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U.S. ARMY CORPS OF ENGINEERS  
441 G STREET, NW  
WASHINGTON, DC 20314-1000

CECW-P

FEB 16 2018

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Implementation Guidance for Section 5014 of the Water Resources Development Act of 2016 (WRDA 2016), Environmental Banks

1. Section 5014 of WRDA 2016 was completed and signed on 12 February 2018. The implementation guidance is posted in the U.S. Army Corps of Engineers website: <http://www.usace.army.mil/Missions/Civil-Works/Project-Planning/Legislative-Links/>.
2. Questions regarding this implementation guidance should be directed to Mark Matusiak, Office of Water and Policy Review, Planning and Policy Division, at (202) 761-4700 or [Mark.Matusiak@usace.army.mil](mailto:Mark.Matusiak@usace.army.mil).

A handwritten signature in blue ink, appearing to read "J. Dalton".

JAMES C. DALTON, P.E.  
Director of Civil Works

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DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
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FEB 12 2018

MEMORANDUM FOR COMMANDING GENERAL U.S. ARMY CORPS OF  
ENGINEERS

SUBJECT: Implementation Guidance for Section 5014 of the Water Infrastructure Improvements for the Nation Act of 2016 (WIIN 2016), Environmental Banks

1. Section 5014 of WIIN 2016 amends the Coastal Wetlands Planning, Protection and Restoration Act (Public Law 101-646; 16 U.S.C. 3951 et seq.) by adding Section 309, Environmental Banks, at the end of the statute. Section 5014 of WIIN 2016 and the Coastal Wetlands Planning, Protection and Restoration Act, as amended by Section 5014, are enclosed.
2. References.
  - a. Compensatory Mitigation for Losses of Aquatic Resources; Final Rule; Federal Register, Volume 73, No. 70, Page 19594, 10 April 2008.
  - b. Section 906 of the Water Resources Development Act (WRDA) of 1986, as amended.
  - c. Section 2036(c) of WRDA 2007, as amended by Section 1163 of WRDA 2016,
  - d. CECC-E Memorandum, Subject: Financial Assurance Instruments for Compensatory Mitigation under the Corps Regulatory Program, 1 December 2011.
3. The Coastal Wetlands Planning, Protection and Restoration Act (CWPPRA) provides for targeted funds to be used for planning and implementing projects that create, protect, restore and enhance wetlands in coastal Louisiana. The CWPPRA Program in the U.S. Army Corps of Engineers (Corps) New Orleans District is managed by the CWPPRA Task Force. The Task Force is comprised of the state of Louisiana and five federal agencies. The New Orleans District Commander is the Chair of the Task Force. The Corps administers accounting and tracks project status of all CWPPRA projects and also constructs approved projects whenever the Corps is assigned as the lead agency. Other projects are constructed by the other four federal agencies.
4. Section 309 of CWPPRA, added by Section 5014 of WIIN 2016, requires the Task Force to issue guidelines for the use, maintenance, and oversight of environmental

SUBJECT: Implementation Guidance for Section 5014 of the Water Infrastructure Improvements for the Nation Act of 2016 (WIIN 2016), Environmental Banks

banks in Louisiana, after public notice and opportunity for comment. The law provides that the environmental bank guidelines shall:

- a. Set forth procedures for establishment and approval of environmental banks subject to approval by the heads of federal agencies responsible for implementation of federal environmental laws for which mitigation credits may be used;
- b. Establish criteria for siting of environmental banks that enhance the resilience of coastal resources in high priority areas, as identified in federal or state restoration plans, including restoration of resources within the scope of a project authorized for construction;
- c. Establish criteria that ensure environmental banks secure adequate financial assurances and legally enforceable protection for the land or resources that generate the credits from environmental banks;
- d. Stipulate that credits from environmental banks may not be used for mitigation of impacts required under Section 404 of the Federal Water Pollution Control Act (also known as the Clean Water Act) or the Endangered Species Act in an area where an existing mitigation bank approved pursuant to such laws within 5 years of enactment of the WRDA 2016 has credits available;
- e. Establish performance criteria for environmental banks; and
- f. Establish criteria and financial assurances for the operation and monitoring of environmental banks.

5. Additionally, Section 309 of CWPPRA defines 'environmental bank' to mean a project, project increment, or projects for purposes of restoring, creating, or enhancing natural resources at a designated site to establish mitigation credits; provides that mitigation credits created from environmental banks approved pursuant to this section may be used to satisfy existing liability under federal environmental laws; and requires that the guidelines and mitigation carried out through an environmental bank established pursuant to such guidelines shall comply with all federal laws, including the Federal Water Pollution Control Act (Clean Water Act) and Section 906 of WRDA 1986, as amended, and their regulations. Section 309 does not affect: (1) any authority, regulatory determination or legal obligation in effect the day before December 16, 2016; or (2) the obligations or requirements of any federal environmental law. Further, Section 309 has a sunset provision that is 10 years after December 16, 2016, after which no environmental bank may be created or approved pursuant to this section.

6. This memorandum provides guidance for the development and issuance of guidelines for the use, maintenance, and oversight of environmental banks in Louisiana pursuant to Section 309 of CWPPRA, added by Section 5014 of WIIN 2016.

SUBJECT: Implementation Guidance for Section 5014 of the Water Infrastructure Improvements for the Nation Act of 2016 (WIIN 2016), Environmental Banks

Information on procedures and requirements for establishing a mitigation bank and standards and criteria for use in fulfilling compensatory mitigation requirements for permits issued under Section 404 of the Clean Water Act and for other Department of the Army (DA) permits, can be found in reference 2.a. Information on compensatory mitigation planning for environmental impacts of Civil Works water resources development projects and consideration of mitigation banks pursuant to Section 1163 of WRDA 2016 (reference 2.c.)

a. Responsibility for development of the CWPPRA environmental bank guidelines lies with the CWPPRA Task Force.

b. Using funds appropriated for the CWPPRA program, the CWPPRA Task Force will develop draft guidelines for environmental banks. Those guidelines shall be consistent with procedural and substantive requirements, standards, and criteria established for mitigation banks in reference 2.a., and requirements applicable to mitigation for water resources development projects in reference 2.c. The guidelines should reflect that the credits produced by environmental banks may be used to satisfy existing liability under federal laws, except that they may not be used for mitigation required to offset impacts authorized under section 404 of the Clean Water Act or for the purposes of the Endangered Species Act in an area where an existing mitigation bank approved pursuant to such laws within 5 years of the date of enactment of WRDA 2016 has credits available.

c. The guidelines should address credit stacking (i.e., the production of multiple mitigation credit types on the same unit of land, such as wetland credits and Endangered Species Act conservation credits) and should prohibit unbundling of stacked credits. (Unbundling occurs when each credit type associated with a particular environmental bank land unit can be sold to a different project proponent to offset the resource impacts of a different project.) The guidelines should require the bank sponsor to use ledgers to track credit transactions, including transactions involving stacked credits, so that the credits associated with a particular environmental bank land unit are not unbundled to offset the impacts of different projects.

d. The guidelines applicable to financial assurances shall ensure that the Corps will not have actual or constructive control or receipt of assurance funds (reference 2.d).

e. After the CWPPRA Task Force has drafted the environmental bank guidelines, the Task Force will issue a public notice to solicit public comment on those draft guidelines. The comment period should be a minimum of 60 days.

f. After the comment period has closed, the CWPPRA Task Force will review the comments received on the draft guidelines, make appropriate changes, and issue the final environmental bank guidelines. The Task Force will issue a public notice to

SUBJECT: Implementation Guidance for Section 5014 of the Water Infrastructure Improvements for the Nation Act of 2016 (WIIN 2016), Environmental Banks

announce the final environmental bank guidelines. The final environmental bank guidelines should be issued within one year of the date of this implementation guidance.

g. The Corps' ecosystem restoration authorities, including Section 1135 of WRDA 1986, as amended; Section 206 of WRDA 1996, as amended; and Section 204 of WRDA 1992, as amended, will not be used for the establishment of environmental banks. Similarly, federal appropriations will not be requested to initiate federal feasibility or other planning studies for the establishment of environmental banks. The Corps can participate in joint water resources projects that include both ecosystem restoration and environmental banking elements as long as the Corps' financial participation in the project is limited to the ecosystem restoration element.

7. Questions regarding this implementation guidance may be directed to Gib Owen, Office of the Assistant Secretary of the Army for Civil Works at [gib.a.owen.civ@mail.mil](mailto:gib.a.owen.civ@mail.mil) or 703-695-4641. Technical questions regarding this implementation guidance should be directed to Mark Matusiak, Planning and Policy Division, at (202) 761-4700 or [mark.matusiak@usace.army.mil](mailto:mark.matusiak@usace.army.mil).



RYAN A. FISHER  
Principal Deputy Assistant Secretary of the Army  
Civil Works

Encl

SEC. 5014. ENVIRONMENTAL BANKS.

The Coastal Wetlands Planning, Protection and Restoration Act (Public Law 101-646; 16 U.S.C. 3951 et seq.) is amended by adding at the end the following:

SEC. 309. ENVIRONMENTAL BANKS.

(a) **GUIDELINES.** Not later than 1 year after the date of enactment of the Water Resources Development Act of 2016, the Task Force shall, after public notice and opportunity for comment, issue guidelines for the use, maintenance, and oversight of environmental banks in Louisiana.

(b) **REQUIREMENTS.** The guidelines issued pursuant to subsection (a) shall

- (1) set forth procedures for establishment and approval of environmental banks subject to the approval of the heads of the appropriate Federal agencies responsible for implementation of Federal environmental laws for which mitigation credits may be used;

- (2) establish criteria for siting of environmental banks that enhance the resilience of coastal resources to inundation and coastal erosion in high priority areas, as identified within Federal or State restoration plans, including the restoration of resources within the scope of a project authorized for construction;

- (3) establish criteria that ensure environmental banks secure adequate financial assurances and legally enforceable protection for the land or resources that generate the credits from environmental banks;

- (4) stipulate that credits from environmental banks may not be used for mitigation of impacts required under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1342) or the Endangered Species Act (16 U.S.C. 1531 et seq.) in an area where an existing mitigation bank approved pursuant to such laws within 5 years of enactment of the Water Resources Development Act of 2016 has credits available;

- (5) establish performance criteria for environmental banks; and

- (6) establish criteria and financial assurance for the operation and monitoring of environmental banks.

(c) **ENVIRONMENTAL BANK.**

- (1) **DEFINITION OF ENVIRONMENTAL BANK.** In this section, the term 'environmental bank' means a project, project increment, or projects for purposes of restoring, creating, or enhancing natural resources at a designated site to establish mitigation credits.

- (2) **CREDITS.** Mitigation credits created from environmental banks approved pursuant to this section may be used to satisfy existing liability under Federal environmental laws.

(d) **SAVINGS CLAUSE.**

- (1) **APPLICATION OF FEDERAL LAW.** Guidelines developed under this section and mitigation carried out through an environmental bank established pursuant to such guidelines shall comply with all applicable requirements of Federal law (including regulations), including

- (A) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

- (B) the Endangered Species Act (16 U.S.C. 1531 et seq.);
- (C) the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.);
- (D) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and
- (E) section 906 of the Water Resources Development Act of 1986 (33 U.S.C. 2283).

(2) STATUTORY CONSTRUCTION. Nothing in this section may be construed to affect

(A) any authority, regulatory determination, or legal obligation in effect the day before the date of enactment of the Water Resources Development Act of 2016;

or

(B) the obligations or requirements of any Federal environmental law.

(e) SUNSET. No new environmental bank may be created or approved pursuant to this section after the date that is 10 years after the date of enactment of this section.

#### SEC. 301. SHORT TITLE.

This title may be cited as the 'Coastal Wetlands Planning, Protection and Restoration Act.

#### SEC. 302. DEFINITIONS.

As used in this title, the term

(1) Secretary' means the Secretary of the Army;

(2) Administrator' means the Administrator of the Environmental Protection Agency;

(3) development activities' means any activity, including the discharge of dredged or fill material, which results directly in a more than de-minimus change in the hydrologic regime, bottom contour, or the type, distribution or diversity of hydrophytic vegetation, or which impairs the flow, reach, or circulation of surface water within wetlands or other waters;

(4) State' means the State of Louisiana;

(5) coastal State' means a State of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes; for the purposes of this title, the term also includes Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands, and American Samoa;

(6) coastal wetlands restoration project' means any technically feasible activity to create, restore, protect, or enhance coastal wetlands through sediment and freshwater diversion, water management, or other measures that the Task Force finds will significantly contribute to the long-term restoration or protection of the physical, chemical and biological integrity of coastal wetlands in the State of Louisiana, and includes any such activity authorized under this title or under any other provision of law, including, but not limited to, new projects, completion or expansion of existing or on-going projects, individual phases, portions, or components of projects and operation, maintenance and rehabilitation of completed projects; the primary purpose of a 'coastal wetlands restoration project' shall not be to provide navigation, irrigation or flood control benefits;

- (7) coastal wetlands conservation project' means--
  - (A) the obtaining of a real property interest in coastal lands or waters, if the obtaining of such interest is subject to terms and conditions that will ensure that the real property will be administered for the long-term conservation of such lands and waters and the hydrology, water quality and fish and wildlife dependent thereon; and
  - (B) the restoration, management, or enhancement of coastal wetlands ecosystems if such restoration, management, or enhancement is conducted on coastal lands and waters that are administered for the long-term conservation of such lands and waters and the hydrology, water quality and fish and wildlife dependent thereon;
- (8) Governor' means the Governor of Louisiana;
- (9) Task Force' means the Louisiana Coastal Wetlands Conservation and Restoration Task Force which shall consist of the Secretary, who shall serve as chairman, the Administrator, the Governor, the Secretary of the Interior, the Secretary of Agriculture and the Secretary of Commerce; and
- (10) Director' means the Director of the United States Fish and Wildlife Service.

### SEC. 303. PRIORITY LOUISIANA COASTAL WETLANDS RESTORATION PROJECTS.

#### (a) Priority Project List

(1) PREPARATION OF LIST- Within forty-five days after the date of enactment of this title, the Secretary shall convene the Task Force to initiate a process to identify and prepare a list of coastal wetlands restoration projects in Louisiana to provide for the long-term conservation of such wetlands and dependent fish and wildlife populations in order of priority, based on the cost-effectiveness of such projects in creating, restoring, protecting, or enhancing coastal wetlands, taking into account the quality of such coastal wetlands, with due allowance for small-scale projects necessary to demonstrate the use of new techniques or materials for coastal wetlands restoration.

(2) TASK FORCE PROCEDURES- The Secretary shall convene meetings of the Task Force as appropriate to ensure that the list is produced and transmitted annually to the Congress as required by this subsection. If necessary to ensure transmittal of the list on a timely basis, the Task Force shall produce the list by a majority vote of those Task Force members who are present and voting; except that no coastal wetlands restoration project shall be placed on the list without the concurrence of the lead Task Force member that the project is cost effective and sound from an engineering perspective. Those projects which potentially impact navigation or flood control on the lower Mississippi River System shall be constructed consistent with section 304 of this Act.

(3) TRANSMITTAL OF LIST- No later than one year after the date of enactment of this title, the Secretary shall transmit to the Congress the list of priority coastal wetlands restoration projects required by paragraph (1) of this subsection. Thereafter, the list shall be updated annually by the Task Force members and transmitted by the Secretary to the Congress as part of the President's annual budget submission. Annual transmittals of the list to the Congress shall include a

status report on each project and a statement from the Secretary of the Treasury indicating the amounts available for expenditure to carry out this title.

(4) List of contents

(A) AREA IDENTIFICATION; PROJECT DESCRIPTION- The list of priority coastal wetlands restoration projects shall include, but not be limited to

- (i) identification, by map or other means, of the coastal area to be covered by the coastal wetlands restoration project; and
- (ii) a detailed description of each proposed coastal wetlands restoration project including a justification for including such project on the list, the proposed activities to be carried out pursuant to each coastal wetlands restoration project, the benefits to be realized by such project, the identification of the lead Task Force member to undertake each proposed coastal wetlands restoration project and the responsibilities of each other participating Task Force member, an estimated timetable for the completion of each coastal wetlands restoration project, and the estimated cost of each project.

(B) PRE-PLAN Prior to the date on which the plan required by subsection (b) of this section becomes effective, such list shall include only those coastal wetlands restoration projects that can be substantially completed during a five-year period commencing on the date the project is placed on the list.

(C) Subsequent to the date on which the plan required by subsection (b) of this section becomes effective, such list shall include only those coastal wetlands restoration projects that have been identified in such plan.

(5) FUNDING- The Secretary shall, with the funds made available in accordance with section 306 of this title, allocate funds among the members of the Task Force based on the need for such funds and such other factors as the Task Force deems appropriate to carry out the purposes of this subsection.

(b) Federal and State Project Planning-

(1) PLAN PREPARATION- The Task Force shall prepare a plan to identify coastal wetlands restoration projects, in order of priority, based on the cost-effectiveness of such projects in creating, restoring, protecting, or enhancing the long-term conservation of coastal wetlands, taking into account the quality of such coastal wetlands, with due allowance for small-scale projects necessary to demonstrate the use of new techniques or materials for coastal wetlands restoration. Such restoration plan shall be completed within three years from the date of enactment of this title.

(2) PURPOSE OF THE PLAN- The purpose of the restoration plan is to develop a comprehensive approach to restore and prevent the loss of, coastal wetlands in Louisiana. Such plan shall coordinate and integrate coastal wetlands restoration projects in a manner that will ensure the long-term conservation of the coastal wetlands of Louisiana.

(3) INTEGRATION OF EXISTING PLANS- In developing the restoration plan, the Task Force shall seek to integrate the 'Louisiana Comprehensive Coastal Wetlands Feasibility Study' conducted by the Secretary of the Army and the 'Coastal Wetlands Conservation and Restoration Plan' prepared by the State of Louisiana's Wetlands Conservation and Restoration Task Force.

(4) **ELEMENTS OF THE PLAN-** The restoration plan developed pursuant to this subsection shall include--

- (A) identification of the entire area in the State that contains coastal wetlands;
- (B) identification, by map or other means, of coastal areas in Louisiana in need of coastal wetlands restoration projects;
- (C) identification of high priority coastal wetlands restoration projects in Louisiana needed to address the areas identified in subparagraph (B) and that would provide for the long-term conservation of restored wetlands and dependent fish and wildlife populations;
- (D) a listing of such coastal wetlands restoration projects, in order of priority, to be submitted annually, incorporating any project identified previously in lists produced and submitted under subsection (a) of this section;
- (E) a detailed description of each proposed coastal wetlands restoration project, including a justification for including such project on the list;
- (F) the proposed activities to be carried out pursuant to each coastal wetlands restoration project;
- (G) the benefits to be realized by each such project;
- (H) an estimated timetable for completion of each coastal wetlands restoration project;
- (I) an estimate of the cost of each coastal wetlands restoration project;
- (J) identification of a lead Task Force member to undertake each proposed coastal wetlands restoration project listed in the plan;
- (K) consultation with the public and provision for public review during development of the plan; and
- (L) evaluation of the effectiveness of each coastal wetlands restoration project in achieving long-term solutions to arresting coastal wetlands loss in Louisiana.

(5) **PLAN MODIFICATION-** The Task Force may modify the restoration plan from time to time as necessary to carry out the purposes of this section.

(6) **PLAN SUBMISSION-** Upon completion of the restoration plan, the Secretary shall submit the plan to the Congress. The restoration plan shall become effective ninety days after the date of its submission to the Congress.

(7) **PLAN EVALUATION-** Not less than three years after the completion and submission of the restoration plan required by this subsection and at least every three years thereafter, the Task Force shall provide a report to the Congress containing a scientific evaluation of the effectiveness of the coastal wetlands restoration projects carried out under the plan in creating, restoring, protecting and enhancing coastal wetlands in Louisiana.

(c) **COASTAL WETLANDS RESTORATION PROJECT BENEFITS** Where such a determination is required under applicable law, the net ecological, aesthetic, and cultural benefits, together with the economic benefits, shall be deemed to exceed the costs of any coastal wetlands restoration project within the State which the Task Force finds to contribute significantly to wetlands restoration.

(d) **CONSISTENCY**

(1) In implementing, maintaining, modifying, or rehabilitating navigation, flood control or irrigation projects, other than emergency actions, under other authorities, the Secretary, in consultation with the Director and the Administrator, shall ensure

that such actions are consistent with the purposes of the restoration plan submitted pursuant to this section.

(2) At the request of the Governor of the State of Louisiana, the Secretary of Commerce shall approve the plan as an amendment to the State's coastal zone management program approved under section 306 of the Coastal Zone Management Act of 1972. (16 U.S.C. 1455).

(e) **FUNDING OF WETLANDS RESTORATION PROJECTS** The Secretary shall, with the funds made available in accordance with this title, allocate such funds among the members of the Task Force to carry out coastal wetlands restoration projects in accordance with the priorities set forth in the list transmitted in accordance with this section. The Secretary shall not fund a coastal wetlands restoration project unless that project is subject to such terms and conditions as necessary to ensure that wetlands restored, enhanced or managed through that project will be administered for the long-term conservation of such lands and waters and dependent fish and wildlife populations.

(f) **COST-SHARING-**

(1) **FEDERAL SHARE-** Amounts made available in accordance with section 306 of this title to carry out coastal wetlands restoration projects under this title shall provide 75 percent of the cost of such projects.

(2) **FEDERAL SHARE UPON CONSERVATION PLAN APPROVAL-**

Notwithstanding the previous paragraph, if the State develops a Coastal Wetlands Conservation Plan pursuant to this title, and such conservation plan is approved pursuant to section 304 of this title, amounts made available in accordance with section 306 of this title for any coastal wetlands restoration project under this section shall be 85 percent of the cost of the project. In the event that the Secretary, the Director, and the Administrator jointly determine that the State is not taking reasonable steps to implement and administer a conservation plan developed and approved pursuant to this title, amounts made available in accordance with section 306 of this title for any coastal wetlands restoration project shall revert to 75 percent of the cost of the project: Provided, however, that such reversion to the lower cost share level shall not occur until the Governor has been provided notice of, and opportunity for hearing on, any such determination by the Secretary, the Director, and Administrator, and the State has been given ninety days from such notice or hearing to take corrective action.

(3) **FORM OF STATE SHARE-** The share of the cost required of the State shall be from a non-Federal source. Such State share shall consist of a cash contribution of not less than 5 percent of the cost of the project. The balance of such State share may take the form of lands, easements, or right-of-way, or any other form of in-kind contribution determined to be appropriate by the lead Task Force member.

(4) Paragraphs (1), (2), and (3) of this subsection shall not affect the existing cost-sharing agreements for the following projects: Caernarvon Freshwater Diversion, Davis Pond Freshwater Diversion, and Bonnet Carre Freshwater Diversion.

SEC. 304. LOUISIANA COASTAL WETLANDS CONSERVATION PLANNING.

(a) DEVELOPMENT OF CONSERVATION PLAN-

(1) AGREEMENT The Secretary, the Director, and the Administrator are directed to enter into an agreement with the Governor, as set forth in paragraph (2) of this subsection, upon notification of the Governor's willingness to enter into such agreement.

(2) TERMS OF AGREEMENT

(A) Upon receiving notification pursuant to paragraph (1) of this subsection, the Secretary, the Director, and the Administrator shall promptly enter into an agreement (hereafter in this section referred to as the 'agreement') with the State under the terms set forth in subparagraph (B) of this paragraph.

(B) The agreement shall

(i) set forth a process by which the State agrees to develop, in accordance with this section, a coastal wetlands conservation plan (hereafter in this section referred to as the 'conservation plan');

(ii) designate a single agency of the State to develop the conservation plan;

(iii) assure an opportunity for participation in the development of the conservation plan, during the planning period, by the public and by Federal and State agencies;

(iv) obligate the State, not later than three years after the date of signing the agreement, unless extended by the parties thereto, to submit the conservation plan to the Secretary, the Director, and the Administrator for their approval; and

(v) upon approval of the conservation plan, obligate the State to implement the conservation plan.

(3) GRANTS AND ASSISTANCE- Upon the date of signing the agreement--

(A) the Administrator shall, in consultation with the Director, with the funds made available in accordance with section 306 of this title, make grants during the development of the conservation plan to assist the designated State agency in developing such plan. Such grants shall not exceed 75 percent of the cost of developing the plan; and

(B) the Secretary, the Director, and the Administrator shall provide technical assistance to the State to assist it in the development of the plan.

(b) CONSERVATION PLAN GOAL If a conservation plan is developed pursuant to this section, it shall have a goal of achieving no net loss of wetlands in the coastal areas of Louisiana as a result of development activities initiated subsequent to approval of the plan, exclusive of any wetlands gains achieved through implementation of the preceding section of this title.

(c) ELEMENTS OF CONSERVATION PLAN The conservation plan authorized by this section shall include

(1) identification of the entire coastal area in the State that contains coastal wetlands;

(2) designation of a single State agency with the responsibility for implementing and enforcing the plan;

(3) identification of measures that the State shall take in addition to existing Federal authority to achieve a goal of no net loss of wetlands as a result of development

activities, exclusive of any wetlands gains achieved through implementation of the preceding section of this title;

(4) a system that the State shall implement to account for gains and losses of coastal wetlands within coastal areas for purposes of evaluating the degree to which the goal of no net loss of wetlands as a result of development activities in such wetlands or other waters has been attained;

(5) satisfactory assurances that the State will have adequate personnel, funding, and authority to implement the plan;

(6) a program to be carried out by the State for the purpose of educating the public concerning the necessity to conserve wetlands;

(7) a program to encourage the use of technology by persons engaged in development activities that will result in negligible impact on wetlands; and

(8) a program for the review, evaluation, and identification of regulatory and nonregulatory options that will be adopted by the State to encourage and assist private owners of wetlands to continue to maintain those lands as wetlands.

(d) **APPROVAL OF CONSERVATION PLAN**

(1) **IN GENERAL** If the Governor submits a conservation plan to the Secretary, the Director, and the Administrator for their approval, the Secretary, the Director, and the Administrator shall, within one hundred and eighty days following receipt of such plan, approve or disapprove it.

(2) **APPROVAL CRITERIA** The Secretary, the Director, and the Administrator shall approve a conservation plan submitted by the Governor, if they determine that--

(A) the State has adequate authority to fully implement all provisions of such a plan;

(B) such a plan is adequate to attain the goal of no net loss of coastal wetlands as a result of development activities and complies with the other requirements of this section; and

(C) the plan was developed in accordance with terms of the agreement set forth in subsection (a) of this section.

(e) **Modification of Conservation Plan**

(1) **NONCOMPLIANCE** If the Secretary, the Director, and the Administrator determine that a conservation plan submitted by the Governor does not comply with the requirements of subsection (d) of this section, they shall submit to the Governor a statement explaining why the plan is not in compliance and how the plan should be changed to be in compliance.

(2) **RECONSIDERATION** If the Governor submits a modified conservation plan to the Secretary, the Director, and the Administrator for their reconsideration, the Secretary, the Director, and Administrator shall have ninety days to determine whether the modifications are sufficient to bring the plan into compliance with requirements of subsection (d) of this section.

(3) **APPROVAL OF MODIFIED PLAN** If the Secretary, the Director, and the Administrator fail to approve or disapprove the conservation plan, as modified, within the ninety-day period following the date on which it was submitted to them by the Governor, such plan, as modified, shall be deemed to be approved effective upon the expiration of such ninety-day period.

(f) **AMENDMENTS TO CONSERVATION PLAN** If the Governor amends the conservation plan approved under this section, any such amended plan shall be considered a new plan and shall be subject to the requirements of this section; except that minor changes to such plan shall not be subject to the requirements of this section.

(g) **IMPLEMENTATION OF CONSERVATION PLAN** A conservation plan approved under this section shall be implemented as provided therein.

(h) **Federal Oversight**

(1) **INITIAL REPORT TO CONGRESS** Within one hundred and eighty days after entering into the agreement required under subsection (a) of this section, the Secretary, the Director, and the Administrator shall report to the Congress as to the status of a conservation plan approved under this section and the progress of the State in carrying out such a plan, including and accounting, as required under subsection (c) of this section, of the gains and losses of coastal wetlands as a result of development activities.

(2) **REPORT TO CONGRESS** Twenty-four months after the initial one hundred and eighty day period set forth in paragraph (1), and at the end of each twenty-four-month period thereafter, the Secretary, the Director, and the Administrator shall report to the Congress on the status of the conservation plan and provide an evaluation of the effectiveness of the plan in meeting the goal of this section.

#### **SEC. 305 NATIONAL COASTAL WETLANDS CONSERVATION GRANTS.**

(a) **MATCHING GRANTS** The Director shall, with the funds made available in accordance with the next following section of this title, make matching grants to any coastal State to carry out coastal wetlands conservation projects from funds made available for that purpose.

(b) **PRIORITY** Subject to the cost-sharing requirements of this section, the Director may grant or otherwise provide any matching moneys to any coastal State which submits a proposal substantial in character and design to carry out a coastal wetlands conservation project. In awarding such matching grants, the Director shall give priority to coastal wetlands conservation projects that are

(1) consistent with the National Wetlands Priority Conservation Plan developed under section 301 of the Emergency Wetlands Resources Act (16 U.S.C. 3921); and

(2) in coastal States that have established dedicated funding for programs to acquire coastal wetlands, natural areas and open spaces. In addition, priority consideration shall be given to coastal wetlands conservation projects in maritime forests on coastal barrier islands.

(c) **CONDITIONS** The Director may only grant or otherwise provide matching moneys to a coastal State for purposes of carrying out a coastal wetlands conservation project if the grant or provision is subject to terms and conditions that will ensure that any real property interest acquired in whole or in part, or enhanced, managed, or restored with such moneys will be administered for the long-term conservation of such lands and waters and the fish and wildlife dependent thereon.

(d) **Cost-Sharing**

(1) **FEDERAL SHARE-** Grants to coastal States of matching moneys by the Director for any fiscal year to carry out coastal wetlands conservation projects shall be used for the payment of not to exceed 50 percent of the total costs of such projects: except that such matching moneys may be used for payment of not to exceed 75 percent of the costs of such projects if a coastal State has established a trust fund, from which the principal is not spent, for the purpose of acquiring coastal wetlands, other natural area or open spaces.

(2) **FORM OF STATE SHARE** The matching moneys required of a coastal State to carry out a coastal wetlands conservation project shall be derived from a non-Federal source.

(3) **IN-KIND CONTRIBUTIONS** In addition to cash outlays and payments, in-kind contributions of property or personnel services by non-Federal interests for activities under this section may be used for the non-Federal share of the cost of those activities.

(e) **Partial Payments**

(1) The Director may from time to time make matching payments to carry out coastal wetlands conservation projects as such projects progress, but such payments, including previous payments, if any, shall not be more than the Federal pro rata share of any such project in conformity with subsection (d) of this section.

(2) The Director may enter into agreements to make matching payments on an initial portion of a coastal wetlands conservation project and to agree to make payments on the remaining Federal share of the costs of such project from subsequent moneys if and when they become available. The liability of the United States under such an agreement is contingent upon the continued availability of funds for the purpose of this section.

(f) **WETLANDS ASSESSMENT** The Director shall, with the funds made available in accordance with the next following section of this title, direct the U.S. Fish and Wildlife Service's National Wetland Inventory to update and digitize wetlands maps in the State of Texas and to conduct an assessment of the status, condition, and trends of wetlands in that State.

**SEC. 306. DISTRIBUTION OF APPROPRIATIONS.**

(a) **PRIORITY PROJECT AND CONSERVATION PLANNING EXPENDITURES-** Of the total amount appropriated during a given fiscal year to carry out this title, 70 percent, not to exceed \$70,000,000, shall be available, and shall remain available until expended, for the purposes of making expenditures--

(1) not to exceed the aggregate amount of \$5,000,000 annually to assist the Task Force in the preparation of the list required under this title and the plan required under this title, including preparation of--

(A) preliminary assessments;

(B) general or site-specific inventories;

(C) reconnaissance, engineering or other studies;

(D) preliminary design work; and

(E) such other studies as may be necessary to identify and evaluate the feasibility of coastal wetland restoration projects;

- (2) to carry out coastal wetlands restoration projects in accordance with the priorities set forth on the list prepared under this title;
- (3) to carry out wetlands restoration projects in accordance with the priorities set forth in the restoration plan prepared under this title;
- (4) to make grants not to exceed \$2,500,000 annually or \$10,000,000 in total, to assist the agency designated by the State in development of the Coastal Wetlands Conservation Plan pursuant to this title.

(b) **COASTAL WETLANDS CONSERVATION GRANTS** Of the total amount appropriated during a given fiscal year to carry out this title, 15 percent, not to exceed \$15,000,000 shall be available, and shall remain available to the Director, for purposes of making grants

(1) to any coastal State, except States eligible to receive funding under section 306(a), to carry out coastal wetlands conservation projects in accordance with section 305 of this title; and

(2) in the amount of \$2,500,000 in total for an assessment of the status, condition, and trends of wetlands in the State of Texas.

(c) **NORTH AMERICAN WETLANDS CONSERVATION** Of the total amount appropriated during a given fiscal year to carry out this title, 15 percent, not to exceed \$15,000,000, shall be available to, and shall remain available until expended by, the Secretary of the Interior for allocation to carry out wetlands conservation projects in any coastal State under section 8 of the North American Wetlands Conservation Act (Public Law 101-233, 103 Stat. 1968, December 13, 1989).

#### SEC. 307. GENERAL PROVISIONS.

(a) **ADDITIONAL AUTHORITY FOR THE CORPS OF ENGINEERS-** The Secretary is authorized to carry out projects for the protection, restoration, or enhancement of aquatic and associated ecosystems, including projects for the protection, restoration, or creation of wetlands and coastal ecosystems. In carrying out such projects, the Secretary shall give such projects equal consideration with projects relating to irrigation, navigation, or flood control.

(b) **STUDY** The Secretary is hereby authorized and directed to study the feasibility of modifying the operation of existing navigation and flood control projects to allow for an increase in the share of the Mississippi River flows and sediment sent down the Atchafalaya River for purposes of land building and wetlands nourishment.

#### SEC. 308. CONFORMING AMENDMENT.

16 U.S.C. 777c is amended by adding the following after the first sentence: 'The Secretary shall distribute 18 per centum of each annual appropriation made in accordance with the provisions of section 777b of this title as provided in the Coastal Wetlands Planning, Protection and Restoration Act: Provided, That, notwithstanding the provisions of section 777b, such sums shall remain available to carry out such Act through fiscal year 1999.'

## SEC. 309. ENVIRONMENTAL BANKS

- (a) **GUIDELINES.** Not later than 1 year after the date of enactment of the Water Resources Development Act of 2016, the Task Force shall, after public notice and opportunity for comment, issue guidelines for the use, maintenance, and oversight of environmental banks in Louisiana.
- (b) **REQUIREMENTS.** The guidelines issued pursuant to subsection (a) shall
- (1) set forth procedures for establishment and approval of environmental banks subject to the approval of the heads of the appropriate Federal agencies responsible for implementation of Federal environmental laws for which mitigation credits may be used;
  - (2) establish criteria for siting of environmental banks that enhance the resilience of coastal resources to inundation and coastal erosion in high priority areas, as identified within Federal or State restoration plans, including the restoration of resources within the scope of a project authorized for construction;
  - (3) establish criteria that ensure environmental banks secure adequate financial assurances and legally enforceable protection for the land or resources that generate the credits from environmental banks;
  - (4) stipulate that credits from environmental banks may not be used for mitigation of impacts required under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1342) or the Endangered Species Act (16 U.S.C. 1531 et seq.) in an area where an existing mitigation bank approved pursuant to such laws within 5 years of enactment of the Water Resources Development Act of 2016 has credits available;
  - (5) establish performance criteria for environmental banks; and
  - (6) establish criteria and financial assurance for the operation and monitoring of environmental banks.
- (c) **ENVIRONMENTAL BANK.**
- (1) **DEFINITION OF ENVIRONMENTAL BANK.** In this section, the term 'environmental bank' means a project, project increment, or projects for purposes of restoring, creating, or enhancing natural resources at a designated site to establish mitigation credits.
  - (2) **CREDITS.** Mitigation credits created from environmental banks approved pursuant to this section may be used to satisfy existing liability under Federal environmental laws.
- (d) **SAVINGS CLAUSE.**
- (1) **APPLICATION OF FEDERAL LAW.** Guidelines developed under this section and mitigation carried out through an environmental bank established pursuant to such guidelines shall comply with all applicable requirements of Federal law (including regulations), including
    - (A) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);
    - (B) the Endangered Species Act (16 U.S.C. 1531 et seq.);
    - (C) the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.);
    - (D) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and
    - (E) section 906 of the Water Resources Development Act of 1986 (33 U.S.C. 2283).

(2) STATUTORY CONSTRUCTION. Nothing in this section may be construed to affect

(A) any authority, regulatory determination, or legal obligation in effect the day before the date of enactment of the Water Resources Development Act of 2016;  
or

(B) the obligations or requirements of any Federal environmental law.

(e) SUNSET. No new environmental bank may be created or approved pursuant to this section after the date that is 10 years after the date of enactment of this section.