

military- or State-owned National Guard installation or installations.”

§ 2694. Conservation and cultural activities

(a) **ESTABLISHMENT.**—The Secretary of Defense may establish and carry out a program to conduct and manage in a coordinated manner the conservation and cultural activities described in subsection (b).

(b) **ACTIVITIES.**—(1) A conservation or cultural activity eligible for the program that the Secretary establishes under subsection (a) is any activity—

(A) that has regional or Department of Defense-wide significance and that involves more than one military department or involves a sentinel landscape;

(B) that is necessary to meet legal requirements or to support military operations or that would contribute to maintaining or improving military installation resilience;

(C) that can be more effectively managed at the Department of Defense level; and

(D) for which no executive agency has been designated responsible by the Secretary.

(2) Such activities include the following:

(A) The development of ecosystem-wide land management plans or nature-based climate resilience plans.

(B) The conduct of wildlife studies to ensure the safety and sustainability of military operations.

(C) The identification and return of Native American human remains and cultural items in the possession or control of the Department of Defense, or discovered on land under the jurisdiction of the Department, to the appropriate Native American tribes.

(D) The control of invasive species that may hinder military activities or degrade military training ranges.

(E) The establishment of a regional curation system for artifacts found on military installations.

(F) The implementation of ecosystem-wide land management plans—

(i) for a single ecosystem—

(I) that encompasses at least two non-contiguous military installations, if those military installations are not all under the administrative jurisdiction of the same Secretary of a military department; and

(II) providing synergistic benefits unavailable if the installations acted separately; or

(ii) for one or more ecosystems within a sentinel landscape.

(c) **COOPERATIVE AGREEMENTS.**—The Secretary may negotiate and enter into cooperative agreements with public and private agencies, organizations, institutions, individuals, or other entities to carry out the program established under subsection (a).

(d) **EFFECT ON OTHER LAWS.**—Nothing in this section shall be construed or interpreted as preempting any otherwise applicable Federal, State, or local law or regulation relating to the management of natural and cultural resources on military installations.

(e) **SENTINEL LANDSCAPE DEFINED.**—In this section, the term “sentinel landscape” has the

meaning given that term in section 2693(g) of this title.

(Added Pub. L. 104-201, div. A, title III, §332(a)(1), Sept. 23, 1996, 110 Stat. 2484; amended Pub. L. 105-85, div. A, title X, §1073(a)(59), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 112-81, div. B, title XXVIII, §2814, Dec. 31, 2011, 125 Stat. 1688; Pub. L. 117-81, div. A, title III, §317(c), Dec. 27, 2021, 135 Stat. 1632; Pub. L. 118-31, div. A, title III, §311(c)(2), Dec. 22, 2023, 137 Stat. 215.)

Editorial Notes

AMENDMENTS

2023—Subsec. (e). Pub. L. 118-31 substituted “meaning given that term in section 2693(g) of this title” for “meaning given that term in section 317(f) of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 2684a note)”.

2021—Subsec. (b)(1)(A). Pub. L. 117-81, §317(c)(1)(A)(i), inserted “or involves a sentinel landscape” before semicolon at end.

Subsec. (b)(1)(B). Pub. L. 117-81, §317(c)(1)(A)(ii), inserted “or that would contribute to maintaining or improving military installation resilience” before semicolon at end.

Subsec. (b)(2)(A). Pub. L. 117-81, §317(c)(1)(B)(i), inserted “or nature-based climate resilience plans” before period at end.

Subsec. (b)(2)(F)(i). Pub. L. 117-81, §317(c)(1)(B)(ii)(I), inserted a dash after “single ecosystem”, designated remaining existing provisions as subcl. (I), redesignated provisions of existing cl. (ii) as subcl. (II) of cl. (i), and realigned margins.

Subsec. (b)(2)(F)(ii). Pub. L. 117-81, §317(c)(1)(B)(ii)(II), added cl. (ii). Former cl. (ii) redesignated cl. (i)(II).

Subsec. (e). Pub. L. 117-81, §317(c)(2), added subsec. (e).

2011—Subsec. (b)(2)(B). Pub. L. 112-81, §2814(1), inserted “and sustainability” after “safety”.

Subsec. (b)(2)(F). Pub. L. 112-81, §2814(2), added subpar. (F).

1997—Subsec. (b)(1)(D). Pub. L. 105-85 substituted “executive agency” for “executive agency”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 104-201, div. A, title III, §332(b), Sept. 23, 1996, 110 Stat. 2485, provided that: “Section 2694 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1996.”

§ 2694a. Conveyance of surplus real property for natural resource conservation

(a) **AUTHORITY TO CONVEY.**—The Secretary of a military department may convey to an eligible entity described in subsection (b) any surplus real property that—

(1) is under the administrative control of the Secretary;

(2) is suitable and desirable for conservation purposes;

(3) has been made available for public benefit transfer for a sufficient period of time to potential claimants; and

(4) is not subject to a pending request for transfer to another Federal agency or for conveyance to any other qualified recipient for public benefit transfer under the real property disposal processes and authorities under subtitle I of title 40.

(b) **ELIGIBLE ENTITIES.**—The conveyance of surplus real property under this section may be made to any of the following:

(1) A State or political subdivision of a State.

(2) A nonprofit organization that exists for the primary purpose of conservation of natural resources on real property.

(c) REVERSIONARY INTEREST AND OTHER DEED REQUIREMENTS.—(1) The deed of conveyance of any surplus real property conveyed under this section shall require the property to be used and maintained for the conservation of natural resources in perpetuity. If the Secretary concerned determines at any time that the property is not being used or maintained for such purpose, then, at the option of the Secretary, all or any portion of the property shall revert to the United States.

(2) The deed of conveyance may permit the recipient of the property—

(A) to convey the property to another eligible entity, subject to the approval of the Secretary concerned and subject to the same covenants and terms and conditions as provided in the deed from the United States; and

(B) to conduct incidental revenue-producing activities on the property that are compatible with the use of the property for conservation purposes.

(3) The deed of conveyance may contain such additional terms, reservations, restrictions, and conditions as the Secretary concerned considers appropriate to protect the interests of the United States.

(d) RELEASE OF COVENANTS.—With the concurrence of the Secretary of Interior, the Secretary concerned may grant a release from a covenant included in the deed of conveyance of real property conveyed under this section, subject to the condition that the recipient of the property pay the fair market value, as determined by the Secretary concerned, of the property at the time of the release of the covenant. The Secretary concerned may reduce the amount required to be paid under this subsection to account for the value of the natural resource conservation benefit that has accrued to the United States during the period the covenant was in effect, if the benefit was not taken into account in determining the original consideration for the conveyance.

(e) NOTICE AND WAIT REQUIREMENTS.—The Secretary concerned may not approve of the reconveyance of real property under subsection (c) or grant the release of a covenant under subsection (d) until after the end of the 14-day period beginning on the date on which the Secretary submits, in an electronic medium pursuant to section 480 of this title, to the appropriate committees of Congress a notice of the proposed reconveyance or release.

(f) LIMITATIONS.—The conveyance of real property under this section shall not be used as a condition of allowing any defense activity under any Federal, State, or local permitting or review process. The Secretary concerned may make the conveyance, with the restrictions specified in subsection (c), to establish a mitigation bank, but only if the establishment of the mitigation bank does not occur in order to satisfy any condition for permitting military activity under a Federal, State, or local permitting or review process.

(g) CONSIDERATION.—In fixing the consideration for the conveyance of real property under this section, or in determining the amount of any reduction of the amount to be paid for the release of a covenant under subsection (d), the Secretary concerned shall take into consideration any benefit that has accrued or may accrue to the United States from the use of such property for the conservation of natural resources.

(h) RELATION TO OTHER CONVEYANCE AUTHORITIES.—(1) The Secretary concerned may not make a conveyance under this section of any real property to be disposed of under a base closure law in a manner that is inconsistent with the requirements and conditions of the base closure law.

(2) In the case of real property on Guam, the Secretary concerned may not make a conveyance under this section unless the Government of Guam has been first afforded the opportunity to acquire the real property as authorized by section 1 of Public Law 106-504 (114 Stat. 2309).

(i) DEFINITIONS.—In this section:

(1) The term “appropriate committees of Congress” has the meaning given such term in section 2801 of this title.

(2) The term “Secretary concerned” means the Secretary of a military department.

(3) The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, Guam, the Virgin Islands, and American Samoa.

(Added Pub. L. 107-314, div. B, title XXVIII, §2812(a)(1), Dec. 2, 2002, 116 Stat. 2707; amended Pub. L. 109-163, div. A, title X, §1056(a)(1), (b), Jan. 6, 2006, 119 Stat. 3438, 3439; Pub. L. 109-364, div. A, title X, §1071(a)(22), Oct. 17, 2006, 120 Stat. 2399; Pub. L. 111-383, div. B, title XXVIII, §2803(a), Jan. 7, 2011, 124 Stat. 4458; Pub. L. 115-91, div. B, title XXVIII, §2811(h), Dec. 12, 2017, 131 Stat. 1849.)

Editorial Notes

REFERENCES IN TEXT

Section 1 of Public Law 106-504 (114 Stat. 2309), referred to in subsec. (h)(2), is set out as a note under section 521 of Title 40, Public Buildings, Property, and Works.

AMENDMENTS

2017—Subsec. (e). Pub. L. 115-91 added subsec. (e) and struck out former subsec. (e). Prior to amendment, text read as follows: “The Secretary concerned may not approve of the reconveyance of real property under subsection (c) or grant the release of a covenant under subsection (d) until the Secretary notifies the appropriate committees of Congress of the proposed reconveyance or release and a period of 21 days elapses from the date the notification is received by the committees or, if earlier, a period of 14 days has elapsed from the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.”

2011—Subsec. (e). Pub. L. 111-383 inserted before period at end “or, if earlier, a period of 14 days has elapsed from the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title”.

2006—Subsec. (c). Pub. L. 109-364 substituted “Reversionary” for “Revisionary” in heading.

Subsec. (i)(2) to (4). Pub. L. 109-163 struck out par. (2), which defined “base closure law”, redesignated pars. (3)

and (4) as (2) and (3), respectively, and, in par. (3), substituted “Guam, the Virgin Islands, and American Samoa” for “and the territories and possessions of the United States”.

§ 2694b. Participation in wetland mitigation banks

(a) **AUTHORITY TO PARTICIPATE.**—The Secretary of a military department, and the Secretary of Defense with respect to matters concerning a Defense Agency, when engaged in an authorized activity that may or will result in the destruction of, or an adverse impact to, a wetland, may make payments to a wetland mitigation banking program or “in-lieu-fee” mitigation sponsor approved in accordance with the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 Fed. Reg. 58605; November 28, 1995) or the Federal Guidance on the Use of In-Lieu-Fee Arrangements for Compensatory Mitigation Under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (65 Fed. Reg. 66913; November 7, 2000), or any successor administrative guidance or regulation.

(b) **ALTERNATIVE TO CREATION OF WETLAND.**—Participation in a wetland mitigation banking program or consolidated user site under subsection (a) shall be in lieu of mitigating wetland impacts through the creation of a wetland on Federal property.

(c) **TREATMENT OF PAYMENTS.**—Payments made under subsection (a) to a wetland mitigation banking program or consolidated user site may be treated as eligible project costs for military construction.

(Added Pub. L. 108-136, div. A, title III, § 314(a)(1), Nov. 24, 2003, 117 Stat. 1430.)

§ 2694c. Participation in conservation banking programs

(a) **AUTHORITY TO PARTICIPATE.**—Subject to the availability of appropriated funds, the Secretary concerned, when engaged or proposing to engage in an activity described in subsection (b) that may or will result in an adverse impact to one or more species protected (or pending protection) under any applicable provision of law, or habitat for such species, may make payments to a conservation banking program or “in-lieu-fee” mitigation sponsor approved in accordance with—

(1) the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 Fed. Reg. 58605; November 28, 1995);

(2) the Guidance for the Establishment, Use, and Operation of Conservation Banks (68 Fed. Reg. 24753; May 2, 2003);

(3) the Federal Guidance on the Use of In-Lieu-Fee Arrangements for Compensatory Mitigation Under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (65 Fed. Reg. 66915; November 7, 2000); or

(4) any successor or related administrative guidance or regulation.

(b) **COVERED ACTIVITIES.**—Payments to a conservation banking program or “in-lieu-fee” mitigation sponsor under subsection (a) may be made only for the purpose of facilitating one or more of the following activities:

(1) Military testing, operations, training, or other military activity.

(2) Military construction.

(c) **TREATMENT OF AMOUNTS FOR CONSERVATION BANKING.**—Payments made under subsection (a) to a conservation banking program or “in-lieu-fee” mitigation sponsor for the purpose of facilitating military construction may be treated as eligible costs of the military construction project.

(d) **SOURCE OF FUNDS.**—Amounts available from any of the following shall be available for activities under this section:

(1) Operation and maintenance.

(2) Military construction.

(3) Research, development, test, and evaluation.

(4) The Support for United States Relocation to Guam Account established under section 2824 of the Military Construction Authorization Act for Fiscal Year 2009 (division B of Public Law 110-417; 122 Stat. 4730; 10 U.S.C. 2687 note).

(e) **SECRETARY CONCERNED DEFINED.**—In this section, the term “Secretary concerned” means—

(1) the Secretary of a military department; and

(2) the Secretary of Defense with respect to a Defense Agency.

(Added Pub. L. 110-417, [div. A], title III, § 311(a), Oct. 14, 2008, 122 Stat. 4408; amended Pub. L. 111-84, div. A, title III, § 311, Oct. 28, 2009, 123 Stat. 2247; Pub. L. 111-383, div. A, title X, § 1075(b)(45), Jan. 7, 2011, 124 Stat. 4371.)

Editorial Notes

AMENDMENTS

2011—Subsec. (d)(4). Pub. L. 111-383 inserted “Authorization” after “Military Construction”.

2009—Subsec. (a). Pub. L. 111-84, § 311(1), struck out “to carry out this section” after “appropriated funds” in introductory provisions.

Subsecs. (d), (e). Pub. L. 111-84, § 311(2), (3), added subsec. (d) and redesignated former subsec. (d) as (e).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 110-417, [div. A], title III, § 311(c), Oct. 14, 2008, 122 Stat. 4409, provided that: “Section 2694c of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 2008, and only funds appropriated for fiscal years beginning after September 30, 2008, may be used to carry out such section.”

§ 2694d. Participation in pollutant banks and water quality trading

(a) **AUTHORITY TO PARTICIPATE.**—The Secretary of a military department, and the Secretary of Defense with respect to matters concerning a Defense Agency, when engaged in an authorized activity that may or will result in the discharge of pollutants, may make payments to a pollutant banking program or water quality trading program approved in accordance with the Water Quality Trading Policy dated January 13, 2003, set forth by the Office of Water of the Environmental Protection Agency, or any successor administrative guidance or regulation.