

DEPARTMENT-LEVEL AND GOVERNMENT-WIDE AUTHORITIES

While the bulk of the authorities that allow Department of the Interior (DOI) bureaus to work with outside parties and engage in partnerships in accomplishing their missions are delegated to the bureau level, a small number are Departmental-level authorities. These authorities require a delegation of authority from the Secretary to be available for use by a specific DOI bureau.

The Solicitor's Office can help the DOI bureaus determine the most appropriate ways of using these authorities to accomplish their partnership goals. Consultation with the Solicitor's Office early in the initial partnership planning and discussion stages will help facilitate effective and legally supportable achievement of these goals.

A. Department Organization and Delegation of Functions. (Reorganization Plan No. 3 of 1950, 5 U.S.C. App. 1). Reorganization Plan Number 3 of 1950 vests the Secretary of the Interior with all the authorities involving the various components of the Department. This authority allows the Secretary to designate subordinate officials to perform the functions of the Secretary. Because many of the authorities of the Secretary are not limited by their text to a single bureau (though they may have been delegated to such bureau), the Secretary could redelegate such authorities to other officials to support partnership goals. This authority is only used sparingly and, in any event, delegations under the Reorganization Plan must occur at the Department's most senior levels, through either Secretary's Order or the Departmental Manual.

The following are authorities that potentially may be utilized by DOI bureaus provided they either have or receive a proper delegation of authority.

- 1. Partnerships for Fish and Wildlife Purposes (16 U.S.C. 661 *et seq.*):** The Fish and Wildlife Coordination Act provides authority for the Secretary to enter into agreements with Federal and State agencies, as well as public and private organizations, to assist in the protection of fish and wildlife and their habitats. This broad authority includes provisions for the Secretary to receive donations of lands and funds, as well as to enter into grants and cooperative agreements for the benefit of fish and wildlife species and their habitat.
- [1a]. Fish and Wildlife Resources Related Activities (16 U.S.C. § 661 *et seq.*):** The Fish and Wildlife Coordination Act authorizes the Secretary to prepare plans to protect wildlife resources, to conduct surveys on public lands, and to accept funds or lands for related purposes; authorizes the investigation and reporting of proposed Federal actions that affect the development, protection, rearing, and stocking of all species of wildlife and their habitat in controlling losses, minimizing damages, and providing recommendations to minimize impacts on fish and wildlife resources.
- 2. Partnerships to Benefit Fish and Wildlife Resources (16 U.S.C. 742a *et seq.*):** The Fish and Wildlife Act of 1956 grants the Secretary broad authority to, "take such steps as may be required for the development, advancement, management, conservation, and protection of fish and wildlife resources. ..." The statute specifically authorizes the acceptance of gifts and the service of volunteers for programs and projects that benefit the mission of the U.S. Fish and Wildlife Service. Further, the act specifically authorizes the Secretary to

enter into cooperative agreements for programs and projects to benefit specific units of the National Wildlife Refuge System.

- [2a] **Fish and Wildlife Resources Cooperative Agreements (16 U.S.C. § 753a):** The Fish and Wildlife Improvement Act of 1978, as amended by Pub. L. No. 95-615, authorizes the Secretary of the Interior to enter into cooperative agreements with colleges and universities, State fish and game agencies, and nonprofit organizations for the purpose of developing adequate, coordinated, cooperative research and training programs for fish and wildlife resources.
3. **Partnerships Involving Fish and Wildlife Resources on Military Reservations (16 U.S.C. 670a et seq.):** The Sikes Act provides for cooperation by the Departments of the Interior and Defense, along with State agencies, in the planning, development and maintenance of fish and wildlife resources on military reservations throughout the United States.
 4. **Tax Deductions for Conservation Easements (26 U.S.C. 170):** The U.S. Tax Code allows taxpayers to take a deduction for a “qualified property interest” contributed to a charitable organization (including DOI land managing bureaus), exclusively for conservation purposes protected in perpetuity. [26 U.S.C. 170 is not a DOI or bureau specific authority *per se*; rather it authorizes a tax deduction by the donor provided that DOI or a bureau agrees to accept a property donation.]
 5. **Cooperation on Federal Energy Regulatory Commission (FERC) Licensed Projects (16 U.S.C. 661 et seq.):** Pursuant to the Fish and Wildlife Coordination Act, the Secretary is authorized to cooperate with project licensees, other federal agencies, state agencies and non-governmental organizations in carrying out the purposes of the Act. Certain provisions of the Federal Power Act, 16 U.S.C. 791 et seq., authorize the Secretary, as part of a licensing proceeding, to request or mandate that FERC include such cooperative efforts in a project license.
 6. **Partnerships Involving Anadromous Fish (16 U.S.C. 757a. et seq.):** The Anadromous Fish Conservation Act authorizes the Secretary to enter into cooperative agreements with States and other non-federal interests for the conservation, development and enhancement of anadromous fish.
 7. **Partnerships with States to Preserve Coastal Barriers (16 U.S.C. 3501 et seq.):** The Coastal Barrier Resources Act provides a consultative role for States in the designation of coastal areas to be enrolled in a program prohibiting federal permits from being issued for the development of such lands.
 8. **Agreements with Non-Federal Public Entities to Provide for Recreation and Fish and Wildlife Enhancement Facilities at Federally Sponsored Water Projects (16 U.S.C. § 460I-12):** This Act encourages agreements with non-federal parties to administer lands and waters associate with federal water projects for recreation or fish and wildlife enhancement purposes. The Act also provides for project modifications to promote recreation and fish and wildlife enhancements, and for cost sharing with non-federal parties.

9. **Agreements for the Acquisition, Protection, and Management of River Resources Both Within and Outside Federally Administered Areas (16 U.S.C. § 1282(b)):** This law provides that the Secretary shall assist States and their political subdivisions, land owners and private organizations, or individuals to plan, protect, and manage river resources. Such assistance, advice, and cooperation may be through written agreements or otherwise. This authority applies within or outside a federally administered area and applies to rivers which are components of the National Wild and Scenic River System and to other rivers. Any agreement under this subsection of the act may include provisions for limited financial assistance to encourage participation in the acquisition, protection, and management of river resources. Also, the Secretary may make available Federal facilities, equipment, tools, and technical assistance to volunteers and volunteer organizations.
10. **Cooperative Authority to Restore and Enhance Watersheds (16 U.S.C. § 1011(a)):** The Wyden Amendment authorizes the Secretary of the Interior to use "appropriations made for the Bureau of Land Management" to enter into and implement cooperative agreements with public and private entities to restore and enhance watersheds, including those outside public lands if appropriate criteria are met. 16 U.S.C.A. § 1011(a), as modified by the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Pub. L. No.105-277, Div. A, Title I, § 136, 112 Stat. 2681-266 (Oct. 7, 1998). For information regarding the broader application of this authority to other agencies, see the notes at 16 U.S.C.A. § 1011.
- [10a] **Exploration Program for the Discovery of Minerals (30 U.S.C. § 642):** This act authorizes the Secretary to enter into contracts with individuals, partnerships, corporations, or other legal entities for the discovery of additional domestic mineral reserves.
- [10b] **Marine Minerals Research Cooperative Agreements and Grants (30 U.S.C. § 1901 to §1905):** The Marine Minerals Resources Research Act authorizes the Secretary to enter into cooperative agreements and grants to promote research and exploration of marine minerals.
- [10c] **Interagency Coordination Agreements on Climate-Related Activities (15 U.S.C. §§ 2901 to 2908):** The National Climate Program Act of 1978 established a national climate program to assist the Nation and the world in understanding and responding to natural and human-induced climate processes and their known and potential effects. The Department of the Interior has a mandated role in this program which is run primarily through the U.S. Commerce Department.
- [10d] **Global Change Research Activities and Agreements (15 U.S.C. §§ 2921-2953, Pub. L. No. 101-606):** The Global Change Research Act of 1990 established the United States Global Change Research Program aimed at understanding and responding to global change, including the cumulative effects of human activities and natural processes on the environment, to promote discussions toward international protocols in global change research, and for other purposes. The Interior Department has responsibilities under this Act.

- [10e] Agreements Regarding the Landsat Program (15 U.S.C. § 5652):** The Land Remote Sensing Policy Act of 1992 assigns responsibility for the "National Satellite Land Remote Sensing Data Archive" to the Department of the Interior. The Act also authorizes and encourages the Department of the Interior and other Federal agencies to carry out research and development programs in applications of these data.
- [10f] Agreements Regarding the Landsat Program (15 U.S.C. § 5652):** The Land Remote Sensing Policy Act of 1992 assigns responsibility for the "National Satellite Land Remote Sensing Data Archive" to the Department of the Interior. The Act also authorizes and encourages the Department of the Interior and other Federal agencies to carry out research and development programs in applications of these data.
- [10g] Outdoor Recreation Authority (16 U.S.C. § 460f):** The Outdoor Recreation Act of June 23, 1963, authorizes the Secretary of the Interior to sponsor, engage in, and assist in research relating to outdoor recreation, directly or by contract or cooperative agreements and make payments for such purposes; undertake studies and assemble information concerning outdoor recreation; and cooperate with educational institutions and others in order to assist in establishing education programs and activities and to encourage public use and benefits from outdoor recreation.
- [10h] Agreements to Implement the Convention on Great Lakes Fisheries between the United States and Canada (16 U.S.C. §§ 931-939):** The Great Lakes Fishery Act of 1956 implements the Convention on Great Lakes Fisheries between the United States and Canada; authorizes construction, operation and maintenance of sea lamprey control works; and established the Great Lakes Fisheries Commission.
- [10i] Agreements and Assistance for Research and Development of Aquaculture (16 U.S.C. §§ 2801-2810):** The National Aquaculture Act of 1980 directs the Secretary of the Interior to participate in the development of a National Aquaculture Development Plan and authorizes research, development, and other activities to encourage the development of aquaculture in the United States.
- [10j] Water Resources Research Grants (42 U.S.C. § 10301):** The Water Resources Research Act of 1984, as amended, provides for water resources research, information transfer, and student training that will assist the Nation and the States in augmenting their science and technology to discover practical solutions to water shortage and quality deterioration problems. This Act authorizes the Secretary to make grants to water resources research and technology institutes at colleges or universities designated by States.
- [10k] Authority to Enter Into Cooperative Agreements Promoting the National Underground Railroad Network to Freedom (16 U.S.C. § 469I-1(c)):** To ensure effective coordination between Federal and non-federal elements of the underground railroad network the Secretary may enter into cooperative agreements and memoranda of understanding with, and provide technical assistance to (1) the heads of other Federal agencies, States, localities, regional governmental bodies, and private entities; and (2)

in cooperation with the Secretary of State, the governments of Canada, Mexico, and any appropriate country in the Caribbean.

- 11. Funding of Research Agreements (43 U.S.C. §1471f):** This law provides authority for the Department to use its own appropriations and any received from other Federal agencies to incrementally fund research projects that may last more than one fiscal year, using work orders under cooperative agreements with colleges and universities, State agencies, and non-profit organizations.
- 12. Acceptance of Contributions to Prosecute Cooperative Projects (43 U.S.C. §1473a, Pub. L. No. 102-154):** This law provides authority for the Secretary to accept land, buildings, equipment and other contributions and fees, and to use them to prosecute projects in cooperation with other federal, State, or private agencies.
- 13. Payment of Costs Incidental to Services Contributed by Volunteers (43 U.S.C. § 1473c):** This law provides authority for the Secretary to pay costs incidental to the utilization of services contributed by individual volunteers in aid of Departmental work. This authority may be utilized only by DOI bureaus and agencies which have clear statutory authority to accept the services of volunteers.
- 14. Acceptance of Donations for Indian Advancement (25 U.S.C. 451):** This law allows the Secretary to accept donations of funds or other property for Indian advancement and to use the donations in accordance with their terms.
- 15. Protection of Indian Forest Resources (25 U.S.C. 3101 *et seq.*):** The National Indian Forest Resources Management Act contains provisions that allow the Federal government and tribal governments to exercise concurrent jurisdiction over forest trespass matters (25 U.S.C. 3106(c)), provide for Secretarial compliance with tribal laws pertaining to Indian forest lands (including laws regulating the environment or historic or cultural preservation) (25 U.S.C. 3108), and authorize cooperative agreements between the Department of the Interior and Indian tribes for certain purposes, including cooperative manpower and job training and development programs, and development and publication of cooperative environmental education materials (25 U.S.C. 3115).
- 16. Protection of Indian Agricultural Resources (25 U.S.C. 3701 *et seq.*):** The American Indian Agricultural Resource Management Act contains provisions that allow the Federal government and tribal governments to exercise concurrent jurisdiction over trespass to agricultural lands (25 U.S.C. 3713(c)), and authorize cooperative agreements between the Department of the Interior and Indian tribes for certain purposes, including cooperative manpower and job training, the development and publication of cooperative education and resource planning materials, the improvement of land and facilities, and natural resource management and development (25 U.S.C. 3733).
- 17. Marine Mammal Cooperative Agreements (16 U.S.C. § 1388):** This law authorizes the Secretary to enter into cooperative agreements with Alaska

Native organizations to conserve marine mammals and provide for co-management of subsistence uses by Alaska Natives.

18. **Alaska National Interest Lands Conservation Act (ANILCA) (Pub. L. 96-487, 94 Stat. 2371, Dec. 2, 1980, as amended):**
- a. **ANILCA § 304(f):** This section authorizes the Secretary to enter into cooperative management agreements with any Native Corporation, the State, any political subdivision of the State or any other person owning or occupying land which is located within or adjacent or near to any national wildlife refuge in Alaska.
 - b. **ANILCA § 605(e):** This section authorizes the Secretary to seek cooperative agreements with the owners of non-public lands adjoining the wild and scenic rivers in Alaska to ensure that the purpose of designation is served.
 - c. **ANILCA § 809 (16 U.S.C. § 3119):** This section authorizes the Secretary to enter into cooperative agreements with other Federal agencies, the State, Native Corporations, other appropriate persons and organizations to effectuate the purposes and policies of subsistence management and use of public lands in Alaska.
 - d. **ANILCA § 903(b) (43 U.S.C. 1601 note):** This section authorizes the Secretary to acquire certain types of easements in lands conveyed under ANILCA or the Alaska Native Claims Settlement Act (ANCSA) P. L. 92-203, 85 Stat. 688, Dec. 18, 1971, including by exchange. See also, ANSCA § 22f regarding exchange authority.
 - e. **ANILCA § 907 (43 U.S.C. 1636):** This section established the Alaska Land Bank Program. It authorizes agreements with private landowners and authorizes the Secretary to provide technical and other assistance with respect to fire control, trespass, planning, Fish and wildlife management and more. See also, 43 U.S.C. 1613; 1601 note; and 1620.
 - f. **ANILCA § 1010 (16 U.S.C. §3150):** This section requires the Secretary of the Interior to assess the oil, gas, and other mineral potential of the public lands in Alaska. The Secretary is authorized to consult with and exchange information with Alaska and to contract with public or private entities.
 - g. **ANILCA § 1203 (16 U.S.C. 3183):** This section provides for a comprehensive cooperative management plan agreed to by the State for the Bristol Bay Cooperative Region for several purposes including providing for land exchanges.
 - h. **ANILCA § 1302 (16 U.S.C. § 3192):** This section authorizes the Secretary to acquire by donation, exchange, purchase or otherwise lands within the boundaries of a conservation system unit other than National Forest Wilderness; and to acquire by donation or exchange lands which are contiguous to any conservation system unit

established or expanded by ANILCA that are owned or validly selected by the State.

- i. ANILCA 1306(b) (16 U.S.C. § 3196(b)):** This section authorizes the Secretary to lease or acquire by donation, exchange, purchase, or any other method (except condemnation) real property, office space, housing, and other necessary facilities for administrative sites and visitor facilities in Alaska.
 - j. ANILCA § 1318 (16 U.S.C. § 3206):** This section authorizes the Secretary to provide advice, assistance and technical expertise to Alaska Native corporations and groups in the preservation, display and interpretation of cultural and archeological resources, including assistance in the design and operation of buildings, facilities and interpretive displays for the public, and training for individuals in the identification, recovery, preservation, demonstration and management of cultural resources.
- 19. Department of the Interior Appropriations Act for FY 2004 (section 323):** Employees of the foundations established by Acts of Congress to solicit private sector funds on behalf of Federal land management agencies shall, in fiscal year 2005, qualify for General Service Administration contract airfares.
- 20. Stewardship of Federal, State and Local Lands (16 U.S.C. §§ 4601-4608 – “Take Pride in America ”):** The Take Pride in America (TPIA) Program statute provides the Department with very broad authority to establish and maintain a public awareness campaign in cooperation with public and private organizations and individuals, in order to instill in the public the importance of the appropriate use of, and appreciation for, Federal, State, and local lands, facilities, and natural and cultural resources; to promote an attitude of stewardship toward them; and to promote participation in caring for them. This statute also provides the Secretary the authority to accept volunteer services; to solicit, accept, hold, and use donations of money and personal property; to distribute pamphlets and other appropriate items to promote TPIA; and to enter into contracts and cooperative agreements, as well as to do any lawful acts necessary to further the TPIA purposes. The TPIA Program office should be contacted with any questions as to the appropriate use of the authority provided in the TPIA statute.
- 21. Problem Solving through Cooperation and Consensus (Office of Collaborative Action and Dispute Resolution):** The Department’s Office of Collaborative Action and Dispute Resolution, working with the Interior Dispute Resolution Council, promotes the appropriate and effective use of alternative dispute resolution processes, and collaborative, consensual approaches to problem-solving and decision-making, to prevent, manage and resolve conflicts in the Department’s work. Though not technically an authority, this Office may be a useful resource to help employees develop partnerships as a means to resolves disputes (or potential disputes) involving the activities of the Department.
- B. Government-wide Authorities:** The following statutory authorities have broad application and are considered government-wide authorities. That is, the

scope of these authorities both includes and extends beyond the Department of the Interior.

1. **Agency Requests for Goods or Services to be Provided by Another Federal Agency (31 U.S.C. § 1535A – Economy Act; See also, Federal Acquisition Regulation 48 CFR 17.5):** The head of an agency or major organizational unit within an agency may place an order with a major organizational unit within the same agency or another agency for goods or services under certain conditions. Such orders are made on a reimbursable basis. This authority may be particularly helpful when an Interior agency is partnering with both federal and non-federal parties to achieve a common goal.
 2. **Agreements to Provide Specialized or Technical Assistance on a Reimbursable Basis to Requesting State or Local Governments (31 U.S.C. § 6505 – Intergovernmental Cooperation Act):** The President may prescribe statistical and other studies and compilations, development projects, technical tests and evaluations, technical information, training activities, surveys, reports, documents, and other similar services that an executive agency is especially competent and authorized by law to provide. The head of an executive agency may provide services prescribed by the President under this section to a State or local government on a reimbursable basis when a written request is made by the State or local government. This authority may be particularly helpful where an Interior agency is partnering with both federal and non-federal parties to achieve a common goal.
 3. **Authority to Determine Whether a Transaction or Partnership Involves a Procurement or Federal Assistance (The Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 6301-6308.Pub. L. No.95-224):** This law does not provide agencies the authority to enter into partnerships *per se*, regardless of whether the relationship is contractual or federal assistance-related. Under this law, however, Congress outlined the distinctions among procurement contracts, grants, and cooperative agreements and directed agencies to utilize the appropriate instrument depending upon the nature of the transaction or circumstances involved.
- C. Authorities for Federal Agencies with Specific Responsibilities:** The following authorities are broad authorities for the federal government; however their application is limited to the types of agencies that are entrusted with specific responsibilities.
1. **Partnerships Involving Restoration by Natural Resource Trustees (42 U.S.C. 9601 et seq.; 33 U.S.C. 2701 et seq.):** The Comprehensive Environmental Response, Compensation and Liability Act and the Oil Pollution Act provide authority for federal, state and tribal natural resource trustees to work together to identify and quantify injuries resulting from the release of hazardous waste or oil spills. Trustees then determine the appropriate restoration measures to restore injured resources and are authorized to recover the costs associated with the restoration of injured resources from responsible parties. Funds recovered from responsible parties may be used without further appropriation to restore, replace or acquire the equivalent of injured resources. Trustees may enter into agreements with other entities to

assist in implementing all or parts of natural resource restoration plans under the direction of the natural resource trustees.

2. **Mutual Aid and Support Agreements for Fire Protection (42 U.S.C. § 1856):** The head of any agency with the duty of providing fire protection to property of the United States is authorized to sign cooperative agreements with any nearby fire protection agencies for mutual aid and support.
3. **Cooperative Research and Development Agreement (CRADA) (15 U.S.C. §3710a):** Created as a result of the Stevenson-Wydler Technology Innovation Act of 1980, as amended by the Federal Technology Transfer Act of 1986, a CRADA allows the Federal government, through its laboratories, to provide personnel, services, facilities, equipment, intellectual property or other resources with or without reimbursement to non-Federal parties (but no funds to non-Federal parties) and the non-Federal parties to provide similar resources toward the conduct of specific research or development efforts consistent with the missions of the labs.
4. **Work on Federally-owned Highways (Act of August 27, 1958; 23 U.S.C. 308(a); Pub. L. No. 90-577):** This Act authorizes the Federal Highway Administration to perform by contract or otherwise, authorized engineering or other services in connection with the survey, construction, maintenance, or improvement of highways on behalf of other government agencies.
5. **National Environmental Policy Act:** For an in-depth discussion of the partnership aspects of this law, please see . . . , above.

Authority to Vest Title in Tangible Personal Property for Research (31 U.S.C. § 6306): This Act authorizes federal agencies to vest title to personal property acquired with funds provided under contracts, grant agreements, and cooperative agreements in a nonprofit institution of higher education or in a nonprofit organization whose primary purpose is conducting scientific research.

Intergovernmental Cooperation in the Conduct of Specialized or Technical Services (Pub. L. No. 90-577; 82 Stat. 1102): The Intergovernmental Cooperation Act of 1968 encourages intergovernmental cooperation in the conduct of specialized or technical services and provisions of facilities essential to the administration of State or local governmental activities and authorizes Federal agencies to provide reimbursable specialized and technical services to State and local governments.

Collection, Evaluation and Analysis of Information Concerning Mineral Occurrence, Production, and Use (30 U.S.C. §§ 1601-1604): These provisions require the President to coordinate departments' and agencies' promotion of cooperative research and development programs with other nations for the equitable and frugal use of materials and energy; promotion and encouragement of private enterprise in the development of economically sound and stable domestic materials industries; and facilitation of the availability and development of domestic resources to meet critical materials needs.

Earthquake Hazards Reduction (42 U.S.C. §7701, Pub. L. No.101-614): The Earthquake Hazards Reduction Act of 1977 sets as a national goal the reduction in

the risks of life and property from future earth quakes in the United States through the establishment and maintenance of a balanced earthquake program encompassing prediction and hazard assessment research, seismic monitoring and information dissemination. The Act authorizes USGS to work with State and local governments and to participate in international cooperation.