

(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.

**(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.)

**Editorial Notes**

## 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.

**Statutory Notes and Related Subsidiaries**

## “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.

**§ 2330c. Aquatic ecosystem restoration****(a) Definition of eligible entity**

In this section, the term “eligible entity” means—

- (1) any State, Indian Tribe, irrigation district, or water district;
- (2) any State, regional, or local authority, the members of which include 1 or more organizations with water or power delivery authority;
- (3) any other entity or organization that owns a facility that is eligible for upgrade, modification or removal under this section;
- (4) any nonprofit conservation organization, acting in partnership with any entity listed in paragraphs (1) through (3), with respect to a project involving land or infrastructure owned by the entity; and
- (5) an agency established under State law for the joint exercise of powers or a combination of entities described in paragraphs (1) through (4).

**(b) General authority****(1) In general**

Subject to the requirements of this section and paragraph (2), on request of any eligible entity the Secretary may negotiate and enter into an agreement on behalf of the United States to fund the design, study, and construction of an aquatic ecosystem restoration and protection project in a Reclamation State if the Secretary determines that the project is likely to improve the health of fisheries, wildlife or aquatic habitat, including through

habitat restoration and improved fish passage via the removal or bypass of barriers to fish passage.

**(2) Exception**

With respect to an aquatic ecosystem restoration and protection project under this section that removes a dam or modifies a dam in a manner that reduces storage or diversion capacity, the Secretary may only negotiate and enter into an agreement to fund—

(A) the design or study of such project if the Secretary has received consent from the owner of the applicable dam; or

(B) the construction of such project if the Secretary—

- (i) identifies any eligible entity that receives water or power from the facility that is under consideration for removal or modification at the time of the request;
- (ii) notifies each eligible entity identified in clause (i) that the dam removal or modification project has been requested; and
- (iii) does not receive, by the date that is 120 days after the date on which all eligible entities have been notified under clause (ii), written objection from 1 or more eligible entities that collectively receive  $\frac{1}{3}$  or more of the water or power delivered from the facility that is under consideration for removal or modification at the time of the request.

**(c) Requirements****(1) In general**

The Secretary shall accept and consider public comment prior to initiating design, study or development of a project under this section.

**(2) Preconditions**

Construction of a project under this section shall be a voluntary project initiated only after—

(A) an eligible entity has entered into an agreement with the Secretary to pay no less than 35 percent of the costs of project construction;

(B) an eligible entity has entered an agreement to pay 100 percent of any operation, maintenance, and replacement and rehabilitation costs with respect to the project;

(C) the Secretary determines the proposed project—

(i) will not result in an unmitigated adverse impact on fulfillment of existing water delivery obligations consistent with historical operations and applicable contracts;

(ii) will not result in an unmitigated adverse effect on the environment;

(iii) is consistent with the responsibilities of the Secretary—

(I) in the role as trustee for federally recognized Indian Tribes; and

(II) to ensure compliance with any applicable international and Tribal treaties and agreements and interstate compacts and agreements;

(iv) is in the financial interest of the United States based on a determination