

(f) Priority areas

In carrying out this section, the Secretary shall give priority to a regional sediment management project in the vicinity of each of the following:

- (1) Little Rock Slackwater Harbor, Arkansas.
- (2) Fletcher Cove, California.
- (3) Egmont Key, Florida.
- (4) Calcasieu Ship Channel, Louisiana.
- (5) Delaware River Estuary, New Jersey and Pennsylvania.
- (6) Fire Island Inlet, Suffolk County, New York.
- (7) Smith Point Park Pavilion and the TWA Flight 800 Memorial, Brookhaven, New York.
- (8) Morehead City, North Carolina.
- (9) Toledo Harbor, Lucas County, Ohio.
- (10) Galveston Bay, Texas.
- (11) Benson Beach, Washington.

(g) Authorization of appropriations

There is authorized to be appropriated to carry out this section \$50,000,000 per fiscal year, of which not more than \$5,000,000 per fiscal year may be used for the development of regional sediment management plans authorized by subsection (e) and of which not more than \$3,000,000 per fiscal year may be used for construction of projects to which subsection (c)(1)(B)(ii) applies. Such funds shall remain available until expended.

(Pub. L. 102-580, title II, §204, Oct. 31, 1992, 106 Stat. 4826; Pub. L. 104-303, title II, §207, Oct. 12, 1996, 110 Stat. 3680; Pub. L. 106-53, title II, §209, Aug. 17, 1999, 113 Stat. 287; Pub. L. 110-114, title II, §2037(a), Nov. 8, 2007, 121 Stat. 1094; Pub. L. 113-121, title I, §§1030(d)(1), 1038, June 10, 2014, 128 Stat. 1232, 1236.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1992, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2014—Subsec. (a)(1). Pub. L. 113-121, §1038(1)(A), inserted “or used in” after “obtained through”.

Subsec. (a)(3)(C). Pub. L. 113-121, §1038(1)(B), inserted “for the purposes of improving environmental conditions in marsh and littoral systems, stabilizing stream channels, enhancing shorelines, and supporting State and local risk management adaptation strategies” before period at end.

Subsec. (a)(4). Pub. L. 113-121, §1038(1)(C), added par. (4).

Subsec. (c)(1)(C). Pub. L. 113-121, §1030(d)(1)(A), substituted “\$10,000,000” for “\$5,000,000”.

Subsec. (d). Pub. L. 113-121, §1038(2)(A), substituted “Selection of dredged material disposal method for purposes related to environmental restoration or storm damage and flood reduction” for “Selection of dredged material disposal method for environmental purposes” in heading.

Subsec. (d)(1). Pub. L. 113-121, §1038(2)(B), substituted “in relation to—” for “in relation to the environmental benefits, including the benefits to the aquatic environment to be derived from the creation of wetlands and control of shoreline erosion.” and added subpars. (A) and (B).

Subsec. (e)(1). Pub. L. 113-121, §1038(3), added par. (1) and struck out former par. (1) which read as follows: “cooperate with any State in the preparation of a com-

prehensive State or regional sediment management plan within the boundaries of the State.”.

Subsec. (g). Pub. L. 113-121, §1030(d)(1)(B), substituted “\$50,000,000” for “\$30,000,000”.

2007—Pub. L. 110-114 amended section generally. Prior to amendment, section related to beneficial uses of dredged material.

1999—Subsec. (c). Pub. L. 106-53, §209(1), in introductory provisions, substituted “binding agreement with the Secretary” for “cooperative agreement in accordance with the requirements of section 1962d-5b of title 42”.

Subsec. (g). Pub. L. 106-53, §209(2), added subsec. (g). 1996—Subsecs. (e), (f). Pub. L. 104-303 added subsec. (e) and redesignated former subsec. (e) as (f).

APPLICABILITY

Pub. L. 110-114, title II, §2037(c), as added by Pub. L. 113-121, title I, §1030(d)(2), June 10, 2014, 128 Stat. 1232, provided that: “The amendment made by subsection (a) [amending this section] shall not apply to any project authorized under this Act [see Tables for classification] if a report of the Chief of Engineers for the project was completed prior to the date of enactment of this Act [Nov. 8, 2007].”

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 3 of Pub. L. 102-580, set out as a note under section 2201 of this title.

§ 2326a. Dredged material disposal facility partnerships**(a) Additional capacity****(1) Provided by Secretary**

At the request of a non-Federal interest with respect to a project, the Secretary may provide additional capacity at a dredged material disposal facility constructed by the Secretary beyond the capacity that would be required for project purposes if the non-Federal interest agrees to pay, during the period of construction, all costs associated with the construction of the additional capacity.

(2) Cost recovery authority

The non-Federal interest may recover the costs assigned to the additional capacity through fees assessed on third parties whose dredged material is deposited at the facility and who enter into agreements with the non-Federal interest for the use of the facility. The amount of such fees may be determined by the non-Federal interest.

(b) Non-Federal use of disposal facilities**(1) In general**

The Secretary—

(A) may permit the use of any dredged material disposal facility under the jurisdiction of, or managed by, the Secretary by a non-Federal interest if the Secretary determines that such use will not reduce the availability of the facility for project purposes; and

(B) may impose fees to recover capital, operation, and maintenance costs associated with such use.

(2) Use of fees

Notwithstanding section 1341(c) of this title but subject to advance appropriations, any monies received through collection of fees under this subsection shall be available to the Secretary, and shall be used by the Secretary,

for the operation and maintenance of the disposal facility from which the fees were collected.

(c) Dredged material facility

(1) In general

The Secretary may enter into a partnership agreement under section 1962d-5b of title 42 with one or more non-Federal interests with respect to a water resources project, or group of water resources projects within a geographic region, if appropriate, for the acquisition, design, construction, management, or operation of a dredged material processing, treatment, contaminant reduction, or disposal facility (including any facility used to demonstrate potential beneficial uses of dredged material, which may include effective sediment contaminant reduction technologies) using funds provided in whole or in part by the Federal Government.

(2) Performance

One or more of the parties to a partnership agreement under this subsection may perform the acquisition, design, construction, management, or operation of a dredged material processing, treatment, contaminant reduction, or disposal facility.

(3) Multiple projects

If appropriate, the Secretary may combine portions of separate water resources projects with appropriate combined cost-sharing among the various water resources projects in a partnership agreement for a facility under this subsection if the facility serves to manage dredged material from multiple water resources projects located in the geographic region of the facility.

(4) Specified Federal funding sources and cost sharing

(A) Specified Federal funding

A partnership agreement with respect to a facility under this subsection shall specify—

- (i) the Federal funding sources and combined cost-sharing when applicable to multiple water resources projects; and
- (ii) the responsibilities and risks of each of the parties relating to present and future dredged material managed by the facility.

(B) Management of sediments

(i) In general

A partnership agreement under this subsection may include the management of sediments from the maintenance dredging of Federal water resources projects that do not have partnership agreements.

(ii) Payments

A partnership agreement under this subsection may allow the non-Federal interest to receive reimbursable payments from the Federal Government for commitments made by the non-Federal interest for disposal or placement capacity at dredged material processing, treatment, contaminant reduction, or disposal facilities.

(C) Credit

A partnership agreement under this subsection may allow costs incurred by the non-

Federal interest before execution of the partnership agreement to be credited in accordance with section 1962d-5b of title 42.

(5) Credit

(A) Effect on existing agreements

Nothing in this subsection supersedes or modifies an agreement in effect on November 8, 2007, between the Federal Government and any non-Federal interest for the cost-sharing, construction, and operation and maintenance of a water resources project.

(B) Credit for funds

Subject to the approval of the Secretary and in accordance with law (including regulations and policies) in effect on November 8, 2007, a non-Federal interest for a water resources project may receive credit for funds provided for the acquisition, design, construction, management, or operation of a dredged material processing, treatment, contaminant reduction, or disposal facility to the extent the facility is used to manage dredged material from the project.

(C) Non-Federal interest responsibilities

A non-Federal interest entering into a partnership agreement under this subsection for a facility shall—

- (i) be responsible for providing all necessary lands, easements, relocations, and rights-of-way associated with the facility; and
- (ii) receive credit toward the non-Federal share of the cost of the project with respect to which the agreement is being entered into for those items.

(d) Public-private partnerships

(1) In general

The Secretary may carry out a program to evaluate and implement opportunities for public-private partnerships in the design, construction, management, or operation and maintenance of dredged material processing, treatment, contaminant reduction, or disposal facilities in connection with construction or maintenance of Federal navigation projects. If a non-Federal interest is a sponsor of the project, the Secretary shall consult with the non-Federal interest in carrying out the program with respect to the project.

(2) Private financing

(A) Agreements

In carrying out this subsection, the Secretary may enter into an agreement with a non-Federal interest with respect to a project, a private entity, or both for the acquisition, design, construction, management, or operation and maintenance of a dredged material processing, treatment, contaminant reduction, or disposal facility (including any facility used to demonstrate potential beneficial uses of dredged material) using funds provided in whole or in part by the private entity.

(B) Reimbursement

If any funds provided by a private entity are used to carry out a project under this

subsection, the Secretary may reimburse the private entity over a period of time agreed to by the parties to the agreement through the payment of subsequent user fees. Such fees may include the payment of a disposal or tipping fee for placement of suitable dredged material at the facility.

(C) Amount of fees

User fees paid pursuant to subparagraph (B) shall be sufficient to repay funds contributed by the private entity plus a reasonable return on investment approved by the Secretary in cooperation with the non-Federal interest with respect to the project and the private entity.

(D) Federal share

The Federal share of such fees shall be equal to the percentage of the total cost that would otherwise be borne by the Federal Government as required pursuant to existing cost-sharing requirements, including section 2213 of this title and section 2326 of this title.

(E) Budget Act compliance

Any spending authority (as defined in section 651(c)(2) of title 2) authorized by this section shall be effective only to such extent and in such amounts as are provided in appropriation Acts.

(Pub. L. 104-303, title II, §217, Oct. 12, 1996, 110 Stat. 3694; Pub. L. 110-114, title II, §2005, Nov. 8, 2007, 121 Stat. 1071.)

REFERENCES IN TEXT

The Budget Act, referred to in subsec. (d)(2)(E) heading, probably means the Congressional Budget Act of 1974, titles I through IX of Pub. L. 93-344, July 12, 1974, 88 Stat. 297, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2, The Congress, and Tables.

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.

AMENDMENTS

2007—Subsec. (c). Pub. L. 110-114, §2005(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 110-114, §2005(1), redesignated subsec. (c) as (d).

Subsec. (d)(1). Pub. L. 110-114, §2005(3), inserted “and maintenance” after “operation” and “processing, treatment, contaminant reduction, or” after “dredged material”.

Subsec. (d)(2)(A). Pub. L. 110-114, §2005(3), inserted “and maintenance” after “operation” and “processing, treatment, contaminant reduction, or” after “of a dredged material”.

“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.

§ 2326b. Sediment management

(a) In general

The Secretary may enter into cooperation agreements with non-Federal interests with respect to navigation projects, or other appro-

priate non-Federal entities, for the development of long-term management strategies for controlling sediments at such projects.

(b) Contents of strategies

Each strategy developed under subsection (a) of this section shall—

(1) include assessments of sediment rates and composition, sediment reduction options, dredging practices, long-term management of any dredged material disposal facilities, remediation of such facilities, and alternative disposal and reuse options;

(2) include a timetable for implementation of the strategy; and

(3) incorporate relevant ongoing planning efforts, including remedial action planning, dredged material management planning, harbor and waterfront development planning, and watershed management planning.

(c) Consultation

In developing strategies under subsection (a) of this section, the Secretary shall consult with interested Federal agencies, States, and Indian tribes and provide an opportunity for public comment.

(d) Dredged material disposal

(1) Study

The Secretary shall conduct a study to determine the feasibility of constructing and operating an underwater confined dredged material disposal site in the Port of New York-New Jersey that could accommodate as much as 250,000 cubic yards of dredged material for the purpose of demonstrating the feasibility of an underwater confined disposal pit as an environmentally suitable method of containing certain sediments.

(2) Report

The Secretary shall transmit to Congress a report on the results of the study conducted under paragraph (1), together with any recommendations of the Secretary that may be developed in a strategy under subsection (a) of this section.

(e) Great Lakes tributary model

(1) In general

In consultation and coordination with the Great Lakes States, the Secretary shall develop a tributary sediment transport model for each major river system or set of major river systems depositing sediment into a Great Lakes federally authorized commercial harbor, channel maintenance project site, or Area of Concern identified under the Great Lakes Water Quality Agreement of 1978. Such model may be developed as a part of a strategy developed under subsection (a) of this section.

(2) Requirements for models

In developing a tributary sediment transport model under this subsection, the Secretary shall build on data and monitoring information generated in earlier studies and programs of the Great Lakes and their tributaries.

(3) Report

Not later than December 31, 2003, the Secretary shall transmit to Congress a report on