



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

OCT 22 2008

REPLY TO
ATTENTION OF

MEMORANDUM FOR THE DIRECTOR CIVIL WORKS

SUBJECT: Implementation Guidance for Section 5017 of the Water Resources Development Act of 2007 (WRDA 2007) – Estuary Restoration

1. Section 5017 of WRDA 2007 amends the Estuary Restoration Act of 2000 (Title I, PL 106-457) (ERA). A copy of the ERA as amended is enclosed. The original law established an interagency Estuary Habitat Restoration Council consisting of the Secretary of the Army, Under Secretary for Oceans and Atmosphere of the Department of Commerce (NOAA), the Administrator of the Environmental Protection Agency, the Secretary of the Interior acting through the Director of the United States Fish and Wildlife Service, and the Secretary of Agriculture, or their designees, and authorized an Estuary Habitat Restoration Program and appropriations for the Army to implement the program. Section 5017 of WRDA 2007 contains three major changes to the ERA, in addition to extending appropriations authority. These changes include allowing for the use of cooperative agreements, making monitoring part of total project costs, and authorizing the Secretary to delegate to the other four agencies implementation of small projects using funds received in their own appropriations or other funds available to these agencies.
2. Sections 102(3), 104(a), and 110(b) of the ERA provide permissive authority for the Secretary to use cooperative agreements for projects implemented under this authority. The use of cooperative agreements will facilitate implementation of many of the projects proposed for funding under this authority, especially those that have low costs and/or do not require significant engineering or hydrologic expertise. The Corps shall develop a standard cooperative agreement and criteria for determining which projects should be implemented under a cooperative agreement in consultation with this office. Because the use of this type of agreement is not common within the Corps, development of guidance outlining the district's responsibilities will be an important element for successful use of cooperative agreements.
3. Section 104(d) of the ERA provides that monitoring costs may be included in the total cost of the estuary habitat restoration projects; sets goals for that monitoring; and allows the non-Federal sponsor to provide monitoring as part of its cost share.
 - a. Monitoring requirements will be in accordance with the guidance previously approved by the Council and Department of Commerce, in accordance with section 107(c) of the ERA, for use for this program (enclosure 2).

b. Consistent with the standards established in accordance with Section 107(c) of the ERA, projects approved for funding beginning in Fiscal Year 2008 will include the costs of post-construction monitoring for a period of five years as part of the total project costs.

c. A monitoring plan is required for every project funded under this authority. As provided in Section 104(d)(1) of the ERA, the goals of monitoring shall be "to measure the effectiveness of the restoration projects and to allow adaptive management to ensure project success." The current guidance should be revised to clearly state that success criteria must be defined for each project and that the NOAA monitoring guidance must be followed.

4. Section 104(d)(1)(B) of the ERA states that one of the goals of monitoring shall be to allow adaptive management to ensure project success.

a. The non-Federal sponsor shall be responsible for any costs associated with post-construction modifications or changes in management of a project that analysis of the monitoring data indicates are necessary for the project to achieve success. Costs of adaptive management will not be included in total project costs.

b. Any required adaptive management will be approved by the funding agency after consultation with the other staff representatives of the Council member agencies. Among the factors to consider are the costs in relation to the expected outputs and any adverse impacts on the original project purpose or adjacent properties.

5. Section 104(g)(2) authorizes the Secretary to delegate, on recommendation of the Council, small projects to the other agencies represented on the Council. Small projects are defined as those with an estimated Federal cost of less than \$1,000,000. Small projects delegated to another agency will be carried out using funds appropriated to that agency or other funds available to that agency. The other Federal agency to which a project is delegated must enter into an agreement, and may utilize cooperative agreements, with the non-Federal sponsor generally in conformance with the cost-sharing criteria in subsections 104(d) and (f) of the ERA.

a. Army will inform the other Council agencies of the items such as the cost share limits and credit for required real estate, to be covered in agreements for delegated projects.

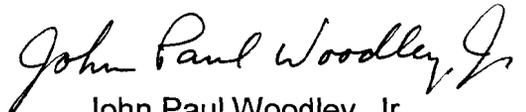
b. Corps funds will not be used to implement small projects delegated to other agencies under Section 104(g)(2) of the ERA.

c. Although allowed under section 104(g)(1), it is extremely unlikely that the Corps would reimburse another agency for implementation of an estuary restoration project under the ERA. However, if Corps funds are provided to another agency in accordance with Section 104(g)(1) of the ERA the other agency would be considered an agent of the Corps and the use of the Corps processes would be required.

6. Section 108(a) of the ERA requires submission of a report to Congress not later than 30 September 2008 and every two years thereafter. The Corps shall draft the report in coordination with the staff of the other agencies represented on the Council and provide the draft report to this office for coordination with the Council Principals and others as appropriate by this office prior to submission to Congress.

2 Encls

1. ERA as amended
2. Monitoring guidance



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