

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.

The National Environmental Policy Act of 1969, referred to in subsec. (h)(9), (10), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

#### AMENDMENTS

2016—Subsec. (h)(4)(D) to (F). Pub. L. 114–322, § 1162(1)(A), added subpar. (D) and redesignated former subpars. (D) and (E) as (E) and (F), respectively.

Subsec. (h)(6)(C). Pub. L. 114–322, § 1162(1)(B), substituted “impacts, including impacts to habitat connectivity” for “impacts”.

Subsec. (h)(11). Pub. L. 114–322, § 1162(1)(C), added par. (11) and struck out former par. (11). Prior to amendment, text read as follows: “Nothing in this subsection requires the Secretary to undertake additional mitigation for existing projects for which mitigation has already been initiated.”

Subsecs. (j), (k). Pub. L. 114–322, § 1162(2), added subsecs. (j) and (k).

2014—Subsec. (d)(1). Pub. L. 113–121, § 1040(a)(1)(A), inserted “for damages to ecological resources, including terrestrial and aquatic resources, and” after “mitigate”, “ecological resources and” after “impact on”, “without the implementation of mitigation measures” before period at end of first sentence, and “If the Secretary determines that mitigation to in-kind conditions is not possible, the Secretary shall identify in the report the basis for that determination and the mitigation measures that will be implemented to meet the requirements of this section and the goals of section 2317(a)(1) of this title.” after “to the extent possible.”

Subsec. (d)(2). Pub. L. 113–121, § 1040(a)(1)(B)(iii), which directed insertion of “using a watershed approach” after “projects” was executed by making the insertion after “projects” the first place appearing to reflect the probable intent of Congress.

Pub. L. 113–121, § 1040(a)(1)(B)(i), (ii), substituted “Selection and design” for “Design” in heading and inserted “select and” before “design” in text.

Subsec. (d)(3)(A). Pub. L. 113–121, § 1040(a)(1)(C)(i), inserted “, at a minimum,” after “complies with”.

Subsec. (d)(3)(B)(iii) to (vi). Pub. L. 113–121, § 1040(a)(1)(C)(ii), added cls. (iii) and (iv), redesignated former cls. (iv) and (v) as (v) and (vi), respectively, and struck out former cl. (iii) which read as follows: “a description of the land and interests in land to be acquired for the mitigation plan and the basis for a determination that the land and interests are available for acquisition;”.

Subsecs. (h), (i). Pub. L. 113–121, § 1040(a)(2), added subsecs. (h) and (i).

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”.

#### APPLICABILITY

Pub. L. 113–121, title I, § 1040(b), June 10, 2014, 128 Stat. 1243, provided that: “The amendments made by subsection (a) [amending this section] shall not apply to a project for which a mitigation plan has been completed as of the date of enactment of this Act [June 10, 2014].”

#### 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) Information included**

In reporting the status of all projects included in the report, the Secretary shall—

(A) use a uniform methodology for determining the status of all projects included in the report;

(B) use a methodology that describes both a qualitative and quantitative status for all projects in the report; and

(C) provide specific dates for participation in the consultations required under section 2283(d)(4)(B) of this title.

**(4) 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; Pub. L. 113-121, title I, § 1041, June 10, 2014, 128 Stat. 1243.)

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.

AMENDMENTS

2014—Pars. (3), (4). Pub. L. 113-121 added par. (3) and redesignated former par. (3) as (4).

“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.

**§ 2283b. Clarification of mitigation authority**

**(a) In general**

The Secretary may carry out measures to improve fish species habitat within the boundaries and downstream of a water resources project constructed by the Secretary that includes a fish hatchery if the Secretary—

(1) has been explicitly authorized to compensate for fish losses associated with the project; and

(2) determines that the measures are—

(A) feasible;

(B) consistent with authorized project purposes and the fish hatchery; and

(C) in the public interest.

**(b) Cost sharing**

**(1) In general**

Subject to paragraph (2), the non-Federal interest shall contribute 35 percent of the total cost of carrying out activities under this section, including the costs relating to the provision or acquisition of required land, easements, rights-of-way, dredged material disposal areas, and relocations.

**(2) Operation and maintenance**

The non-Federal interest shall contribute 100 percent of the costs of operation, maintenance,

replacement, repair, and rehabilitation of the measures carried out under this section.

(Pub. L. 113-121, title I, § 1028, June 10, 2014, 128 Stat. 1230.)

CODIFICATION

Section was enacted as part of the Water Resources Reform and Development Act of 2014, 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. 113-121, set out as a note under section 2201 of this title.

**§ 2283c. Technical assistance**

**(1) In general**

The Secretary may provide technical assistance to States and local governments to establish third-party mitigation instruments, including mitigation banks and in-lieu fee programs, that will help to target mitigation payments to high-priority ecosystem restoration actions.

**(2) Requirements**

In providing technical assistance under this section, the Secretary shall give priority to States and local governments that have developed State, regional, or watershed-based plans identifying priority restoration actions.

**(3) Mitigation instruments**

The Secretary shall seek to ensure any technical assistance provided under this section will support the establishment of mitigation instruments that will result in restoration of high-priority areas identified in the plans under paragraph (2).

(Pub. L. 113-121, title I, § 1040(c), June 10, 2014, 128 Stat. 1243.)

CODIFICATION

Section was enacted as part of the Water Resources Reform and Development Act of 2014, 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. 113-121, 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, eco-