

MEMORANDUM FOR MAJOR SUBORDINATE COMMANDS AND DISTRICT
COMMANDS

SUBJECT: Policy Guidance Letter No. 24, Restoration of Fish and Wildlife Habitat
Resources

1. References:

a. Office of the Assistant Secretary of the Army (Civil Works), "Statement of
New Environmental Approaches" dated June 25, 1990.

b. Chief of Engineers Memorandum, 14 February 1990, subject: "Strategic
Direction for Environmental Engineering"

c. EC 11-2-157

d. ER 1105-2-100

e. Memorandum, CECW-P/CECW-O, 19 April 1990, subject: Implementation of
Project Modifications for Improvement of Environment, Section 1135(b), WRDA 86.

f. Memorandum, CECW-PO. 7 November 1990. subject: Section 1135(b) Report
Guidance

g. Memorandum, CECW-PM, 10 January 1991, subject: Section 1135(b), PL 99-
662, As Amended: Proposals Selected for FY 91 Report Preparation.

2. Background: References 1a. and 1b. provide the framework for the Army Corps of
Engineers response to the President's goal of maintaining and restoring the health of the
environment. An important part of the Corps response is the establishment of fish
and wildlife restoration as a priority project output as announced by reference 1a. The
purpose of this memorandum is to provide additional guidance for accomplishing fish
and wildlife habitat restoration in accordance with reference 1a. and 1c. This guidance
should be followed, as appropriate, in using the other above references.

3. Definition: Fish and wildlife restoration consists of measures undertaken to return fish
and wildlife habitat resources to a modern historic condition. Resources addressed in this
letter are fish and wildlife resources as opposed to historical and cultural resources,
aesthetic resources, recreation resources, etc. which are addressed in other guidance. The
goal of fish and wildlife restoration is to reverse the adverse impacts of human activity
and restore habitats to previous levels of productivity but not a higher level than would
have existed under natural conditions in the absence of human activity or disturbance.

4. Policy:

a. Fish and wildlife restoration activities may be recommended only if justified and: (1) a Civil Works project has contributed to the degradation (the degradation was caused at least in part by a Corps project) or (2) restoration can be most cost effectively accomplished through modification of an existing Civil Works project (modification of an existing Corps project is an essential element of the restoration). Proposals for restoration will generally require 25% local cost sharing in the implementation of the restoration and full non-Federal operation and maintenance of the completed restoration.

b. The fish and wildlife restoration initiative does not change the requirements for the formulation and justification of fish and wildlife measures as defined in reference 1d. Restoration measures must address significant resources and be justified through a determination that the combined monetary and non-monetary value of the last increment of benefits or losses prevented or replaced exceeds the combined monetary and non-monetary cost of the last added increment of the fish and wildlife restoration measure. The least cost alternative does not of itself provide justification and may not maximize the net environmental benefits.

c. Policy under current budgetary constraints does not provide for the implementation of the provisions of WRDA 86 to mitigate for damages to fish and wildlife resources at existing projects under Section 906(b), to enhance fish and wildlife resources under Section 906(e) and to beneficially modify habitat for fish and wildlife under Section 704(b).

d. The fish and wildlife restoration initiative is directed at using the engineering creativity of the Army Corps of Engineers to restore fish and wildlife habitat resources.

Therefore, priority consideration will be given to projects that emphasize active engineering measures to restore these resources. Proposals which consist primarily of land acquisition to preserve fish and wildlife habitat are not appropriate projects under the fish and wildlife restoration initiative.

5. Application of Policy to New Projects.

a. Fish and wildlife restoration measures may be studied as part of a cost shared (50-50) feasibility study undertaken to identify a water resource project and such measures may be recommended for authorization. Feasibility studies addressing opportunities for fish and wildlife restoration will be a high budget priority.

b. Where a cost shared feasibility study results in a recommended project for commercial navigation, flood damage reduction, hurricane and storm damage reduction and related hydropower and municipal and industrial water supply; justified measures to avoid and/or minimize the adverse environmental impacts of these projects and measures to compensate for unavoidable impacts must be classified as mitigation and shared to the same extent as other project costs are shared or reimbursed. The fish and wildlife

restoration initiative will not change the formulation, justification or cost sharing for mitigation at new projects.

c. A new project may include additional fish and wildlife measures or additional increments of measures, over and above justified mitigation, to address the separate project purpose of fish and wildlife restoration. Any fish and wildlife restoration measures must be justified in accordance with the guidance in paragraph 4b. These fish and wildlife restoration measures at new projects must address degradation caused at least in part by an existing Corps project. This means that if there is not an existing Corps project adversely impacting the study area, there is no opportunity for Corps participation in fish and wildlife restoration.

d. A new project can be formulated exclusively for fish and wildlife restoration in response to specific study authorities as long as the project addresses fish and wildlife degradation where another Corps project has contributed, at least in part, to the degradation. Justified fish and wildlife restoration measures identified in such a study may be recommended for authorization.

e. Documents recommending authorization should provide that the construction costs for fish and wildlife restoration will be shared 75% Federal and 25% non-Federal. The fish and wildlife restoration may include land acquisition. Lands, rights-of-way relocations and disposal areas (LERRD) for fish and wildlife restoration will be provided by the non-Federal sponsor with the value of the LERRD credited against the non-Federal 25% share. Where the value of LERRD exceeds the non-Federal sponsor's 25% share, the sponsor will be reimbursed for the value of LERRD exceeding the 25% non-Federal share.

f. As a general policy, operation, maintenance, repair, replacement and rehabilitation (OMRRR) of fish and wildlife restoration measures will be accomplished by the non-Federal sponsor at 100% non-Federal cost. If the restoration is on lands of another Federal agency, that agency may collect the non-Federal OMRRR as agreed to by that Federal agency and the non-Federal sponsor.

6. Application of Policy to Existing Projects.

a. Projects for fish and wildlife restoration involving modifications in the structures and operations of projects may be implemented under the authority of Section 1135(b) of RDA 86, as amended. Funding for studies and implementation of Section 1135(b) projects is provided on a nationwide programmatic basis. Existing guidance for implementation is contained in references 1e., 1f. and 1g. As the Section 1135(b) program evolves, additional guidance will be issued.

b. Proposals that are not appropriate for implementation as Section 1135(b) projects, may be pursued under the authority of Section 216 of the Rivers and Harbors and Flood Control Act of 1970 (Review of Completed Projects). In accordance with the guidance in reference 1c., fish and wildlife restoration projects under section 216 study authority

require the preparation and approval of an initial appraisal or reconnaissance report prepared at Federal expense using operation and maintenance (O&M) funds. The initial appraisal or reconnaissance report prepared under the O&M program should be limited to an expenditure of \$20,000. If more than \$20,000 is required, approval should be requested from HQUSACE, attention CECW-OM, including sufficient information to justify the additional expenditure. If the results of the initial appraisal are favorable, a reconnaissance report or cost-shared (50-50) feasibility study (depending on the depth of study previously accomplished under O&M) would be accomplished under the General Investigations (GI) program. Implementation of the fish and wildlife restoration project would require the execution of a local cooperation agreement and would be funded under the Construction, General (CG) program.

c. Measures for fish and wildlife restoration at existing projects may also be recommended as a result of feasibility studies initiated under the GI program in response to specific study resolutions. Implementation of the fish and wildlife restoration project would be funded under the CG program once authorized by Congress.

d. The following policy guidelines should be followed when recommending a fish and wildlife restoration proposal for authorization.

(1). Fish and wildlife restoration measures at an existing project could address adverse fish and wildlife impacts of that project. However, any fish and wildlife restoration measures found to be justified at existing projects must be cost shared as fish and wildlife restoration not mitigation.

(2). An existing project could be modified to add fish and wildlife restoration measures where the degradation was not contributed to by the Corps project as long as the resource is not restored beyond modern historic conditions.

(3). Proposals for fish and wildlife restoration (non 1135(b) proposals) at existing projects may include land acquisition. In those cases, the authorizing document will provide that LERRD for fish and wildlife restoration will be provided by the non-Federal sponsor with the value of the LERRD credited against the non-Federal 25% share where the value of LERRD exceeds the non-Federal sponsors 25% share, the sponsor will be reimbursed for the value of LERRD exceeding the 25% non-federal share.

(4). OMRRR for fish and wildlife restoration measures at existing projects should be accomplished by the non-Federal sponsor at 100% non-Federal cost.

7. The policy contained in this letter will be incorporated into ER 1105-2-100.

FOR THE COMMANDER:

PATRICK J. KELLY
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Director of Civil Works

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