

as amended by this Act, not more than \$1,000,000 shall be available for use by the Secretary for carrying out this section for that fiscal year, other than for providing in the form of grants under subsection (f).

(B) There is authorized to be appropriated to the Secretary for use for providing in the form of grants under subsection (f) not more than—

- (i) \$6,000,000 for fiscal year 1992;
- (ii) \$12,000,000 for fiscal year 1993;
- (iii) \$12,000,000 for fiscal year 1994; and
- (iv) \$12,000,000 for fiscal year 1995.

(i) Definitions

In this section—

(1) the term “Administrator” means the Administrator of the Environmental Protection Agency;

(2) the term “coastal State” has the meaning given the term “coastal state” under section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453);

(3) each of the terms “coastal waters” and “coastal zone” has the meaning that term has in the Coastal Zone Management Act of 1972 [16 U.S.C. 1451 et seq.];

(4) the term “coastal management agency” means a State agency designated pursuant to section 306(d)(6) of the Coastal Zone Management Act of 1972 [16 U.S.C. 1455(d)(6)];

(5) the term “land use” includes a use of waters adjacent to coastal waters; and

(6) the term “Secretary” means the Secretary of Commerce.

(Pub. L. 101–508, title VI, §6217, Nov. 5, 1990, 104 Stat. 1388–314; Pub. L. 102–587, title II, §2205(b)(24), Nov. 4, 1992, 106 Stat. 5052.)

Editorial Notes

REFERENCES IN TEXT

The Coastal Zone Management Act of 1972, referred to in subsecs. (a)(2) and (i)(3), is title III of Pub. L. 89–454 as added by Pub. L. 92–583, Oct. 27, 1972, 86 Stat. 1280, which is classified generally to this chapter (§1451 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1451 of this title and Tables.

This Act, referred to in subsecs. (a)(2) and (c)(2)(B), is Pub. L. 101–508, Nov. 5, 1990, 104 Stat. 1388, known as the Omnibus Budget Reconciliation Act of 1990. For complete classification of this Act to the Code, see Tables.

Section 318(a) of the Coastal Zone Management Act of 1972, referred to in subsec. (h)(2)(A), which is classified to section 1464(a) of this title, was amended by Pub. L. 104–150, §4(1), June 3, 1996, 110 Stat. 1381, and, as so amended, does not contain a par. (4).

CODIFICATION

Section was enacted as part of the Coastal Zone Act Reauthorization Amendments of 1990 and also as part of the Omnibus Budget Reconciliation Act of 1990, and not as part of the Coastal Zone Management Act of 1972 which comprises this chapter.

AMENDMENTS

1992—Subsec. (i)(3). Pub. L. 102–587 struck out comma after “coastal waters” and inserted “Zone” before “Management”.

§ 1456. Coordination and cooperation

(a) Federal agencies

In carrying out his functions and responsibilities under this chapter, the Secretary shall con-

sult with, cooperate with, and, to the maximum extent practicable, coordinate his activities with other interested Federal agencies.

(b) Adequate consideration of views of Federal agencies

The Secretary shall not approve the management program submitted by a state pursuant to section 1455 of this title unless the views of Federal agencies principally affected by such program have been adequately considered.

(c) Consistency of Federal activities with State management programs; Presidential exemption; certification

(1)(A) Each Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs. A Federal agency activity shall be subject to this paragraph unless it is subject to paragraph (2) or (3).

(B) After any final judgment, decree, or order of any Federal court that is appealable under section 1291 or 1292 of title 28, or under any other applicable provision of Federal law, that a specific Federal agency activity is not in compliance with subparagraph (A), and certification by the Secretary that mediation under subsection (h) is not likely to result in such compliance, the President may, upon written request from the Secretary, exempt from compliance those elements of the Federal agency activity that are found by the Federal court to be inconsistent with an approved State program, if the President determines that the activity is in the paramount interest of the United States. No such exemption shall be granted on the basis of a lack of appropriations unless the President has specifically requested such appropriations as part of the budgetary process, and the Congress has failed to make available the requested appropriations.

(C) Each Federal agency carrying out an activity subject to paragraph (1) shall provide a consistency determination to the relevant State agency designated under section 1455(d)(6) of this title at the earliest practicable time, but in no case later than 90 days before final approval of the Federal activity unless both the Federal agency and the State agency agree to a different schedule.

(2) Any Federal agency which shall undertake any development project in the coastal zone of a state shall insure that the project is, to the maximum extent practicable, consistent with the enforceable policies of approved state management programs.

(3)(A) After final approval by the Secretary of a state's management program, any applicant for a required Federal license or permit to conduct an activity, in or outside of the coastal zone, affecting any land or water use or natural resource of the coastal zone of that state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the enforceable policies of the state's approved program and that such activity will be conducted in a manner consistent with the program. At the same time,

the applicant shall furnish to the state or its designated agency a copy of the certification, with all necessary information and data. Each coastal state shall establish procedures for public notice in the case of all such certifications and, to the extent it deems appropriate, procedures for public hearings in connection therewith. At the earliest practicable time, the state or its designated agency shall notify the Federal agency concerned that the state concurs with or objects to the applicant's certification. If the state or its designated agency fails to furnish the required notification within six months after receipt of its copy of the applicant's certification, the state's concurrence with the certification shall be conclusively presumed. No license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certification or until, by the state's failure to act, the concurrence is conclusively presumed, unless the Secretary, on his own initiative or upon appeal by the applicant, finds after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state, that the activity is consistent with the objectives of this chapter or is otherwise necessary in the interest of national security.

(B) After the management program of any coastal state has been approved by the Secretary under section 1455 of this title, any person who submits to the Secretary of the Interior any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) and regulations under such Act shall, with respect to any exploration, development, or production described in such plan and affecting any land or water use or natural resource of the coastal zone of such state, attach to such plan a certification that each activity which is described in detail in such plan complies with the enforceable policies of such state's approved management program and will be carried out in a manner consistent with such program. No Federal official or agency shall grant such person any license or permit for any activity described in detail in such plan until such state or its designated agency receives a copy of such certification and plan, together with any other necessary data and information, and until—

(i) such state or its designated agency, in accordance with the procedures required to be established by such state pursuant to subparagraph (A), concurs with such person's certification and notifies the Secretary and the Secretary of the Interior of such concurrence;

(ii) concurrence by such state with such certification is conclusively presumed as provided for in subparagraph (A), except if such state fails to concur with or object to such certification within three months after receipt of its copy of such certification and supporting information, such state shall provide the Secretary, the appropriate federal agency, and such person with a written statement describing the status of review and the basis for further delay in issuing a final decision, and if such statement is not so provided, concurrence by such state with such certification shall be conclusively presumed; or

(iii) the Secretary finds, pursuant to subparagraph (A), that each activity which is described in detail in such plan is consistent with the objectives of this chapter or is otherwise necessary in the interest of national security.

If a state concurs or is conclusively presumed to concur, or if the Secretary makes such a finding, the provisions of subparagraph (A) are not applicable with respect to such person, such state, and any Federal license or permit which is required to conduct any activity affecting land uses or water uses in the coastal zone of such state which is described in detail in the plan to which such concurrence or finding applies. If such state objects to such certification and if the Secretary fails to make a finding under clause (iii) with respect to such certification, or if such person fails substantially to comply with such plan as submitted, such person shall submit an amendment to such plan, or a new plan, to the Secretary of the Interior. With respect to any amendment or new plan submitted to the Secretary of the Interior pursuant to the preceding sentence, the applicable time period for purposes of concurrence by conclusive presumption under subparagraph (A) is 3 months.

(d) Application of local governments for Federal assistance; relationship of activities with approved management programs

State and local governments submitting applications for Federal assistance under other Federal programs, in or outside of the coastal zone, affecting any land or water use of natural resource of the coastal zone shall indicate the views of the appropriate state or local agency as to the relationship of such activities to the approved management program for the coastal zone. Such applications shall be submitted and coordinated in accordance with the provisions of section 6506 of title 31. Federal agencies shall not approve proposed projects that are inconsistent with the enforceable policies of a coastal state's management program, except upon a finding by the Secretary that such project is consistent with the purposes of this chapter or necessary in the interest of national security.

(e) Construction with other laws

Nothing in this chapter shall be construed—

(1) to diminish either Federal or state jurisdiction, responsibility, or rights in the field of planning, development, or control of water resources, submerged lands, or navigable waters; nor to displace, supersede, limit, or modify any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more states or of two or more states and the Federal Government; nor to limit the authority of Congress to authorize and fund projects;

(2) as superseding, modifying, or repealing existing laws applicable to the various Federal agencies; nor to affect the jurisdiction, powers, or prerogatives of the International Joint Commission, United States and Canada, the Permanent Engineering Board, and the United States operating entity or entities established pursuant to the Columbia River Basin Treaty,

signed at Washington, January 17, 1961, or the International Boundary and Water Commission, United States and Mexico.

(f) Construction with existing requirements of water and air pollution programs

Notwithstanding any other provision of this chapter, nothing in this chapter shall in any way affect any requirement (1) established by the Federal Water Pollution Control Act, as amended [33 U.S.C. 1251 et seq.], or the Clean Air Act, as amended [42 U.S.C. 7401 et seq.], or (2) established by the Federal Government or by any state or local government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to this chapter and shall be the water pollution control and air pollution control requirements applicable to such program.

(g) Concurrence with programs which affect inland areas

When any state's coastal zone management program, submitted for approval or proposed for modification pursuant to section 1455 of this title, includes requirements as to shorelands which also would be subject to any Federally supported national land use program which may be hereafter enacted, the Secretary, prior to approving such program, shall obtain the concurrence of the Secretary of the Interior, or such other Federal official as may be designated to administer the national land use program, with respect to that portion of the coastal zone management program affecting such inland areas.

(h) Mediation of disagreements

In case of serious disagreement between any Federal agency and a coastal state—

- (1) in the development or the initial implementation of a management program under section 1454 of this title; or
- (2) in the administration of a management program approved under section 1455 of this title;

the Secretary, with the cooperation of the Executive Office of the President, shall seek to mediate the differences involved in such disagreement. The process of such mediation shall, with respect to any disagreement described in paragraph (2), include public hearings which shall be conducted in the local area concerned.

(i) Application fee for appeals

(1) With respect to appeals under subsections (c)(3) and (d) which are submitted after November 5, 1990, the Secretary shall collect an application fee of not less than \$200 for minor appeals and not less than \$500 for major appeals, unless the Secretary, upon consideration of an applicant's request for a fee waiver, determines that the applicant is unable to pay the fee.

(2)(A) The Secretary shall collect such other fees as are necessary to recover the full costs of administering and processing such appeals under subsection (c).

(B) If the Secretary waives the application fee under paragraph (1) for an applicant, the Secretary shall waive all other fees under this subsection for the applicant.

(3) Fees collected under this subsection shall be deposited into the Coastal Zone Management

Fund established under section 1456a of this title.

(Pub. L. 89-454, title III, §307, as added Pub. L. 92-583, Oct. 27, 1972, 86 Stat. 1285; amended Pub. L. 94-370, §6, July 26, 1976, 90 Stat. 1018; Pub. L. 95-372, title V, §504, Sept. 18, 1978, 92 Stat. 693; Pub. L. 101-508, title VI, §6208, Nov. 5, 1990, 104 Stat. 1388-307; Pub. L. 102-587, title II, §2205(b)(13), (14), Nov. 4, 1992, 106 Stat. 5051.)

Editorial Notes

REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in subsec. (c)(3)(B), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, which is classified generally to subchapter III (§1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 43 and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (f), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Clean Air Act, referred to in subsec. (f), is act July 14, 1955, ch. 360, 69 Stat. 322, which is classified generally to chapter 85 (§7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

CODIFICATION

In subsec. (d), "section 6506 of title 31" substituted for "title IV of the Intergovernmental Coordination [Cooperation] Act of 1968 [42 U.S.C. 4231 et seq.]" on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1992—Subsec. (c)(3)(B). Pub. L. 102-587, §2205(b)(13), made technical amendment to directory language of Pub. L. 101-508, §6208(b)(3)(B). See 1990 Amendment note below.

Subsec. (i). Pub. L. 102-587, §2205(b)(14), designated existing provisions as par. (1), added pars. (2) and (3), and struck out at end of par. (1) "The Secretary shall collect such other fees as are necessary to recover the full costs of administering and processing such appeals under subsection (c) of this section."

1990—Subsec. (c)(1). Pub. L. 101-508, §6208(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs."

Subsec. (c)(2). Pub. L. 101-508, §6208(b)(1), which directed the insertion of "the enforceable policies of" before "approved State management programs", was executed by making the insertion before "approved state management programs" to reflect the probable intent of Congress.

Subsec. (c)(3)(A). Pub. L. 101-508, §6208(b)(2), in first sentence inserted "in or outside of the coastal zone," after "to conduct an activity", substituted "any land or water use or natural resource of" for "land or water uses in", and inserted "the enforceable policies of" after "the proposed activity complies with".

Subsec. (c)(3)(B). Pub. L. 101-508, §6208(b)(3)(A), substituted "land or water use or natural resource of" for "land use or water use in" in first sentence.

Pub. L. 101-508, §6208(b)(3)(B), as amended by Pub. L. 102-587, §2205(b)(13), inserted "the enforceable policies of" after "such plan complies with" in first sentence.

Subsec. (d). Pub. L. 101-508, §6208(b)(4), substituted “, in or outside of the coastal zone, affecting any land or water use of natural resource of” for “affecting” and inserted “the enforceable policies of” after “that are inconsistent with”.

Subsec. (i). Pub. L. 101-508, §6208(c), added subsec. (i). 1978—Subsec. (c)(3)(B)(ii). Pub. L. 95-372 inserted “, except if such state fails to concur with or object to such certification within three months after receipt of its copy of such certification and supporting information, such state shall provide the Secretary, the appropriate federal agency, and such person with a written statement describing the status of review and the basis for further delay in issuing a final decision, and if such statement is not so provided, concurrence by such state with such certification shall be conclusively presumed” after “as provided for in subparagraph (A)”.

1976—Subsec. (b). Pub. L. 94-370, §6(2), struck out provisions requiring that in case of serious disagreement between Federal agency and state in development of program, Secretary shall seek to mediate the differences in cooperation with the Executive Office of the President and incorporated such provision into subsec. (h).

Subsec. (c)(3). Pub. L. 94-370, §6(3), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (h). Pub. L. 94-370, §6(4), added subsec. (h) which incorporates former provision of subsec. (b) relating to mediation by Secretary of disagreements between Federal agencies and state.

§ 1456-1. Authorization of the Coastal and Estuarine Land Conservation Program

(a) In general

The Secretary may conduct a Coastal and Estuarine Land Conservation Program, in cooperation with appropriate State, regional, and other units of government, for the purposes of protecting important coastal and estuarine areas that have significant conservation, recreation, ecological, historical, or aesthetic values, or that are threatened by conversion from their natural, undeveloped, or recreational state to other uses or could be managed or restored to effectively conserve, enhance, or restore ecological function. The program shall be administered by the National Ocean Service of the National Oceanic and Atmospheric Administration through the Office of Ocean and Coastal Resource Management.

(b) Property acquisition grants

The Secretary shall make grants under the program to coastal states with approved coastal zone management plans or National Estuarine Research Reserve units for the purpose of acquiring property or interests in property described in subsection (a) that will further the goals of—

- (1) a Coastal Zone Management Plan or Program approved under this chapter;
- (2) a National Estuarine Research Reserve management plan;
- (3) a regional or State watershed protection or management plan involving coastal states with approved coastal zone management programs; or
- (4) a State coastal land acquisition plan that is consistent with an approved coastal zone management program.

(c) Grant process

The Secretary shall allocate funds to coastal states or National Estuarine Research Reserves

under this section through a competitive grant process in accordance with guidelines that meet the following requirements:

(1) The Secretary shall consult with the coastal state's coastal zone management program, any National Estuarine Research Reserve in that State, and the lead agency designated by the Governor for coordinating the implementation of this section (if different from the coastal zone management program).

(2) Each participating coastal state, after consultation with local governmental entities and other interested stakeholders, shall identify priority conservation needs within the State, the values to be protected by inclusion of lands in the program, and the threats to those values that should be avoided.

(3) Each participating coastal state shall to the extent practicable ensure that the acquisition of property or easements shall complement working waterfront needs.

(4) The applicant shall identify the values to be protected by inclusion of the lands in the program, management activities that are planned and the manner in which they may affect the values identified, and any other information from the landowner relevant to administration and management of the land.

(5) Awards shall be based on demonstrated need for protection and ability to successfully leverage funds among participating entities, including Federal programs, regional organizations, State and other governmental units, landowners, corporations, or private organizations.

(6) The governor, or the lead agency designated by the governor for coordinating the implementation of this section, where appropriate in consultation with the appropriate local government, shall determine that the application is consistent with the State's or territory's approved coastal zone plan, program, and policies prior to submittal to the Secretary.

(7)(A) Priority shall be given to lands described in subsection (a) that can be effectively managed and protected and that have significant ecological value.

(B) Of the projects that meet the standard in subparagraph (A), priority shall be given to lands that—

(i) are under an imminent threat of conversion to a use that will degrade or otherwise diminish their natural, undeveloped, or recreational state; and

(ii) serve to mitigate the adverse impacts caused by coastal population growth in the coastal environment.

(8) In developing guidelines under this section, the Secretary shall consult with coastal states, other Federal agencies, and other interested stakeholders with expertise in land acquisition and conservation procedures.

(9) Eligible coastal states or National Estuarine Research Reserves may allocate grants to local governments or agencies eligible for assistance under section 1455a(e) of this title.

(10) The Secretary shall develop performance measures that the Secretary shall use to evaluate and report on the program's effectiveness in accomplishing its purposes, and