

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.