

Estuary Restoration Act of 2000
Title I of Estuaries and Clean Waters Act of 2000
Public Law 106-457 dated November 7, 2000, as amended

Background:

The purposes of the Act are to promote the restoration of estuary habitat; develop a national estuary habitat restoration strategy for creating and maintaining effective partnerships within the federal government and with the private sector; provide federal assistance for and promote efficient financing of estuary habitat restoration projects; and develop and enhance monitoring, data sharing, and research capabilities. The Act establishes a Council consisting of representatives of five agencies: National Oceanic and Atmospheric Administration (NOAA), Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (FWS), and Departments of Agriculture and Army. The Council is charged with development and implementation of a national estuary restoration strategy, designed in part to meet the goal of restoring one million acres of estuarine habitat by 2010. The Act authorizes the Secretary of the Army to carry out a cost-shared program for design and construction of habitat restoration projects in accordance with the national Strategy developed by the Council (Federal Register, Vol. 67, No. 232. The Secretary of the Army, on recommendation of the Council, may delegate implementation of a small project (under \$1million Federal cost) to one of the other agencies/departments represented on the Council. Under this provision, projects delegated to another agency/department would be funded by that agency/department. The amendments include authorization of appropriations to the other departments/agencies for this purpose.

Appropriations: The average annual appropriation to the Corps for projects has been about \$1 million except in FY 2007. No funds were appropriated in FY 2008 for the program.

Accomplishments:

As of September 2008, funding has been provided to 14 projects. Of these, two have been completed and a third is in construction. Seven are in various stages of planning and design. Four have terminated due to a variety of reasons. Unexpended funds that had been designated for terminated projects are being used in part to fully fund the proposal selected for funding in fiscal year 2008 and will be available for future projects.

Estuary Habitat Restoration Program Definitions:

Estuary - For purposes of this program, *estuary* is defined as “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 from land drainage.” Estuary also includes the “...near coastal waters and wetlands of the Great Lakes that are similar in form and function to estuaries...” For this program, estuary is considered to extend from the head of tide to the boundary with the open sea (to downstream terminus features or structures such as barrier islands, reefs, sand bars, mud flats, or headlands in close proximity to the connection with the open sea). In the Great Lakes, riparian and nearshore areas adjacent to the mouths of creeks or rivers entering the Great Lakes will be considered to be estuaries. Estuary habitat includes the estuary and its associated ecosystems, such as: salt, brackish, and fresh water coastal marshes; coastal forested wetlands and other coastal wetlands; maritime forests; coastal grasslands; tidal

flats; natural shoreline areas; shellfish beds; sea grass meadows; kelp beds; river deltas; and river and stream corridors under tidal influence.

Eligible Habitat restoration activities - Section 103 of the Estuary Restoration Act of 2000 (the Act) defines the term *estuary habitat restoration activity* to mean “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.” Projects funded under this program will be consistent with this definition.

Eligible habitat restoration activities include re-establishment of chemical, physical, hydrologic, and biological features and components associated with an estuary. Restoration may include, but is not limited to, improvement of estuarine wetland tidal exchange or reestablishment of historic hydrology; dam or berm removal; improvement or reestablishment of fish passage; appropriate reef/substrate/habitat creation; planting of native estuarine wetland and submerged aquatic vegetation; reintroduction of native species; control of invasive species by altering conditions so they are less conducive to the invasive species; and establishment of riparian buffer zones in the estuary. Cleanup of pollution for the benefit of estuary habitat may be considered, as long as it does not meet the definition of excluded activities under the Act.

Excluded activities - Estuary Habitat Restoration Program funds will not be used for any activity that 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 that constitutes restoration for natural resource damages required under any Federal or State law. Estuary Habitat Restoration Program funds will not be used for remediation of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601-9675). Additionally, Estuary Habitat Restoration Program funds will not be used to carry out projects on Federal lands.

Process:

The Corps of Engineers publishes a solicitation for project proposals about once a year. Due to funding constraints the maximum amount available to any one project has been set at \$1 million. The solicitations are announced in the *Federal Register* and distributed to interested parties through a list serve – sign up at <http://www.usace.army.mil/estuary.html>. The proposals are review by the staff of the five agencies represented on the Council and the Council makes recommendations to the Secretary of the Army regarding which projects should be considered for funding. If one of the other agencies wishes to fund one of the recommended projects that will be part of the Secretary’s considerations when making final project selections.

Cost Sharing: The Federal share of the project cost may not exceed 65% except for the incremental cost of including innovative technology or applications which shall be cost shared at 85% Federal. To date no proposals have included innovative technology or applications of existing technology. The Corps is in the process of developing criteria under which some projects may be considered for execution using a Cooperative Agreement where funds would be provided to the sponsor. However the Corps would retain significant oversight responsibilities. To date the projects have required a cost-share agreement with the Corps under which funds are not provided to the sponsor but instead used by the Corps to implement some part of the project.

19 November 2008
EMC

This process will be retained for larger and/or more complex or higher risk projects. In either case the sponsor must provide its share in cash, or the cash equivalent of credit for real estate and /or services as defined in the law. All of the projects require compliance with various Federal environmental statutes. If other agencies agree to fund a project the funding agency process will be followed. Monitoring is now a cost-shared item to be included in the total project cost of projects funded under this authority. Monitoring for a five-year period post-implementation is required for projects funded under this act.