

TITLE 33. NAVIGATION AND NAVIGABLE WATERS
CHAPTER 42. ESTUARY RESTORATION
33 U.S.C. §§ 2901-2909 (2003).

§ 2901. Purposes

The purposes of this title [33 USC § § 2901 et seq.] are--

- (1) to promote the restoration of estuary habitat;
- (2) to develop a national estuary habitat restoration strategy for creating and maintaining effective estuary habitat restoration partnerships among public agencies at all levels of government and to establish new partnerships between the public and private sectors;
- (3) to provide Federal assistance for estuary habitat restoration projects and to promote efficient financing of such projects; and
- (4) to develop and enhance monitoring and research capabilities through the use of the environmental technology innovation program associated with the National Estuarine Research Reserve System established by section 315 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1461) to ensure that estuary habitat restoration efforts are based on sound scientific understanding and innovative technologies.

§ 2902. Definitions

In this title [33 USC § § 2901 et seq.], the following definitions apply:

- (1) Council. The term "Council" means the Estuary Habitat Restoration Council established by section 105 [33 USC § 2904].
- (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 the date of enactment of this Act [enacted Nov. 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 or State 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 320 of the Federal Water Pollution Control Act (33 U.S.C. 1330);

(ii) a lakewide management plan or remedial action plan developed under section 118 of the Federal Water Pollution Control Act (33 U.S.C. 1268);

(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 117 of the Federal Water Pollution Control Act (33 U.S.C. 1267).

(7) Indian tribe. The term "Indian tribe" has the meaning given such term by section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(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 104(f)(2) [33 USC § 2903(f)(2)], 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.

§ 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 in accordance with the requirements of this title [33 USC § § 2901 et seq.].

(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 105(b) [33 USC § 2904(b)].

(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 106 [33 USC § 2905];

(C) include a monitoring plan that is consistent with standards for monitoring developed under section 107 [33 USC § 2906] 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 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 title [33 USC § § 2901 et seq.], 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 having the potential for improved cost-effectiveness in estuary habitat restoration.

(d) Cost sharing.

(1) Federal share. 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 title [33 USC § § 2901 et seq.] shall not exceed 65 percent of such cost.

(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 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 under this title [33 USC § § 2901 et seq.] shall include lands, easements, rights-of-way, and relocations and may include services, or any other form of in-kind contribution determined by the Secretary to be an appropriate contribution equivalent to the monetary amount required for the non-Federal share of the activity.

(4) Operation and maintenance. The non-Federal interests shall be responsible for all costs associated with operating, maintaining, replacing, repairing, and rehabilitating all projects carried out under this section.

(e) Interim actions.

(1) In general. Pending completion of the estuary habitat restoration strategy to be developed under section 106 [33 USC § 2905], the Secretary may take interim actions to carry out an estuary habitat restoration activity.

(2) Federal share. The Federal share of the cost of an estuary habitat restoration activity before the completion of the estuary habitat restoration strategy shall not exceed 25 percent of such cost.

(f) Cooperation of non-Federal interests.

(1) In general. The Secretary may not carry out an estuary habitat restoration project until a non-Federal interest has entered into a written agreement with the Secretary in which the non-Federal interest agrees to--

(A) provide all lands, easements, rights-of-way, and relocations and any other elements the Secretary determines appropriate under subsection (d)(3); and

(B) provide for maintenance and monitoring of the project.

(2) Nongovernmental organizations. Notwithstanding section 221(b) of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b(b)), for any project to be undertaken under this title [33 USC § § 2901 et seq.], the Secretary, in consultation and coordination with appropriate State and local governmental agencies and Indian tribes, may allow a nongovernmental organization to serve as the non-Federal interest for the project.

(g) Delegation of project implementation. In carrying out this title [33 USC § § 2901 et seq.], the Secretary may delegate project implementation to another Federal department or agency on a reimbursable basis if the Secretary, upon the recommendation of the Council, determines such delegation is appropriate.

§ 2904. Establishment of Estuary Habitat Restoration Council

(a) Council. There is established a council to be known as the "Estuary Habitat Restoration Council".

(b) Duties. The Council shall be responsible for--

(1) soliciting, reviewing, and evaluating project proposals and developing recommendations concerning such proposals based on the factors specified in section 104(c)(3) [33 USC § 2903(c)(3)];

(2) submitting to the Secretary a list of recommended projects, including a recommended priority order and any recommendation as to whether a project should be carried out by the Secretary or by another Federal department or agency under section 104(g) [33 USC § 2903(g)];

(3) developing and transmitting to Congress a national strategy for restoration of estuary habitat;

(4) periodically reviewing the effectiveness of the national strategy in meeting the purposes of this title [33 USC § § 2901 et seq.] and, as necessary, updating the national strategy; and

(5) providing advice on the development of the database, monitoring standards, and report required under sections 107 and 108 [33 USC § § 2906 and 2907].

(c) Membership. The Council shall be composed of the following members:

(1) The Secretary (or the Secretary's designee).

(2) The Under Secretary for Oceans and Atmosphere of the Department of Commerce (or the Under Secretary's designee).

(3) The Administrator of the Environmental Protection Agency (or the Administrator's designee).

(4) The Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service (or such Secretary's designee).

(5) The Secretary of Agriculture (or such Secretary's designee).

(6) The head of any other Federal agency designated by the President to serve as an ex officio member of the Council.

(d) Prohibition of compensation. Members of the Council may not receive compensation for their service as members of the Council.

(e) Chairperson. The chairperson shall be elected by the Council from among its members for a 3-year term, except that the first elected chairperson may serve a term of fewer than 3 years.

(f) Convening of Council.

(1) First meeting. The Secretary shall convene the first meeting of the Council not later than 60 days after the date of enactment of this Act [enacted Nov. 7, 2000] for the purpose of electing a chairperson.

(2) Additional meetings. The chairperson shall convene additional meetings of the Council as often as appropriate to ensure that this title [33 USC § § 2901 et seq.] is fully carried out, but not less often than annually.

(g) Council procedures. The Council shall establish procedures for voting, the conduct of meetings, and other matters, as necessary.

(h) Public participation. Meetings of the Council shall be open to the public. The Council shall provide notice to the public of such meetings.

(i) Advice. The Council shall consult with persons with recognized scientific expertise in estuary or estuary habitat restoration, representatives of State agencies, local or regional government agencies, and nongovernmental organizations with expertise in estuary or estuary habitat restoration, and representatives of Indian tribes, agricultural interests, fishing interests, and other estuary users--

(1) to assist the Council in the development of the estuary habitat restoration strategy to be developed under section 106 [33 USC § 2905]; and

(2) to provide advice and recommendations to the Council on proposed estuary habitat restoration projects, including advice on the scientific merit, technical merit, and feasibility of a project.

§ 2905. Estuary habitat restoration strategy.

(a) In general. Not later than 1 year after the date of enactment of this Act [enacted Nov. 7, 2000], the Council, shall develop an estuary habitat restoration strategy designed to ensure a comprehensive approach to maximize benefits derived from estuary habitat restoration projects and to foster the coordination of Federal and non-Federal activities related to restoration of estuary habitat.

(b) Goal. The goal of the strategy shall be the restoration of 1,000,000 acres of estuary habitat by the year 2010.

(c) Integration of estuary habitat restoration plans, programs, and partnerships. In developing the estuary habitat restoration strategy, the Council shall--

(1) conduct a review of estuary management or habitat restoration plans and Federal programs established under other laws that authorize funding for estuary habitat restoration activities; and

(2) ensure that the estuary habitat restoration strategy is developed in a manner that is consistent with the estuary management or habitat restoration plans.

(d) Elements of the strategy. The estuary habitat restoration strategy shall include proposals, methods, and guidance on--

(1) maximizing the incentives for the creation of new public-private partnerships to carry out estuary habitat restoration projects and the use of Federal resources to encourage increased private sector involvement in estuary habitat restoration activities;

(2) ensuring that the estuary habitat restoration strategy will be implemented in a manner that is consistent with the estuary management or habitat restoration plans;

(3) promoting estuary habitat restoration projects to--

(A) provide healthy ecosystems in order to support--

(i) wildlife, including endangered and threatened species, migratory birds, and resident species of an estuary watershed; and

(ii) fish and shellfish, including commercial and recreational fisheries;

(B) improve surface and ground water quality and quantity, and flood control;

(C) provide outdoor recreation; and

(D) address other areas of concern that the Council determines to be appropriate for consideration;

(4) addressing the estimated historic losses, estimated current rate of loss, and extent of the threat of future loss or degradation of each type of estuary habitat;

(5) measuring the rate of change for each type of estuary habitat;

(6) selecting a balance of smaller and larger estuary habitat restoration projects; and

(7) ensuring equitable geographic distribution of projects funded under this title [33 USC § § 2901 et seq.].

(e) Public review and comment. Before the Council adopts a final or revised estuary habitat restoration strategy, the Secretary shall publish in the Federal Register a draft of the estuary habitat restoration strategy and provide an opportunity for public review and comment.

(f) Periodic revision. Using data and information developed through project monitoring and management, and other relevant information, the Council may periodically review and update, as necessary, the estuary habitat restoration strategy.

§ 2906. Monitoring of estuary habitat restoration projects

(a) Under Secretary. In this section, the term "Under Secretary" means the Under Secretary for Oceans and Atmosphere of the Department of Commerce.

(b) Database of restoration project information. The Under Secretary, in consultation with the Council, shall develop and maintain an appropriate database of information concerning estuary habitat restoration projects carried out under this title [33 USC § § 2901 et seq.], including information on project techniques, project completion, monitoring data, and other relevant information.

(c) Monitoring data standards. The Under Secretary, in consultation with the Council, shall develop standard data formats for monitoring projects, along with requirements for types of data collected and frequency of monitoring.

(d) Coordination of data. The Under Secretary shall compile information that pertains to estuary habitat restoration projects from other Federal, State, and local sources and that meets the quality control requirements and data standards established under this section.

(e) Use of existing programs. The Under Secretary shall use existing programs within the National Oceanic and Atmospheric Administration to create and maintain the database required under this section.

(f) Public availability. The Under Secretary shall make the information collected and maintained under this section available to the public.

§ 2907. Reporting

(a) In general. At the end of the third and fifth fiscal years following the date of enactment of this Act [enacted Nov. 7, 2000], the Secretary, after considering the advice and recommendations of the Council, shall transmit to Congress a report on the results of activities carried out under this title [33 USC § § 2901 et seq.].

(b) Contents of report. A report under subsection (a) shall include--

(1) data on the number of acres of estuary habitat restored under this title [33 USC § § 2901 et seq.], including descriptions of, and partners involved with, projects selected, in progress, and completed under this title [33 USC § § 2901 et seq.] that comprise those acres;

(2) information from the database established under section 107(b) [33 USC § 2906(b)] related to ongoing monitoring of projects to ensure that short-term and long-term restoration goals are achieved;

(3) an estimate of the long-term success of varying restoration techniques used in carrying out estuary habitat restoration projects;

(4) a review of how the information described in paragraphs (1) through (3) has been incorporated in the selection and implementation of estuary habitat restoration projects;

(5) a review of efforts made to maintain an appropriate database of restoration projects carried out under this title [33 USC § § 2901 et seq.]; and

(6) a review of the measures taken to provide the information described in paragraphs (1) through (3) to persons with responsibility for assisting in the restoration of estuary habitat.

§ 2908. Funding

(a) Authorization of appropriations.

(1) Estuary habitat restoration projects. There is authorized to be appropriated to the Secretary for carrying out and providing technical assistance for estuary habitat restoration projects--

(A) \$ 40,000,000 for fiscal year 2001;

(B) \$ 50,000,000 for each of fiscal years 2002 and 2003;

(C) \$ 60,000,000 for fiscal year 2004; and

(D) \$ 75,000,000 for fiscal year 2005.

Such sums shall remain available until expended.

(2) Monitoring. There is authorized to be appropriated to the Under Secretary for Oceans and Atmosphere of the Department of Commerce for the acquisition, maintenance, and management of monitoring data on restoration projects carried out under this title [33 USC § § 2901 et seq.], \$ 1,500,000 for each of fiscal years 2001 through 2005. Such sums shall remain available until expended.

(b) Set-aside for administrative expenses of the Council. Not to exceed 3 percent of the amounts appropriated for a fiscal year under subsection (a)(1) or \$ 1,500,000, whichever is greater, may be used by the Secretary for administration and operation of the Council.

§ 2909. General provisions

(a) Agency consultation and coordination. In carrying out this title [33 USC § § 2901 et seq.], the Secretary shall, as necessary, consult with, cooperate with, and coordinate its activities with the activities of other Federal departments and agencies.

(b) Cooperative agreements; memoranda of understanding. In carrying out this title [33 USC § § 2901 et seq.], the Secretary may--

(1) enter into cooperative agreements with Federal, State, and local government agencies and other entities; and

(2) execute such memoranda of understanding as are necessary to reflect the agreements.

(c) Federal agency facilities and personnel. Federal agencies may cooperate in carrying out scientific and other programs necessary to carry out this title [33 USC § § 2901 et seq.], and may provide facilities and personnel, for the purpose of assisting the Council in carrying out its duties under this title.

(d) Identification and mapping of dredged material disposal sites. In consultation with appropriate Federal and non-Federal public entities, the Secretary shall undertake, and update as warranted by changed conditions, surveys to identify and map sites appropriate for beneficial uses of dredged material for the protection, restoration, and creation of aquatic and ecologically related habitats, including wetlands, in order to further the purposes of this title [33 USC § § 2901 et seq.].

(e) Study of bioremediation technology.

(1) In general. Not later than 180 days after the date of enactment of this Act [enacted Nov. 7, 2000], the Administrator of the Environmental Protection Agency, with the participation of the estuarine scientific community, shall begin a 2-year study on the efficacy of bioremediation products.

(2) Requirements. The study shall--

(A) evaluate and assess bioremediation technology--

(i) on low-level petroleum hydrocarbon contamination from recreational boat bilges;

(ii) on low-level petroleum hydrocarbon contamination from stormwater discharges;

(iii) on nonpoint petroleum hydrocarbon discharges; and

(iv) as a first response tool for petroleum hydrocarbon spills; and

(B) recommend management actions to optimize the return of a healthy and balanced ecosystem and make improvements in the quality and character of estuarine waters.