

## § 2805. Authorization of appropriations

### (a) NOAA authorization

For development and implementation of programs under this chapter, including financial assistance to non-Federal agencies and institutions to support implementation of intensive monitoring programs under section 2803(d) of this title, there is authorized to be appropriated to the Under Secretary amounts not to exceed \$5,000,000 for fiscal year 1993, \$8,000,000 for fiscal year 1994, \$10,000,000 for fiscal year 1995, and \$12,000,000 for fiscal year 1996.

### (b) EPA authorization

For development and implementation of programs under this chapter, including financial assistance to non-Federal agencies and institutions to support implementation of intensive monitoring programs under section 2803(d) of this title, there is authorized to be appropriated to the Administrator amounts not to exceed \$5,000,000 for fiscal year 1993, \$8,000,000 for fiscal year 1994, and \$10,000,000 for fiscal year 1995, and \$12,000,000 for fiscal year 1996.

(Pub. L. 92-532, title V, §505, as added Pub. L. 102-567, title V, §501, Oct. 29, 1992, 106 Stat. 4299.)

## CHAPTER 42—ESTUARY RESTORATION

Sec.	
2901.	Purposes.
2902.	Definitions.
2903.	Estuary habitat restoration program.
2904.	Establishment of Estuary Habitat Restoration Council.
2905.	Estuary habitat restoration strategy.
2906.	Monitoring of estuary habitat restoration projects.
2907.	Reporting.
2908.	Funding.
2909.	General provisions.

### § 2901. Purposes

The purposes of this chapter are—

(1) to promote the restoration of estuary habitat by implementing a coordinated Federal approach to estuary habitat restoration activities, including the use of common monitoring standards and a common system for tracking restoration acreage;

(2) to develop and implement a national estuary habitat restoration strategy for creating and maintaining effective estuary habitat restoration partnerships among public agencies at all levels of government and to establish new partnerships between the public and private sectors;

(3) to provide Federal assistance for estuary habitat restoration projects through cooperative agreements and to promote efficient financing of such projects; and

(4) to develop and enhance monitoring and research capabilities through the use of the environmental technology innovation program associated with the National Estuarine Research Reserve System established by section 1461 of title 16 to ensure that estuary habitat restoration efforts are based on sound scientific understanding and innovative technologies.

(Pub. L. 106-457, title I, §102, Nov. 7, 2000, 114 Stat. 1958; Pub. L. 110-114, title V, §5017(a), Nov. 8, 2007, 121 Stat. 1197.)

## AMENDMENTS

2007—Par. (1). Pub. L. 110-114, §5017(a)(1), inserted “by implementing a coordinated Federal approach to estuary habitat restoration activities, including the use of common monitoring standards and a common system for tracking restoration acreage” before semicolon at end.

Par. (2). Pub. L. 110-114, §5017(a)(2), inserted “and implement” after “to develop”.

Par. (3). Pub. L. 110-114, §5017(a)(3), inserted “through cooperative agreements” after “restoration projects”.

## SHORT TITLE

Pub. L. 106-457, §1(a), Nov. 7, 2000, 114 Stat. 1957, provided that: “This Act [enacting this chapter, sections 1273 and 1300 of this title, and sections 277d-43 to 277d-46 of Title 22, Foreign Relations and Intercourse, amending sections 1263a, 1267, 1269, 1324, and 1330 of this title, and enacting provisions set out as notes under this section, sections 1251 and 1267 of this title, and section 277d-43 of Title 22] may be cited as the ‘Estuaries and Clean Waters Act of 2000’.”

Pub. L. 106-457, title I, §101, Nov. 7, 2000, 114 Stat. 1958, provided that: “This title [enacting this chapter] may be cited as the ‘Estuary Restoration Act of 2000’.”

## PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS

Pub. L. 106-457, title IX, §901, Nov. 7, 2000, 114 Stat. 1981, provided that:

“(a) IN GENERAL.—It is the sense of Congress that, to the extent practicable, all equipment and products purchased with funds made available under this Act [see Short Title note above] should be American made.

“(b) NOTICE TO RECIPIENTS OF ASSISTANCE.—The head of each Federal Agency [sic] providing financial assistance under this Act, to the extent practicable, shall provide to each recipient of the assistance a notice describing the statement made in subsection (a).”

## LONG-TERM ESTUARY ASSESSMENT

Pub. L. 106-457, title IX, §902, Nov. 7, 2000, 114 Stat. 1981, provided that:

“(a) IN GENERAL.—The Secretary of Commerce (acting through the Under Secretary for Oceans and Atmosphere) and the Secretary of the Interior (acting through the Director of the Geological Survey) may carry out a long-term estuary assessment project (in this section referred to as the ‘project’) in accordance with the requirements of this section.

“(b) PURPOSE.—The purpose of the project shall be to establish a network of strategic environmental assessment and monitoring projects for the Mississippi River south of Vicksburg, Mississippi, and the Gulf of Mexico, in order to develop advanced long-term assessment and monitoring systems and models relating to the Mississippi River and other aquatic ecosystems, including developing equipment and techniques necessary to implement the project.

“(c) MANAGEMENT AGREEMENT.—To establish, operate, and implement the project, the Secretary of Commerce and the Secretary of the Interior may enter into a management agreement with a university-based consortium.

“(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated—

“(1) \$1,000,000 for fiscal year 2001 to develop the management agreement under subsection (c); and

“(2) \$4,000,000 for each of fiscal years 2002, 2003, 2004, and 2005 to carry out the project.

Such sums shall remain available until expended.”

### § 2902. Definitions

In this chapter, the following definitions apply:

#### (1) Council

The term “Council” means the Estuary Habitat Restoration Council established by section 2904 of this title.

**(2) Estuary**

The term “estuary” means a part of a river or stream or other body of water that has an unimpaired connection with the open sea and where the sea water is measurably diluted with fresh water derived from land drainage. The term also includes near coastal waters and wetlands of the Great Lakes that are similar in form and function to estuaries, including the area located in the Great Lakes biogeographic region and designated as a National Estuarine Research Reserve under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) as of November 7, 2000.

**(3) Estuary habitat**

The term “estuary habitat” means the physical, biological, and chemical elements associated with an estuary, including the complex of physical and hydrologic features and living organisms within the estuary and associated ecosystems.

**(4) Estuary habitat restoration activity****(A) In general**

The term “estuary habitat restoration activity” means an activity that results in improving degraded estuaries or estuary habitat or creating estuary habitat (including both physical and functional restoration), with the goal of attaining a self-sustaining system integrated into the surrounding landscape.

**(B) Included activities**

The term “estuary habitat restoration activity” includes—

- (i) the reestablishment of chemical, physical, hydrologic, and biological features and components associated with an estuary;
- (ii) except as provided in subparagraph (C), the cleanup of pollution for the benefit of estuary habitat;
- (iii) the control of nonnative and invasive species in the estuary;
- (iv) the reintroduction of species native to the estuary, including through such means as planting or promoting natural succession;
- (v) the construction of reefs to promote fish and shellfish production and to provide estuary habitat for living resources; and
- (vi) other activities that improve estuary habitat.

**(C) Excluded activities**

The term “estuary habitat restoration activity” does not include an activity that—

- (i) constitutes mitigation required under any Federal or State law for the adverse effects of an activity regulated or otherwise governed by Federal or State law; or
- (ii) constitutes restoration for natural resource damages required under any Federal or State law.

**(5) Estuary habitat restoration project**

The term “estuary habitat restoration project” means a project to carry out an estuary habitat restoration activity.

**(6) Estuary habitat restoration plan****(A) In general**

The term “estuary habitat restoration plan” means any Federal, State, or regional plan for restoration of degraded estuary habitat that was developed with the substantial participation of appropriate public and private stakeholders.

**(B) Included plans and programs**

The term “estuary habitat restoration plan” includes estuary habitat restoration components of—

- (i) a comprehensive conservation and management plan approved under section 1330 of this title;
- (ii) a lakewide management plan or remedial action plan developed under section 1268 of this title;
- (iii) a management plan approved under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); and
- (iv) the interstate management plan developed pursuant to the Chesapeake Bay program under section 1267 of this title.

**(7) Indian tribe**

The term “Indian tribe” has the meaning given such term by section 450b of title 25.

**(8) Non-Federal interest**

The term “non-Federal interest” means a State, a political subdivision of a State, an Indian tribe, a regional or interstate agency, or, as provided in section 2903(f)(2) of this title, a nongovernmental organization.

**(9) Secretary**

The term “Secretary” means the Secretary of the Army.

**(10) State**

The term “State” means the States of Alabama, Alaska, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Virginia, Washington, and Wisconsin, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, American Samoa, and Guam.

(Pub. L. 106-457, title I, §103, Nov. 7, 2000, 114 Stat. 1958; Pub. L. 110-114, title V, §5017(b), Nov. 8, 2007, 121 Stat. 1197.)

## REFERENCES IN TEXT

The Coastal Zone Management Act of 1972, referred to in pars. (2) and (6)(B)(iii), is title III of Pub. L. 89-454 as added by Pub. L. 92-583, Oct. 27, 1972, 86 Stat. 1280, as amended, which is classified generally to chapter 33 (§1451 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1451 of Title 16 and Tables.

## AMENDMENTS

2007—Par. (6)(A). Pub. L. 110-114 substituted “Federal, State, or regional” for “Federal or State”.

**§ 2903. Estuary habitat restoration program****(a) Establishment**

There is established an estuary habitat restoration program under which the Secretary may carry out estuary habitat restoration projects and provide technical assistance through the award of contracts and cooperative agreements in accordance with the requirements of this chapter.

**(b) Origin of projects**

A proposed estuary habitat restoration project shall originate from a non-Federal interest consistent with State or local laws.

**(c) Selection of projects****(1) In general**

The Secretary shall select estuary habitat restoration projects from a list of project proposals submitted by the Estuary Habitat Restoration Council under section 2904(b) of this title.

**(2) Required elements**

Each estuary habitat restoration project selected by the Secretary must—

(A) address restoration needs identified in an estuary habitat restoration plan;

(B) be consistent with the estuary habitat restoration strategy developed under section 2905 of this title;

(C) include a monitoring plan that is consistent with standards for monitoring developed under section 2906 of this title to ensure that short-term and long-term restoration goals are achieved; and

(D) include satisfactory assurance from the non-Federal interests proposing the project that the non-Federal interests will have adequate personnel, funding, and authority to carry out items of local cooperation and properly maintain the project.

**(3) Factors for selection of projects**

In selecting an estuary habitat restoration project, the Secretary shall consider the following factors:

(A) Whether the project is part of an approved Federal or State estuary management or habitat restoration plan.

(B) The technical feasibility of the project.

(C) The scientific merit of the project.

(D) Whether the project will encourage increased coordination and cooperation among Federal, State, and local government agencies.

(E) Whether the project fosters public-private partnerships and uses Federal resources to encourage increased private sector involvement, including consideration of the amount of private funds or in-kind contributions for an estuary habitat restoration activity.

(F) Whether the project is cost-effective.

(G) Whether the State in which the non-Federal interest is proposing the project has a dedicated source of funding to acquire or restore estuary habitat, natural areas, and open spaces for the benefit of estuary habitat restoration or protection.

(H) Other factors that the Secretary determines to be reasonable and necessary for consideration.

**(4) Priority**

In selecting estuary habitat restoration projects to be carried out under this chapter, the Secretary shall give priority consideration to a project if, in addition to meriting selection based on the factors under paragraph (3)—

(A) the project occurs within a watershed in which there is a program being carried out that addresses sources of pollution and other activities that otherwise would re-impair the restored habitat; or

(B) the project includes pilot testing of or a demonstration of an innovative technology or approach having the potential for improved cost-effectiveness in estuary habitat restoration.

**(d) Cost sharing****(1) Federal share****(A) In general**

Except as provided in paragraph (2) and subsection (e)(2) of this section, the Federal share of the cost of an estuary habitat restoration project (other than the cost of operation and maintenance of the project) carried out under this chapter shall not exceed 65 percent of such cost.

**(B) Monitoring****(i) Costs**

The costs of monitoring an estuary habitat restoration project funded under this chapter may be included in the total cost of the estuary habitat restoration project.

**(ii) Goals**

The goals of the monitoring shall be—

(I) to measure the effectiveness of the restoration project; and

(II) to allow adaptive management to ensure project success.

**(2) Innovative technology costs**

The Federal share of the incremental additional cost of including in a project pilot testing of or a demonstration of an innovative technology or approach described in subsection (c)(4)(B) of this section shall be 85 percent.

**(3) Non-Federal share**

The non-Federal share of the cost of an estuary habitat restoration project carried out under this chapter shall include lands, easements, rights-of-way, and relocations and may include services (including monitoring), or any other form of in-kind contribution determined by the Secretary to be an appropriate contribution equivalent to the monetary amount required for the non-Federal share of the activity.

**(4) Operation and maintenance**

The non-Federal interests shall be responsible for all costs associated with operating, maintaining, replacing, repairing, and rehabilitating all projects carried out under this section.

**(e) Interim actions****(1) In general**

Pending completion of the estuary habitat restoration strategy to be developed under