

117 STAT. 1430

PUBLIC LAW 108-136—NOV. 24, 2003

(c) **PROVISION OF DISASTER ASSISTANCE.**—Section 404 of such title is amended—

(1) in subsection (a), by inserting “or serious harm to the environment” after “loss of lives”;

(2) in subsection (c)(2), by inserting “or the environment” after “human lives”; and

(3) by adding at the end the following new subsection:

“(e) **LIMITATION ON TRANSPORTATION ASSISTANCE.**—Transportation services authorized under subsection (b) may be provided in response to a manmade or natural disaster to prevent serious harm to the environment, when human lives are not at risk, only if other sources to provide such transportation are not readily available.”.

(d) **PROVISION OF HUMANITARIAN ASSISTANCE.**—Section 2561(a) of such title is amended—

(1) by inserting “(1)” before “To the extent”; and

(2) by adding at the end the following new paragraph:

“(2) The Secretary of Defense may use the authority provided by paragraph (1) to transport supplies intended for use to respond to, or mitigate the effects of, an event or condition, such as an oil spill, that threatens serious harm to the environment, but only if other sources to provide such transportation are not readily available. The Secretary may require reimbursement for costs incurred by the Department of Defense to transport supplies under this paragraph.”.

SEC. 313. REPEAL OF AUTHORITY TO USE ENVIRONMENTAL RESTORATION ACCOUNT FUNDS FOR RELOCATION OF A CONTAMINATED FACILITY.

(a) **REPEAL.**—Effective October 1, 2003, section 2703(c) of title 10, United States Code, is amended—

(1) in paragraph (1) by striking “only—” and all that follows through the period at the end and inserting “only to carry out the environmental restoration functions of the Secretary of Defense and the Secretaries of the military departments under this chapter and under any other provision of law.”;

(2) by striking paragraphs (2) and (3); and

(3) by redesignating paragraph (4) as paragraph (2) and striking the second sentence of such paragraph.

(b) **EFFECT OF REPEAL ON EXISTING AGREEMENTS.**—An agreement in effect on September 30, 2003, under section 2703(c)(1)(B) of title 10, United States Code, as in effect on that date, to pay for the costs of permanently relocating a facility because of a release or threatened release of hazardous substances, pollutants, or contaminants shall remain in effect after that date, subject to the terms of the agreement, and costs may be paid in accordance with the terms of the agreement, notwithstanding the amendments made by subsection (a).

SEC. 314. AUTHORIZATION FOR DEPARTMENT OF DEFENSE PARTICIPATION IN WETLAND MITIGATION BANKS.

(a) **DOD PARTICIPATION.**—(1) Chapter 159 of title 10, United States Code, is amended by inserting after section 2694a the following new section:

“§ 2694b. Participation in wetland mitigation banks

“(a) **AUTHORITY TO PARTICIPATE.**—The Secretary of a military department, and the Secretary of Defense with respect to matters

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concerning a Defense Agency, when engaged in an authorized activity that may or will result in the destruction of, or an adverse impact to, a wetland, may make payments to a wetland mitigation banking program or 'in-lieu-fee' mitigation sponsor approved in accordance with the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 Fed. Reg. 58605; November 28, 1995) or the Federal Guidance on the Use of In-Lieu-Fee Arrangements for Compensatory Mitigation Under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (65 Fed. Reg. 66913; November 7, 2000), or any successor administrative guidance or regulation:

"(b) ALTERNATIVE TO CREATION OF WETLAND.—Participation in a wetland mitigation banking program or consolidated user site under subsection (a) shall be in lieu of mitigating wetland impacts through the creation of a wetland on Federal property.

"(c) TREATMENT OF PAYMENTS.—Payments made under subsection (a) to a wetland mitigation banking program or consolidated user site may be treated as eligible project costs for military construction."

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2694a the following new item:

"2694b. Participation in wetland mitigation banks."

(b) MITIGATION AND MITIGATION BANKING REGULATIONS.—(1) To ensure opportunities for Federal agency participation in mitigation banking, the Secretary of the Army, acting through the Chief of Engineers, shall issue regulations establishing performance standards and criteria for the use, consistent with section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344), of on-site, off-site, and in-lieu fee mitigation and mitigation banking as compensation for lost wetlands functions in permits issued by the Secretary of the Army under such section. To the maximum extent practicable, the regulatory standards and criteria shall maximize available credits and opportunities for mitigation, provide flexibility for regional variations in wetland conditions, functions and values, and apply equivalent standards and criteria to each type of compensatory mitigation.

33 USC 1344
note.

(2) Final regulations shall be issued not later than two years after the date of the enactment of this Act.

Deadline.

SEC. 315. INCLUSION OF ENVIRONMENTAL RESPONSE EQUIPMENT AND SERVICES IN NAVY DEFINITIONS OF SALVAGE FACILITIES AND SALVAGE SERVICES.

(a) SALVAGE FACILITIES.—Section 7361 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(e) SALVAGE FACILITIES DEFINED.—In this section, the term 'salvage facilities' includes equipment and gear utilized to prevent, abate, or minimize damage to the environment."

(b) SETTLEMENT OF CLAIMS FOR SALVAGE SERVICES.—Section 7363 of such title is amended—

(1) by inserting "(a) AUTHORITY TO SETTLE CLAIM.—" before "The Secretary"; and

(2) by adding at the end the following new subsection:

"(b) SALVAGE SERVICES DEFINED.—In this section, the term 'salvage services' includes services performed in connection with