

Cooperative/NOAA

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**COOPERATIVE AGREEMENT
BETWEEN THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
AND
DEPARTMENT OF THE ARMY
FOR A PROGRAM TO RESTORE AND CREATE FISH HABITAT**

Background: Within the National Oceanic and Atmospheric Administration (NOAA), the National Marine Fisheries Service (NMFS) is assigned the primary Federal responsibility for the conservation, management, and development of the Nation's living marine resources. The NMFS Habitat Conservation Policy recognizes that mankind will inevitably alter marine, estuarine, and anadromous fish and shellfish habitats which are essential to maintaining the Nation's fisheries. The ability of these habitats to support fish production is diminishing while pressures for conversion for other uses are continuing. In accordance with the Policy, NMFS is proceeding to: (1) promote, support, and originate habitat restoration and creation by Federal, state, and local resource, construction, and regulatory agencies and the private sector and (2) work directly with these agencies in developing policies, guidelines, and rule making to promote the conservation of coastal and anadromous fish habitats.

Within the Department of the Army, the U.S. Army Corps of Engineers (Corps) has general authority and broad experience, expertise, and capability to conduct water resources development activities. These include protection and restoration of fish and wildlife habitats. In addition, the Corps has conducted extensive basic and applied research in the beneficial uses of dredged materials. This research has shown that under the proper conditions, the restoration and creation of wetlands, seagrass beds, and other aquatic habitats necessary for fish production is both possible and feasible. It is Corps policy to restore and create fish habitat at existing projects when it can be accomplished in an acceptable manner without added cost. If added costs are involved, the Corps will consider those opportunities using funds and authorities which may be available to them and with appropriate cost sharing by non-federal interests.

This Agreement has resulted from a 1986-88 NMFS-Corps Pilot Study, which was conducted to:

"... determine the practicability of establishing, within existing authorities, resources and funding, a NMFS-Corps nationwide habitat restoration and creation program. Such a program would contribute towards balancing fish habitat conservation with orderly development and management of the Nation's water resources."

The Pilot Study demonstrated the feasibility of combining the broad environmental engineering and construction capability and experience of the Corps and the marine, estuarine, and anadromous fish expertise of NMFS and other agencies to carry out fish habitat restoration and creation. A final report¹ recommended establishment of a national fish habitat restoration and creation program based on the report findings and modelled after the Pilot Study efforts.

Purpose: The purpose of this Agreement is to establish, consistent with the Pilot Study findings, an NMFS-Corps Habitat Restoration and Creation Program. Referred to herein as the "Program," it is to be a continuing cooperative, nationwide effort. The goal is to increase marine fish productivity and advance habitat restoration technology in conjunction with Corps water resources projects.

Statutory Basis: This Agreement is consistent with the following statutes:

1. Fish and Wildlife Act of 1956, as amended, 16 U.S.C. § 742a et seq.
2. Fish and Wildlife Coordination Act of 1958, 16 U.S.C. § 661 et seq.
3. National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4321 et seq.
4. Magnuson Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. § 1801 et seq.
5. Endangered Species Act of 1973, as amended, 16 U.S.C. § 1531 et seq.
6. Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. § 1361 et seq.
7. Rivers and Harbors Act of 1899, 33 U.S.C. § 403, 407.
8. Water Resources Development Act of 1986, 33 U.S.C. §2283. et seq.
9. Water Resources Development Act of 1990, P.L. 101-640.
10. Coastal Wetland Planning, Protection and Restoration Act of 1990, Title III of the Non-Indigenous Aquatic Nuisance Prevention and Control Act of 1990, P.L. 101-649.

¹ The report, National Marine Fisheries Service - U.S. Army Corps of Engineers Pilot Study to Restore and Create Fisheries Habitats, was cosigned on February 9, 1990, by William V. Fox, Assistant Administrator for Fisheries, NMFS and Major General Patrick Kelly, Director of Civil Works, U.S. Army Corps of Engineers.

11. Marine Research, Protection and Sanctuaries Act of 1972, as amended, Title II, 33 U.S.C. § 1441 et seq.
12. Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.
13. River and Harbor and Flood Control Act of 1965, Section 219, 10 U.S.C § 3036d.
14. Coastal Zone Management Act of 1972, as amended, 16 U.S.C. § 1451 et seq.

General Scope: This continuing Program will consist of: (1) systematically identifying fish habitat restoration and creation opportunities within the Civil Works Program; (2) formulating, coordinating, evaluating, and selecting habitat features²; (3) implementing selected features; and (4) carrying out required research/monitoring activities. It will involve field offices, laboratory, and headquarters offices of both agencies.

Because it is not intended that selected features be limited to wetland construction using dredged material, the broadest range of restoration needs and opportunities should be examined and included (e.g., restoration of salmon runs through removal of stream obstructions, increased shrimp production through water structure regulation to improve access, establishment of oysters through bed construction and seeding, and construction of artificial reefs).

The support and cooperation of other agencies, both Federal and state, is essential for Program success. Because individual sites will be found primarily in state waters, support of state agencies is critical. The U.S. Fish and Wildlife Service, the Environmental Protection Agency, and other resource agencies will also be invited to participate.

Under the Program, restoration and creation work will be carried out by the five NMFS regions and those participating Corps major subordinate commands (MSC) and district commands (DC), in cooperation with the above-cited other parties. The Program will be implemented primarily at the field level and will combine NMFS technical expertise with the Corps' broad water resources planning, engineering, design and construction expertise and capability.

². As used herein, the term "habitat feature" refers to the construction or other work required for habitat restoration and creation purposes within a Civil Works project (e.g., the artificial reef feature constructed under the NMFS-Corps Pilot Study at Mission Bay, CA).

Habitat features will be identified at projects of the overall Civil Works Program. Restoration and creation features may include marine, estuarine, and anadromous fish habitats. Features will be designed to result in a net increase of fish productivity when compared with current conditions. Thus, work under this Program should not be carried out with the purpose of mitigating anticipated damages from Corps projects.

Fish habitat restoration and creation features are highly individual in nature, requiring tailored and, sometimes, innovative design applications to fit unique site and resource conditions. Results are not always readily predictable and benefits are sometimes difficult to quantify. Because of these conditions, the Program may include two general types of habitat features: (1) readily implementable features, which will not involve long term monitoring requirements; and (2) experimental features, which will require substantial monitoring and research activities. Readily implementable features will be constructed with the objective of increasing fish productivity, thus improving overall project efficiencies. Experimental features will have the primary objective of improving the technologies of fish habitat restoration and creation and/or environmental engineering, while expanding the understanding of the effectiveness and value of existing techniques.

Responsibilities: Within NMFS, Program implementation is delegated to its regional directors. Corps MSCs are authorized to pursue directly implementable features which do not involve added Corps project costs. Directly implementable and experimental features involving added project costs will require approval of the Assistant Secretary of the Army (Civil Works) (ASA(CW)) before implementation. Corps Headquarters, in coordination with ASA(CW), and NMFS headquarters will provide direction to their respective field offices on matters of national policy and program guidance. The Program should be designed and managed as an interagency team effort.

Annually, each MSC will inform its respective NMFS region and other involved agencies of ongoing and future Civil Works projects. From the identified projects, NMFS regions and other involved agencies will identify potential areas and sites for habitat restoration and creation and assess potential fish benefits. Approved features will be planned, placed into the project schedule, and implemented cooperatively within the unique missions, authorities, capabilities, and expertise of the agencies.

Approved sites will be included in the Corps' O&M or project schedules. Each feature's planning, construction, and maintenance will be integrated routinely into scheduled project work.

The research offices of the Corps and NMFS may jointly oversee and monitor experimental features. Responsibilities for performing and funding these activities shall be addressed in the

approval process for these features. Provisions will be made for publication and distribution of resulting scientific and technical information.

Funding: Each agency will be responsible for funding necessary for its participation both at the national and field levels.

Reports and Documentation: On an annual basis, participating NMFS regional directors and MSC commanders will submit joint progress reports to designated Washington headquarters offices. These reports will be evaluated and consolidated into a single annual progress report for Washington-level review. At the conclusion of two years, a joint NMFS-Corps assessment report will be submitted to the Under Secretary for Oceans and Atmosphere, U.S. Department of Commerce, and the Assistant Secretary of the Army (Civil Works). This report will include conclusions and recommendations with regard to continuation of the Program.

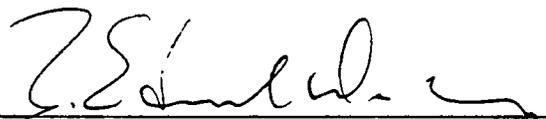
Effective Date and Duration: This Agreement will become effective upon signature by both parties and will remain in effect as long as both parties agree to participate. Differences should be resolved at the field level, if possible, and in headquarters, if not. Either party may terminate the agreement 30 days after written notice to the other party, with provision for an orderly closing out of ongoing operations.



U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION

Under Secretary for
Oceans and Atmosphere

January 31, 1981
Date



DEPARTMENT OF THE ARMY

Acting Assistant Secretary
of the Army (Civil Works)

Jan 31, 1981
Date