

(C) offering technical services that cannot be readily obtained in the private sector to be incorporated into water resources projects if the costs for assistance will be recovered under the terms of each project.

(b) Cooperation

The Secretary may carry out the provisions of this section in cooperation with Federal departments and agencies, State and local agencies, authorities, institutions, corporations (profit or nonprofit), foreign governments, or other organizations.

(c) Funding

The funds to carry out the provisions of this section shall include funds deposited in a special account with the Secretary of the Treasury for such purposes by any cooperating entity or organization according to cost-sharing agreements proscribed by the Secretary. Reimbursement for services provided under this section shall be credited to the appropriation concerned.

(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.)

Editorial Notes

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.

Statutory Notes and Related Subsidiaries

“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.

(3) Anadromous fish habitat and passage

(A) Measures

A project under this section may include measures to improve habitat or passage for anadromous fish, including—

(i) installing fish bypass structures on small water diversions;

(ii) modifying tide gates; and

(iii) restoring or reconnecting floodplains and wetlands that are important for anadromous fish habitat or passage.

(B) Benefits

A project that includes measures under this paragraph shall be formulated to maximize benefits for the anadromous fish species benefitted by the project.

(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 nonprofit 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.

(g) Prioritization

The Secretary shall give projects that include measures described in subsection (a)(3) equal priority for implementation as other projects under this section.

(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; Pub. L. 116-260, div. AA, title I, §126(a), Dec. 27, 2020, 134 Stat. 2640.)

Editorial Notes

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

2020—Subsec. (a)(3). Pub. L. 116-260, §126(a)(1), added par. (3).

Subsec. (g). Pub. L. 116-260, §126(a)(2), added subsec. (g).

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).

Statutory Notes and Related Subsidiaries

“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.)

Editorial Notes

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).

Statutory Notes and Related Subsidiaries

“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.