

Floodway System, Louisiana, authorized by Public Law 99-88, and the project for Mississippi Delta Region, Louisiana, authorized by the Flood Control Act of 1965, shall be considered to provide benefits that are national for purposes of this section.

**(g) Fish and Wildlife Coordination Act supplementation**

The provisions of subsections (a), (b), and (d) of this section shall be deemed to supplement the responsibility and authority of the Secretary pursuant to the Fish and Wildlife Coordination Act [16 U.S.C. 661 et seq.], and nothing in this section is intended to affect that Act.

(Pub. L. 99-662, title IX, § 906, Nov. 17, 1986, 100 Stat. 4186; Pub. L. 102-580, title III, § 333(a), Oct. 31, 1992, 106 Stat. 4852; Pub. L. 106-53, title II, § 221, Aug. 17, 1999, 113 Stat. 295; Pub. L. 106-541, title II, § 224(a), Dec. 11, 2000, 114 Stat. 2597; Pub. L. 110-114, title II, § 2036(a), Nov. 8, 2007, 121 Stat. 1092.)

REFERENCES IN TEXT

The Endangered Species Act, as amended, referred to in subsec. (e)(2), probably means the Endangered Species Act of 1973, Pub. L. 93-205, Dec. 28, 1973, 87 Stat. 884, as amended, which is classified generally to chapter 35 (§1531 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of Title 16 and Tables.

Public Law 99-88, referred to in subsec. (f), is Pub. L. 99-88, Aug. 15, 1985, 99 Stat. 293, known as the Supplemental Appropriations Act, 1985. Provisions of Pub. L. 99-88 authorizing the project for the Atchafalaya Floodway System, Louisiana, are not classified to the Code. For complete classification of this Act to the Code, see Tables.

The Flood Control Act of 1965, referred to in subsec. (f), is title II of Pub. L. 89-298, Oct. 27, 1965, 79 Stat. 1073. Provisions of that Act authorizing the project for Mississippi Delta Region, Louisiana, are not classified to the Code. For complete classification of this Act to the Code, see Tables.

The Fish and Wildlife Coordination Act referred to in subsec. (g), is act Mar. 10, 1934, ch. 55, 48 Stat. 401, as amended, which is classified generally to sections 661 to 666c of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 16 and Tables.

AMENDMENTS

2007—Subsec. (d)(1). Pub. L. 110-114, § 2036(a)(1), (2), substituted “to Congress in any report, and shall not select a project alternative in any report,” for “to the Congress” and inserted “, and other habitat types are mitigated to not less than in-kind conditions” after “mitigated in-kind”.

Subsec. (d)(3) to (5). Pub. L. 110-114, § 2036(a)(3), added pars. (3) to (5).

2000—Subsec. (d). Pub. L. 106-541 inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, realigned margins, substituted “November 17, 1986” for “the date of enactment of this Act”, redesignated former cls. (1) and (2) as (A) and (B), respectively, and added par. (2).

1999—Subsec. (e). Pub. L. 106-53 inserted after second sentence “Not more than 80 percent of the non-Federal share of such first costs may be satisfied through in-kind contributions, including facilities, supplies, and services that are necessary to carry out the enhancement project.”

1992—Subsec. (c). Pub. L. 102-580 inserted “, including lands, easements, rights-of-way, and relocations,” before “for implementation and operation”.

CONCURRENT MITIGATION

Pub. L. 106-541, title II, § 224(b), Dec. 11, 2000, 114 Stat. 2598, provided that:

“(1) INVESTIGATION.—

“(A) IN GENERAL.—The Comptroller General shall conduct an investigation of the effectiveness of the concurrent mitigation requirements of section 906 of the Water Resources Development Act of 1986 (33 U.S.C. 2283). In carrying out the investigation, the Comptroller General shall determine—

“(i) whether or not there are instances in which less than 50 percent of required mitigation is completed before initiation of project construction and the number of such instances; and

“(ii) the extent to which mitigation projects restore natural hydrologic conditions, restore native vegetation, and otherwise support native fish and wildlife species.

“(B) SPECIAL RULE.—In carrying out subparagraph (A)(ii), the Comptroller General shall—

“(i) establish a panel of independent scientists, comprised of individuals with expertise and experience in applicable scientific disciplines, to assist the Comptroller General; and

“(ii) assess methods used by the Corps of Engineers to monitor and evaluate mitigation projects, and compare Corps of Engineers mitigation project design, construction, monitoring, and evaluation practices with those used in other publicly and privately financed mitigation projects.

“(2) REPORT.—Not later than 1 year after the date of enactment of this Act [Dec. 11, 2000], the Comptroller General shall transmit to Congress a report on the results of the investigation.”

**§ 2283a. Status report**

**(1) In general**

Concurrent with the President’s submission to Congress of the President’s request for appropriations for the Civil Works Program for a fiscal year, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the status of construction of projects that require mitigation under section 2283 of this title, the status of such mitigation, and the results of the consultation under subsection (d)(4)(B) of such section.

**(2) Projects included**

The status report shall include the status of—

(A) all projects that are under construction as of the date of the report;

(B) all projects for which the President requests funding for the next fiscal year; and

(C) all projects that have undergone or completed construction, but have not completed the mitigation required under section 2283 of this title.

**(3) Availability of information**

The Secretary shall make information contained in the status report available to the public, including on the Internet.

(Pub. L. 110-114, title II, § 2036(b), Nov. 8, 2007, 121 Stat. 1094.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2007, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 110-114, set out as a note under section 2201 of this title.

**§ 2284. Benefits and costs attributable to environmental measures**

In the evaluation by the Secretary of benefits and costs of a water resources project, the benefits attributable to measures included in a project for the purpose of environmental quality, including improvement of the environment and fish and wildlife enhancement, shall be deemed to be at least equal to the costs of such measures.

(Pub. L. 99-662, title IX, §907, Nov. 17, 1986, 100 Stat. 4188.)

**§ 2284a. Benefits to navigation**

In evaluating potential improvements to navigation and the maintenance of navigation projects, the Secretary shall consider, and include for purposes of project justification, economic benefits generated by cruise ships as commercial navigation benefits.

(Pub. L. 104-303, title II, §230, Oct. 12, 1996, 110 Stat. 3704.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1996, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 104-303, set out as a note under section 2201 of this title.

**§ 2284b. Scenic and aesthetic considerations**

In conducting studies of potential water resources projects, the Secretary shall consider measures to preserve and enhance scenic and aesthetic qualities in the vicinity of such projects.

(Pub. L. 104-303, title II, §232, Oct. 12, 1996, 110 Stat. 3704.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1996, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 104-303, set out as a note under section 2201 of this title.

**§ 2285. Environmental Protection and Mitigation Fund**

There is established an Environmental Protection and Mitigation Fund. There is authorized to be appropriated to such fund \$35,000,000 for fiscal years beginning after September 30, 1986. Amounts in the fund<sup>1</sup> shall be available for undertaking, in advance of construction of any water resources project authorized to be constructed by the Secretary, such measures authorized as part of such project, including the acquisition of lands and interests therein, as may be necessary to ensure that project-induced losses to fish and wildlife production and habi-

<sup>1</sup> So in original. Probably should be capitalized.

tat will be mitigated. The Secretary shall reimburse the Fund for any amounts expended under this section for a water resources project from the first appropriations made for construction, including planning and designing, of such project.

(Pub. L. 99-662, title IX, §908, Nov. 17, 1986, 100 Stat. 4188.)

**§ 2286. Acceptance of certain funds for mitigation**

The Secretary is authorized to accept funds from any entity, public or private, in accordance with the Pacific Northwest Electric Power Planning and Conservation Act [16 U.S.C. 839 et seq.] to be used to protect, mitigate, and enhance fish and wildlife in connection with projects constructed or operated by the Secretary. The Secretary may accept and use funds for such purposes without regard to any limitation established under any other provision of law or rule of law.

(Pub. L. 99-662, title XI, §1146, Nov. 17, 1986, 100 Stat. 4253.)

REFERENCES IN TEXT

The Pacific Northwest Electric Power Planning and Conservation Act, referred to in text, is Pub. L. 96-501, Dec. 5, 1980, 94 Stat. 2697, which is classified principally to chapter 12H (§839 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 839 of Title 16 and Tables.

**§ 2287. Continued planning and investigations**

**(a) Pre-authorization planning and engineering**

After the Chief of Engineers transmits his recommendations for a water resources development project to the Secretary for transmittal to the Congress, as authorized in section 701-1 of this title, and before authorization for construction of such project, the Chief of Engineers is authorized to undertake continued planning and engineering (other than preparation of plans and specifications) for such project if the Chief of Engineers finds that the project is without substantial controversy and justifies further engineering, economic, and environmental investigations and the Chief of Engineers transmits to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a statement of such findings. In the one-year period after authorization for construction of such project, the Chief of Engineers is authorized to undertake planning, engineering, and design for such project.

**(b) Omitted**

**(c) Authorizations as additions to other authorizations**

The authorization made by this section shall be in addition to any other authorizations for planning, engineering, and design of water resources development projects and shall not be construed as a limitation on any other such authorization.

(Pub. L. 99-662, title IX, §910, Nov. 17, 1986, 100 Stat. 4189.)