsible for administration of a WSR the discretion to lease land that is within the boundaries of any designated river and which has been acquired by the Secretary under the Act, using restrictive covenants as necessary to protect river values. The new subsection 14A(b) allowed the respective Secretary to first offer such lease to the person who owned the land prior to its acquisition by the United States.

#### **Legislative History**

Refer to the generic description of the legislative history of this public law in Section 2(a)(ii).

Section 764 of H.R. 12536 (incorporated as Section 764 of P.L. 95-625) added subsection 14A to allow the administering Secretary to lease acquired lands with protective covenants.

#### **Intent**

The House Committee on Interior and Insular Affairs explained that this new provision permits the administering Secretary to lease acquired lands with restrictions “for compatible private uses.” Such leased lands are exempt from “the provisions related to 50 percent and 100 acre-per-mile limitations.” The Committee also stated their intent for “the administration to make full use of the authority provided to enter into long-term leases with private individuals so that lands deemed available can be used productively and in consonance with the purpose of the Wild and Scenic Rivers Act.”<sup>74</sup>

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<sup>74</sup> H.R. Rep. No. 95-1165, at 88 (1978).



## **Amendments to Section 15 – Exceptions for Alaska**

### ***Public Law 96-487 – Alaska National Interest Lands Conservation Act (December 2, 1980)***

#### **Amendments**

- Added a new section for rivers designated under the ANILCA and outside national parks, redesignating Sections 15 and 16 as 16 and 17, respectively.
- For rivers numbered 38-50, this amendment:
  - Established a 640-acre boundary, excluding any lands owned by the state or political subdivision, and prohibiting the extension of the boundary around any private lands adjoining the river in such manner as to surround or effectively surround such private lands; and,
  - Provided a withdrawal boundary under federal mining and mineral leasing laws to include the WSR's bed or its banks, and the area 1/2 mile from the bank of any river designated a wild river.

#### **Legislative History**

P.L. 96-487 originated as H.R. 39, commonly known as ANILCA. Its legislative history is long and complex and available through other sources. The “conservation system units” designated in the ANILCA resulted from a provision in the ANCSA, which directed the Secretary of the Interior to withdraw 80 million acres of federal lands for conservation purposes. These lands were then available for consideration by Congress as national parks, forests, wildlife refuges, and WSRs. Through ANILCA, Congress added 25 rivers to the National System, effectively doubling the mileage of rivers in the National System, and designated 12 other rivers for study.

Subsection 606(a) of P.L. 96-487 amended Section 15 of the WSRA. The language of the amendment originated in H.R 39, subsection 503(b).

#### **Intent**

Rivers designated in the ANILCA as numbers 38-50 are located outside national park units, so new mining and mineral leasing was allowable on federal lands, precipitating the need for expanded boundaries and a mining buffer given Alaska landscapes. As there are few roads in Alaska, rivers

also serve as transportation corridors so this provision prevented designation from making existing private lands inaccessible.

The Senate Committee on Energy and Natural Resources stated:

“In administering Wild and Scenic Rivers in Alaska, the Committee expects the appropriate Secretary to carefully consider access needs in terms of the special access authority granted in Title XI of the Committee amendments [authorizing grants of rights of ways to and through conservation units]. Holders of mining claims, for example, may need access up and down proposed wild and scenic rivers or study rivers in connection with various mining activities. Likewise, inholders should not be denied reasonable access to their inholdings as a result of wild and scenic river designation.” S. Rep. No. 413, at 216 (1979).

## **Amendments to Section 16 – Definitions**

### ***Public Law 93-279 (May 10, 1974)***

#### **Amendments**

- Expanded the purpose for which a scenic easement may be acquired in subsection 16(c) from “protecting the scenic view from the river” to “protecting the natural qualities of a designated wild, scenic or recreational river area . . .”.

#### **Legislative History**

Refer to the generic description of the legislative history of this public law in Section 4.

Section (c) of P.L. 93-279 originated in H.R. 4864 as an expansion of the definition of a scenic easement.

#### **Intent**

Through this amendment, Congress expanded the definition of a scenic easement so as not to limit its application to the lands visible from the river, and clarified its application to within the authorized boundaries of a designated component. The House Committee on Interior and Insular Affairs explained that this change was made in recognition that activities beyond the immediate view of the river may have a considerable negative effect on river values.<sup>75</sup>

### ***Public Law 99-590 (October 30, 1986)***

#### **Amendments**

- Added a provision to subsection 16(c), clarifying acquisition of fee title with the reservation of regular existing uses to the owner as a scenic easement and, furthermore, that such an acquisition does not count as fee title ownership for purposes of subsection 6(b) (limitations on fee title condemnation based on amount of federal and state lands within a designated WSR).

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<sup>75</sup> H.R. Rep. No. 93-621, at 3 (1973).

## **Legislative History**

Refer to the generic description of the legislative history of this public law in Section 3.

Section 510 of P.L. 99-590 expanded the definition of a scenic easement to allow use of a reserved-interest deed.

## **Intent**

The House Committee on Interior and Insular Affairs clarified the intent of this amendment “to allow the appropriate Secretary to acquire fee title to a tract of land allowing the landowner to retain in perpetuity all regular existing uses of the land.” The legal interest acquired by the United States would be a scenic easement “and would not constitute fee ownership for the calculation of fee title lands under Section 6(b) [of the Act].” Additionally, the Committee explained that the amendment would allow for the use of reserved-interest deeds, which “should more clearly delineate the interests in land acquired by the government and such interests reserved by the landowner thereby reducing ambiguities for all parties concerned.”<sup>76</sup>

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<sup>76</sup> H.R. Rep. No. 99-503, at 13 (1986).



## **Amendments to Section 17 – Authorization of Appropriations for Land Acquisitions**

### ***Public Law 93-279 (May 10, 1974)***

#### **Amendments**

- Increased the appropriation authorizations for the original eight rivers and provided an expiration date.

#### **Legislative History**

Refer to the generic description of the legislative history of this public law in Section 4.

Section (d) of P.L. 93-279 originated as a proposal by the Administration to increase appropriation authorizations for acquisition of lands and interest in lands on the eight initial components of the National System. The final bill included the requested amount and also an expiration date for this authorization of June 30, 1979, as proposed initially in H. 4864.<sup>77</sup>

#### **Intent**

The increase of appropriation authorizations of \$20,600,000 was based on more accurate projections by the WSR-administering agencies, resulting from five years of experience in the planning and management of the first eight rivers.

### ***Public Law 95-625 – National Parks and Recreation Act of 1978 (November 10, 1978)***

#### **Amendments**

- Increased the appropriation authorization for four of the original eight rivers—Eleven Point, Rogue, St. Croix and Salmon. This law also removed the expiration period added by P.L. 93-279.

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<sup>77</sup> H.R. Rep. No. 93-621, at 1, 4-5 (1973).

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## ***Appendix A: Substantive Amendments to the Act 1968-2013***

This index briefly explains the amendments to the 1968 Act by public law and chronologically.

Public Law 93-279 (May 10, 1974)

- Revised 4(a) – Required all studies to be transmitted to the President and from the President to Congress, regardless of the finding.
- Deleted 5(b) – Moved study period and other direction for first 27 study rivers to 4(a).
- Revised 7(b) – Extended protection period for first 27 study rivers to 10 years and requiring 180-day notification and submission of all reports, consistent with 4(a).
- Revised then 15(c), the former 16(c) – Expanded the purpose for acquiring a scenic easement.
- Revised then 16, the former 17 – Increased authorizations for appropriations for land acquisition for eight rivers designated in the 1968 Act.

Public Law 93-621 (January 3, 1975)

- Added 4(a)(ii) – Gave priority to study rivers with greatest proportion of private land.
- Inserted new 5(b) – Identified study period for 29 new study rivers.
- Revised 7(b)(I) – Allowed specific study period to be substituted.

Public Law 94-486 (October 12, 1976)

- Amended only the last sentence of 4(b) – Eliminated requirement for delay of designation pending close of state's full legislative session.

Public Law 95-87 – Surface Mining Control and Reclamation Act of 1977 (August 3, 1977)

- Prohibited surface coal mining operations on any lands within 3(a) and 5(a) rivers, but independently, i.e., it did not amend the WSRA.

Public Law 95-625 – National Parks and Recreation Act of 1978 (November 10, 1978)

- Amended 2(a)(ii) – Allowed expenditure of federal funds for management of federal lands.
- Revised 3(b) – Allowed date for completion of boundary as specified in amendatory act.
- Revised 6(g)(3) – Allowed for a different date to be specified by law in the definition of an improved property.
- Revised 12(a) – Expanded scope beyond 5(a) to include 2(a)(ii) and 3(a) rivers and allowed for written cooperative federal/state agreements on 2(a)(ii).
- Added 14A – Provided for the lease of federally owned land acquired under the Act with protective covenants.
- Revised 17 – Increased authorizations for appropriations for land acquisition for four of the original eight rivers designated in 1968 Act.

Public Law 96-487 – Alaska National Interest Lands Conservation Act (December 2, 1980)

- Revised 8(b) – Provided a two-mile withdrawal area from disposition under public land laws for ANILCA study rivers.
- Revised 9(b) – Provided a two-mile withdrawal area from operation of mining and mineral leasing laws for ANILCA study rivers.
- Added 15 – Provided direction for rivers designated under the ANILCA and outside national parks (640-acre boundary and 1/2 mile mineral withdrawal area for wild rivers).

Public Law 97-465 – Small Tracts Act (January 12, 1983)

- Prohibited use of this land conveyance authority by the Secretary of Agriculture in designated WSRs, but independently, i.e., did not amend the WSRs.

Public Law 99-590 (October 30, 1986)

- Revised 3(b) – Eliminated “plan for necessary developments.”
- Added 3(c) – Required only publication of notice of availability of boundary map.
- Added 3(d)(1) and (2) – Required a CRMP and specifying its contents.
- Added 4(d) – Identified the general area of 5(a) study rivers and interim boundary for 3(a) WSRs.
- Added second paragraph to 6(a) (6(a)(2)) – Allowed purchase of entire tract (area within/ outside boundary).
- Inserted provision in 6(a)(1) – Allowed acquisition of state land by exchange.
- Revised 6(b) – Clarified the 50 percent condemnation rule to apply to fee area outside the ordinary high water mark.
- Added 7(b)(ii) – Extended the study period until the date report actually submitted.
- Added second sentence to 8(a) – Allowed disposal of public land through exchange (6(d)) and use of lease provision in 14(A)(a).
- Replaced 11(b) with 11(b)(1) to 11(b)(4) – Significantly expanded federal assistance.
- Added provision to 16(c) – Clarified acquisition of fee title with reservation of regular existing uses to the owner as a scenic easement.

Public Law 100-534 – West Virginia National Interest River Conservation Act of 1987 (October 26, 1988)

- Added to subsection 3(b) to correct the 320 acres/river mile acreage limitation that was inadvertently deleted in P.L. 99-590.

Public Law 100-557 – Omnibus Oregon Wild and Scenic Rivers Act of 1988 (October 28, 1988)

- Added 5(d)(2) – Directed the study of the Upper Klamath River without invoking protective provisions if authorized by Congress under 5(a).

## ***Appendix B: Citations of Bills of the House and Senate***

Citations presented in association with respective amendatory act.

Public Law 93-279 (May 10, 1974)

- S. 921, 93rd Cong. (1973). Introduced February 20, 1973.
- H.R. 4864, 93rd Cong. (1973). Introduced February 27, 1973.
- H.R. 9492, 93rd Cong. (1973). Introduced July 23, 1973.

Public Law 93-621 (January 3, 1975)

- S. 3022, 93rd Cong. (1974). Introduced February 19, 1974.
- S. 3708, 93rd Cong. (1974). Introduced June 27, 1974.

Public Law 94-486 (October 12, 1976)

- H.R. 15422, 94th Cong. (1976). Introduced September 2, 1976.

Public Law 95-625 – National Parks and Recreation Act of 1978 (November 10, 1978)

- S. 971, 95th Cong. (1977). Introduced February 24, 1977.
- H.R. 12536, 95th Cong. (1978). Introduced May 3, 1978.

Public Law 96-487 – Alaska National Interest Lands Conservation Act (December 2, 1980)

- H.R. 39, 96th Cong. (1979). Introduced January 15, 1979.

Public Law 99-590 (October 30, 1986) – Commonly referred to as the ‘86 generic amendments.

- H.R. 4350, 99th Cong. (1986). Introduced March 6, 1986.
- H.R. 3934, 99th Cong. (1986).
- S. 2466, 99th Cong. (1986). Introduced May 20, 1986.

Public Law 100-534 – West Virginia National Interest River Conservation Act of 1987 (October 26, 1988)

- H.R. 900, 100th Cong. (1987). Introduced January 29, 1987.
- S. 1720, 100th Cong. (1987). Introduced September 25, 1987.

Public Law 100-557 – Omnibus Oregon Wild and Scenic Rivers Act of 1988 (October 28, 1988)

- S. 2148, 100th Cong. (1988). Introduced March 4, 1988.
- H.R. 4164, 100th Cong. (1988). Introduced March 16, 1988.

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