

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 5304 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), 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) 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 section 2905 of this title, the Secretary may take interim actions to carry out an estuary habitat restoration activity.

**(2) Federal share**

The Federal share of the cost of an estuary habitat restoration activity before the completion of the estuary habitat restoration strategy shall not exceed 25 percent of such cost.

**(f) Cooperation of non-Federal interests****(1) In general**

The Secretary may not carry out an estuary habitat restoration project until a non-Federal interest has entered into a written agreement with the Secretary in which the non-Federal interest agrees to—

(A) provide all lands, easements, rights-of-way, and relocations and any other elements the Secretary determines appropriate under subsection (d)(3); and

(B) provide for long-term maintenance and monitoring of the project.

**(2) Nongovernmental organizations**

Notwithstanding section 1962d–5b(b) of title 42, for any project to be undertaken under this chapter, the Secretary, in consultation and coordination with appropriate State and local governmental agencies and Indian tribes, may allow a nongovernmental organization to serve as the non-Federal interest for the project.

**(3) Project agreements**

For a project carried out under this chapter, the requirements of section 2213(j)(1) of this title may be fulfilled by a nongovernmental organization serving as the non-Federal interest for the project pursuant to paragraph (2).

**(g) Delegation of project implementation****(1) In general**

In carrying out this chapter, the Secretary may delegate project implementation to another Federal department or agency on a reimbursable basis if the Secretary, upon the recommendation of the Council, determines such delegation is appropriate.

**(2) Small projects****(A) Small project defined**

In this paragraph, the term “small project” means a project carried out under this chapter with an estimated Federal cost of less than \$1,000,000.

**(B) Delegation of project implementation**

In carrying out this section, the Secretary, on recommendation of the Council, may delegate implementation of a small project to—

(i) the Secretary of the Interior (acting through the Director of the United States Fish and Wildlife Service);

(ii) the Under Secretary for Oceans and Atmosphere of the Department of Commerce;

(iii) the Administrator of the Environmental Protection Agency; or

(iv) the Secretary of Agriculture.

**(C) Funding**

A small project delegated to the head of a Federal department or agency under this

paragraph may be carried out using funds appropriated to the department or agency under section 2908(a)(1) of this title or other funds available to the department or agency.

**(D) Agreements**

The head of a Federal department or agency to which a small project is delegated under this paragraph shall enter into an agreement with the non-Federal interest for the project generally in conformance with the criteria in subsections (d) and (e). Cooperative agreements may be used for any delegated project to allow the non-Federal interest to carry out the project on behalf of the Federal agency.

(Pub. L. 106–457, title I, §104, Nov. 7, 2000, 114 Stat. 1960; Pub. L. 110–114, title V, §5017(c), Nov. 8, 2007, 121 Stat. 1197; Pub. L. 114–322, title IV, §5013(a), Dec. 16, 2016, 130 Stat. 1903.)

## AMENDMENTS

2016—Subsec. (f)(3). Pub. L. 114–322 added par. (3).

2007—Subsec. (a). Pub. L. 110–114, §5017(c)(1), inserted “through the award of contracts and cooperative agreements” after “assistance”.

Subsec. (c)(3)(A). Pub. L. 110–114, §5017(c)(2)(A), inserted “or State” after “Federal”.

Subsec. (c)(4)(B). Pub. L. 110–114, §5017(c)(2)(B), inserted “or approach” after “technology”.

Subsec. (d)(1). Pub. L. 110–114, §5017(c)(3)(A), designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

Subsec. (d)(2). Pub. L. 110–114, §5017(c)(3)(B), inserted “or approach” after “technology”.

Subsec. (d)(3). Pub. L. 110–114, §5017(c)(3)(C), inserted “(including monitoring)” after “services”.

Subsec. (f)(1)(B). Pub. L. 110–114, §5017(c)(4), inserted “long-term” before “maintenance”.

Subsec. (g). Pub. L. 110–114, §5017(c)(5), designated existing provisions as par. (1), inserted heading, and added par. (2).

**§ 2904. Establishment of Estuary Habitat Restoration Council****(a) Council**

There is established a council to be known as the “Estuary Habitat Restoration Council”.

**(b) Duties**

The Council shall be responsible for—

(1) soliciting, reviewing, and evaluating project proposals and developing recommendations concerning such proposals based on the factors specified in section 2903(c)(3) of this title;

(2) submitting to the Secretary a list of recommended projects, including a recommended priority order and any recommendation as to whether a project should be carried out by the Secretary or by another Federal department or agency under section 2903(g) of this title;

(3) developing and transmitting to Congress a national strategy for restoration of estuary habitat;

(4) periodically reviewing the effectiveness of the national strategy in meeting the purposes of this chapter and, as necessary, updating the national strategy;

(5) providing advice on the development of the database, monitoring standards, and report required under sections 2906 and 2907 of this title;