

(Pub. L. 102-580, title IV, §401, Oct. 31, 1992, 106 Stat. 4862; Pub. L. 114-322, title I, §1138, Dec. 16, 2016, 130 Stat. 1657.)

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

2016—Subsec. (a). Pub. L. 114-322 amended subsec. (a) generally. Prior to amendment, subsec. (a) authorized the Secretary to engage in activities to inform the United States maritime industry and port authorities of technological innovations abroad that could significantly improve waterborne transportation in the United States, both inland and deep draft.

“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.

§ 2330. Aquatic ecosystem restoration

(a) General authority

(1) In general

The Secretary may carry out a project to restore and protect an aquatic ecosystem or estuary if the Secretary determines that the project—

- (A)(i) will improve the quality of the environment and is in the public interest; or
- (ii) will improve the elements and features of an estuary (as defined in section 2902 of this title); and
- (B) is cost-effective.

(2) Dam removal

A project under this section may include removal of a dam.

(b) Cost sharing

(1) In general

Non-Federal interests shall provide 35 percent of the cost of construction of any project carried out under this section, including provision of all lands, easements, rights-of-way, and necessary relocations.

(2) Form

Before October 1, 2003, the Federal share of the cost of a project under this section may be provided in the form of reimbursements of project costs.

(c) Agreements

(1) In general

Construction of a project under this section shall be initiated only after a non-Federal interest has entered into a binding agreement with the Secretary to pay the non-Federal share of the costs of construction required by this section and to pay 100 percent of any operation, maintenance, and replacement and rehabilitation costs with respect to the project in accordance with regulations prescribed by the Secretary.

(2) Nonprofit entities

Notwithstanding section 1962d-5b of title 42, for any project carried out under this section, a non-Federal interest may include a non-

profit entity, with the consent of the affected local government.

(d) Cost limitation

Not more than \$10,000,000 in Federal funds may be allotted under this section for a project at any single locality.

(e) Use of natural and nature-based features

In carrying out a project to restore and protect an aquatic ecosystem or estuary under subsection (a), the Secretary shall consider, and may include, with the consent of the non-Federal interest, a natural feature or nature-based feature, as such terms are defined in section 2289a of this title, if the Secretary determines that inclusion of such features is consistent with the requirements of subsection (a).

(f) Funding

There is authorized to be appropriated to carry out this section \$62,500,000 for each fiscal year.

(Pub. L. 104-303, title II, §206, Oct. 12, 1996, 110 Stat. 3679; Pub. L. 106-53, title II, §210, Aug. 17, 1999, 113 Stat. 287; Pub. L. 110-114, title II, §2020, Nov. 8, 2007, 121 Stat. 1078; Pub. L. 113-121, title I, §1030(g), June 10, 2014, 128 Stat. 1232; Pub. L. 115-270, title I, §§1149(a), 1157(f), Oct. 23, 2018, 132 Stat. 3787, 3794.)

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

2018—Subsec. (e). Pub. L. 115-270, §1149(a)(2), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 115-270, §§1149(a)(1), 1157(f), redesignated subsec. (e) as (f) and substituted “\$62,500,000” for “\$50,000,000”.

2014—Subsec. (d). Pub. L. 113-121 substituted “\$10,000,000” for “\$5,000,000”.

2007—Subsec. (a). Pub. L. 110-114, §2020(1), added subsec. (a) and struck out former subsec. (a), which read as follows:

“(a) GENERAL AUTHORITY.—The Secretary may carry out an aquatic ecosystem restoration and protection project if the Secretary determines that the project—

- “(1) will improve the quality of the environment and is in the public interest; and
- “(2) is cost-effective.”

Subsec. (e). Pub. L. 110-114, §2020(2), substituted “\$50,000,000” for “\$25,000,000”.

1999—Subsec. (b). Pub. L. 106-53, §210(1), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (c). Pub. L. 106-53, §210(2), designated existing provisions as par. (1), inserted heading, and added par. (2).

“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.

§ 2330a. Monitoring ecosystem restoration

(a) In general

In conducting a feasibility study for a project (or a component of a project) for ecosystem restoration, the Secretary shall ensure that the recommended project includes, as an integral

part of the project, a plan for monitoring the success of the ecosystem restoration.

(b) Monitoring plan

The monitoring plan shall—

(1) include a description of the monitoring activities to be carried out, the criteria for ecosystem restoration success, and the estimated cost and duration of the monitoring; and

(2) specify that the monitoring shall continue until such time as the Secretary determines that the criteria for ecosystem restoration success will be met.

(c) Cost share

For a period of 10 years from completion of construction of a project (or a component of a project) for ecosystem restoration, the Secretary shall consider the cost of carrying out the monitoring as a project cost. If the monitoring plan under subsection (b) requires monitoring beyond the 10-year period, the cost of monitoring shall be a non-Federal responsibility.

(d) Inclusions

A monitoring plan under subsection (b) shall include a description of—

(1) the types and number of restoration activities to be conducted;

(2) the physical action to be undertaken to achieve the restoration objectives of the project;

(3) the functions and values that will result from the restoration plan; and

(4) a contingency plan for taking corrective actions in cases in which monitoring demonstrates that restoration measures are not achieving ecological success in accordance with criteria described in the monitoring plan.

(e) Conclusion of operation and maintenance responsibility

The responsibility of a non-Federal interest for operation and maintenance of the non-structural and nonmechanical elements of a project, or a component of a project, for ecosystem restoration shall cease 10 years after the date on which the Secretary makes a determination of success under subsection (b)(2).

(f) Federal obligations

The Secretary is not responsible for the operation or maintenance of any components of a project with respect to which a non-Federal interest is released from obligations under subsection (e).

(Pub. L. 110-114, title II, §2039, Nov. 8, 2007, 121 Stat. 1100; Pub. L. 114-322, title I, §1161, Dec. 16, 2016, 130 Stat. 1668.)

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

2016—Subsecs. (d) to (f). Pub. L. 114-322 added subsecs. (d) to (f).

“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.

§ 2330b. Fish hatcheries

(a) In general

Notwithstanding any other provision of law, the Secretary may operate a fish hatchery for the purpose of restoring a population of fish species located in the region surrounding the fish hatchery that is listed as a threatened species or an endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or a similar State law.

(b) Costs

A non-Federal entity, another Federal agency, or a group of non-Federal entities or other Federal agencies shall be responsible for 100 percent of the additional costs associated with managing a fish hatchery for the purpose described in subsection (a) that are not authorized as of December 16, 2016, for the fish hatchery.

(Pub. L. 114-322, title I, §1168, Dec. 16, 2016, 130 Stat. 1671.)

REFERENCES IN TEXT

The Endangered Species Act of 1973, referred to in subsec. (a), is Pub. L. 93-205, Dec. 28, 1973, 87 Stat. 884, which is classified principally 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.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2016, and also as part of the Water Infrastructure Improvements for the Nation Act, also known as the WIIN Act, 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 1002 of Pub. L. 114-322, set out as a note under section 2201 of this title.

§ 2331. Use of continuing contracts for construction of certain projects

(a) In general

Notwithstanding any other provision of law, the Secretary shall not implement a fully allocated funding policy with respect to a water resource project if initiation of construction has occurred but sufficient funds are not available to complete the project.

(b) Continuing contracts

The Secretary shall enter into a continuing contract for a project described in subsection (a).

(c) Initiation of construction clarified

For the purposes of this section, initiation of construction for a project occurs on the date of enactment of an Act that appropriates funds for the project from 1 of the following appropriation accounts:

- (1) Construction, General.
- (2) Operation and Maintenance, General.
- (3) Flood Control, Mississippi River and Tributaries.

(Pub. L. 106-53, title II, §206, Aug. 17, 1999, 113 Stat. 286.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1999, and not as part of the Water