

a management agreement with a university-based consortium.

“(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated—

“(1) \$1,000,000 for fiscal year 2001 to develop the management agreement under subsection (c); and

“(2) \$4,000,000 for each of fiscal years 2002, 2003, 2004, and 2005 to carry out the project.

Such sums shall remain available until expended.”

§ 2902. Definitions

In this chapter, the following definitions apply:

(1) Council

The term “Council” means the Estuary Habitat Restoration Council established by section 2904 of this title.

(2) Estuary

The term “estuary” means a part of a river or stream or other body of water that has an unimpaired connection with the open sea and where the sea water is measurably diluted with fresh water derived from land drainage. The term also includes near coastal waters and wetlands of the Great Lakes that are similar in form and function to estuaries, including the area located in the Great Lakes biogeographic region and designated as a National Estuarine Research Reserve under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) as of November 7, 2000.

(3) Estuary habitat

The term “estuary habitat” means the physical, biological, and chemical elements associated with an estuary, including the complex of physical and hydrologic features and living organisms within the estuary and associated ecosystems.

(4) Estuary habitat restoration activity

(A) In general

The term “estuary habitat restoration activity” means an activity that results in improving degraded estuaries or estuary habitat or creating estuary habitat (including both physical and functional restoration), with the goal of attaining a self-sustaining system integrated into the surrounding landscape.

(B) Included activities

The term “estuary habitat restoration activity” includes—

(i) the reestablishment of chemical, physical, hydrologic, and biological features and components associated with an estuary;

(ii) except as provided in subparagraph (C), the cleanup of pollution for the benefit of estuary habitat;

(iii) the control of nonnative and invasive species in the estuary;

(iv) the reintroduction of species native to the estuary, including through such means as planting or promoting natural succession;

(v) the construction of reefs to promote fish and shellfish production and to provide estuary habitat for living resources; and

(vi) other activities that improve estuary habitat.

(C) Excluded activities

The term “estuary habitat restoration activity” does not include an activity that—

(i) constitutes mitigation required under any Federal or State law for the adverse effects of an activity regulated or otherwise governed by Federal or State law; or

(ii) constitutes restoration for natural resource damages required under any Federal or State law.

(5) Estuary habitat restoration project

The term “estuary habitat restoration project” means a project to carry out an estuary habitat restoration activity.

(6) Estuary habitat restoration plan

(A) In general

The term “estuary habitat restoration plan” means any Federal, State, or regional plan for restoration of degraded estuary habitat that was developed with the substantial participation of appropriate public and private stakeholders.

(B) Included plans and programs

The term “estuary habitat restoration plan” includes estuary habitat restoration components of—

(i) a comprehensive conservation and management plan approved under section 1330 of this title;

(ii) a lakewide management plan or remedial action plan developed under section 1268 of this title;

(iii) a management plan approved under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); and

(iv) the interstate management plan developed pursuant to the Chesapeake Bay program under section 1267 of this title.

(7) Indian tribe

The term “Indian tribe” has the meaning given such term by section 5304 of title 25.

(8) Non-Federal interest

The term “non-Federal interest” means a State, a political subdivision of a State, an Indian tribe, a regional or interstate agency, or, as provided in section 2903(f)(2) of this title, a nongovernmental organization.

(9) Secretary

The term “Secretary” means the Secretary of the Army.

(10) State

The term “State” means the States of Alabama, Alaska, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Virginia, Washington, and Wisconsin, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, American Samoa, and Guam.

(Pub. L. 106-457, title I, §103, Nov. 7, 2000, 114 Stat. 1958; Pub. L. 110-114, title V, §5017(b), Nov. 8, 2007, 121 Stat. 1197.)

Editorial Notes

REFERENCES IN TEXT

The Coastal Zone Management Act of 1972, referred to in pars. (2) and (6)(B)(iii), is title III of Pub. L. 89-454 as added by Pub. L. 92-583, Oct. 27, 1972, 86 Stat. 1280, as amended, which is classified generally to chapter 33 (§1451 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1451 of Title 16 and Tables.

AMENDMENTS

2007—Par. (6)(A). Pub. L. 110-114 substituted “Federal, State, or regional” for “Federal or State”.

§ 2903. Estuary habitat restoration program

(a) Establishment

There is established an estuary habitat restoration program under which the Secretary may carry out estuary habitat restoration projects and provide technical assistance through the award of contracts and cooperative agreements in accordance with the requirements of this chapter.

(b) Origin of projects

A proposed estuary habitat restoration project shall originate from a non-Federal interest consistent with State or local laws.

(c) Selection of projects

(1) In general

The Secretary shall select estuary habitat restoration projects from a list of project proposals submitted by the Estuary Habitat Restoration Council under section 2904(b) of this title.

(2) Required elements

Each estuary habitat restoration project selected by the Secretary must—

- (A) address restoration needs identified in an estuary habitat restoration plan;
- (B) be consistent with the estuary habitat restoration strategy developed under section 2905 of this title;
- (C) include a monitoring plan that is consistent with standards for monitoring developed under section 2906 of this title to ensure that short-term and long-term restoration goals are achieved; and
- (D) include satisfactory assurance from the non-Federal interests proposing the project that the non-Federal interests will have adequate personnel, funding, and authority to carry out items of local cooperation and properly maintain the project.

(3) Factors for selection of projects

In selecting an estuary habitat restoration project, the Secretary shall consider the following factors:

- (A) Whether the project is part of an approved Federal or State estuary management or habitat restoration plan.
- (B) The technical feasibility of the project.
- (C) The scientific merit of the project.
- (D) Whether the project will encourage increased coordination and cooperation among

Federal, State, and local government agencies.

(E) Whether the project fosters public-private partnerships and uses Federal resources to encourage increased private sector involvement, including consideration of the amount of private funds or in-kind contributions for an estuary habitat restoration activity.

(F) Whether the project is cost-effective.

(G) Whether the State in which the non-Federal interest is proposing the project has a dedicated source of funding to acquire or restore estuary habitat, natural areas, and open spaces for the benefit of estuary habitat restoration or protection.

(H) Other factors that the Secretary determines to be reasonable and necessary for consideration.

(4) Priority

In selecting estuary habitat restoration projects to be carried out under this chapter, the Secretary shall give priority consideration to a project if, in addition to meriting selection based on the factors under paragraph (3)—

(A) the project occurs within a watershed in which there is a program being carried out that addresses sources of pollution and other activities that otherwise would re-impair the restored habitat; or

(B) the project includes pilot testing of or a demonstration of an innovative technology or approach having the potential for improved cost-effectiveness in estuary habitat restoration.

(d) Cost sharing

(1) Federal share

(A) In general

Except as provided in paragraph (2) and subsection (e)(2), the Federal share of the cost of an estuary habitat restoration project (other than the cost of operation and maintenance of the project) carried out under this chapter shall not exceed 65 percent of such cost.

(B) Monitoring

(i) Costs

The costs of monitoring an estuary habitat restoration project funded under this chapter may be included in the total cost of the estuary habitat restoration project.

(ii) Goals

The goals of the monitoring shall be—

- (I) to measure the effectiveness of the restoration project; and
- (II) to allow adaptive management to ensure project success.

(2) Innovative technology costs

The Federal share of the incremental additional cost of including in a project pilot testing of or a demonstration of an innovative technology or approach described in subsection (c)(4)(B) shall be 85 percent.

(3) Non-Federal share

The non-Federal share of the cost of an estuary habitat restoration project carried out