

**MINUTES OF THE MEETING
ESTUARY HABITAT RESTORATION COUNCIL
AT HEADQUARTERS, U.S. ARMY CORPS OF ENGINEERS
441 G Street, N.W., WASHINGTON, DC
January 29, 2008**

The meeting convened at 2:00 p.m., with the following members present:

- **Mr. George S. Dunlop**, Principal Deputy Assistant Secretary of the Army (Civil Works), Chair;
- **Mr. Gary Frazer**, Assistant Director for Fisheries and Habitat Conservation, U.S. Fish & Wildlife Service (USFWS);
- **Mr. Timothy R.E. Keeney**, Deputy Assistant Secretary of Commerce for Oceans and Atmosphere, National Oceanic and Atmospheric Administration (NOAA);
- **Ms. Suzanne Schwartz**, representing Mr. Benjamin Grumbles, Assistant Administrator for the Office of Water, U.S. Environmental Protection Agency (EPA); and
- **Ms. Yenie L. Tran**, Special Assistant to the USDA Under Secretary for Natural Resources and the Environment, U.S. Department of Agriculture.

I. INTRODUCTORY COMMENTS:

Mr. George Dunlop called the meeting to order and welcomed Council participants and staffers. He said that we are here to execute the Estuary Restoration Act (ERA) as mandated by Congress. He then asked the Council members to introduce themselves.

Ms. Yenie Tran said that Gary Mast was unable to attend but that she was happy to be there. She said that USDA is involved because they oversee the Natural Resources Conservation Service.

Mr. Timothy Keeney mentioned that he would like to see more progress on ERA and is looking forward to hearing about the Water Resources Development Act of 2007 (WRDA 2007).

Ms. Susanne Schwartz said she is pleased to be here. She would like to see more movement but recognizes that it can be difficult at times to get change on the ground. EPA is very active in estuarine issues and habitat. The National Estuary Program recently celebrated its 20th anniversary; one million acres of critical habitat have been protected or restored. She also announced that the Gulf of Mexico Hypoxia Action Plan is being revised now to reflect better science and they hope to have it published soon.

Mr. Gary Frazer said the Service is very engaged in estuary habitat restoration and focuses on it through the National Fish Habitat Action Plan. He too is concerned with the progress of ERA and is interested in discussing WRDA 2007 and how that might give us more opportunities.

Mr. Dunlop mentioned that the National Academy of Sciences' National Research Council recently released a seminal study assessing Everglades Restoration. It recommended that the Corps change some of its strategies, rather than try to design optimal solutions, and suggested a change in modality of the U.S. Army Corps of Engineers (USACE) to move towards incremental adaptive restoration. It recommends that you complete a piece that you know will work and that has an important monitoring

component, and use that as your guide to move forward. Mr. Dunlop mentioned that he can get copies of the study if anyone is interested and that it might help inform the science behind agency activities.

II. INTRODUCTION TO THE WATER RESOURCES DEVELOPMENT ACT AMENDMENTS

Ms. Jan Rasgus, U.S. Army Corps of Engineers (USACE), serves as a Senior Policy Advisor and has overall management responsibility for WRDA implementation. She described the overall contents of WRDA 2007, which is divided into nine titles. Key items include 47 non-project specific policy provisions, programmatic authorities, Louisiana Restoration Planning, Upper Mississippi system, and establishment of a national levee safety program. It also includes numerous project and study-specific provisions. She stated that if all the authorized work were implemented, it would cost approximately \$22 billion. However, each provision requires a specific appropriation of funds in order to proceed.

Ms. Rasgus said that the purpose of implementation guidance is to lay out the policies and procedures the Corps will use to implement the law, and to make sure that the resulting guidance is consistent. Priorities have been set for developing the implementation guidance. Once the guidance is finalized, it will be available online. There is also a database tracking WRDA 2007 components. Points of contact for implementation guidance have been identified. Ms. Ellen Cummings, USACE, is tasked with writing the implementation guidance for Sec. 5017, the provision that modifies the ERA.

Mr. Frazer asked if coordination with other agencies occurred when developing the implementation guidance.

Ms. Rasgus replied yes, and that sometimes the bill even calls for this.

Mr. Keeney asked if authorization fell only to the Corps.

Ms. Rasgus replied that it is almost all Corps implementation, but that occasionally, actions for other agencies are placed in WRDA.

Ms. Cummings described the WRDA 2007 changes specific to ERA. Several are significant. These include provisions relating to cooperative agreements, delegation of authority to other agencies, ability of other agencies to budget for and receive their own appropriations, cost-shared monitoring, and the definition of small projects. Separate from Sec.5017, WRDA 2007 includes some general provisions that relate to monitoring and cooperative agreements. Final decisions have not yet been made as to whether these will affect the ERA Program. Ongoing projects will probably not be affected by WRDA 2007 changes. Some of the other changes include amendment of the dates for reports to Congress. The most recent report covered the period 2004-2006 and the next report will cover 2006-2008. Small projects were defined as projects with a Federal cost of less than \$1 million. The authorization of appropriations is extended to 2012.

Ms. Mangin, USFWS, explained the proposed approval process if other agencies were to receive funding under ERA, which they are authorized to do. If other agencies receive appropriations, the request for proposals would be a joint RFP. All agencies would distribute the RFP to their partners. The Corps would continue as the point of contact for proposals. The Work Group would present to the Council a final ranking of

proposals, noting which agency would fund each project. Each agency would have an agreement with the non-Federal sponsor to carry out the work.

Mr. Dunlop asked if another agency receives an appropriation, what are the circumstances under which funds are utilized.

Ms. Cummings stated that other agencies would use their authorities. Sponsors would still have to provide the minimum 35% non-Federal share and the maximum total Federal share would be limited to 65%. Monitoring would still be required. Each agency would use its own implementing mechanism, for instance, cooperative agreements.

Mr. Dunlop said that Ms. Rasgus will give a timeline of WRDA 2007 guidance to us in the next two weeks, and Army will keep the Council informed.

Mr. Keeney asked when the drafting guidance for ERA will occur and what can be accomplished in the meantime.

Ms. Cummings replied that implementation guidance is being developed and is not causing any delays to ongoing projects. The Estuary Restoration Act Project Application form expires April 30. The Work Group would also like to modify the form to reflect the WRDA 2007 changes and our experience with the form.

Mr. Dunlop said that these issues won't arise until Congress appropriates more money.

Mr. Frazer asked if the Corps request for FY08 was unsuccessful.

Ms. Cummings replied that the President requested \$5 million dollars, but the appropriation was zero.

Mr. Frazer then asked if we were intending to put out a Request for Proposals (RFP) without dollars.

Ms. Cummings replied that when ERA is in the President's Budget, we have gone ahead and posted an RFP in anticipation of receiving appropriations.

III. STATUS REPORT OF ONGOING PROJECTS

Ms. Cummings provided a status report of on-going projects. The Council has recommended and approved 13 projects to date. One project was terminated at the sponsor's request and one project has been completed- submerged aquatic vegetation (SAV) in the Eastern Shore, VA. The SAV project restored approximately 40 acres. Another project, Alligator Creek, has the Project Cooperation Agreement (PCA) executed and the sponsor is waiting for the area to dry prior to construction. Construction should start in February or March of 2008. Six projects are planning to get to PCAs this year, and three are scheduled to get to the construction phase. At Colorado Lagoon, ERA funding will support dredging, re-grading, and planting. The sponsor is also working on storm water outlets and now wants to look at opening the mouth of the lagoon. Besides changing managers several times, they are required to fill out a California Environmental Impact Report, so this will delay things. The Great Lakes projects have been very active. Euclid Creek in Ohio the sponsor's representative has changed and environmental construction windows may cause construction delays which will delay building until 2009.

Ms. Cummings stated that the Work Group suggests terminating the Robinson Estuary project, which was in the first list of recommended projects. The original project

request was for \$200,000 and encompassed 120 acres, including grading, culverts, and planting. Most of the work is now completed and ERA funding would be for planting only. No progress has been made in negotiating a PCA.

In the last several years, RFPs have been issued in June. This runs into the field season for many people, so the Work Group proposes to issue the solicitation later in summer/early fall to generate more proposals.

Mr. Frazer asked about the nature of the commitment with the Robinson sponsor.

Ms. Cummings stated that the project was approved for \$200,000 based on the original proposal; the current project comprised of planting only, would be substantially different.

Mr. Frazer asked if the environmental objectives could be achieved without planting. He stressed that he wants to know the consequences of pulling the money.

Mr. Dunlop speculated that the vegetation will come back on its own. In the Everglades, people have underestimated how much uplift nature will perform on its own. He also stated that money should be spent on projects and sponsors ready to go.

Mr. Keeney asked if we have had any Congressional questions about projects completed.

Ms. Cummings said that we have generally not received requests in that detail but we have provided status reports to Congress on one or two occasions.

Mr. Dunlop said that unless a constituent is pressing, then Congress does not seem to have great interest in projects. They are not trying to second guess or guide us.

IV. NEW PROPOSED PROJECTS

Ms. Cummings then described the proposed and recommended projects for this year. Half Moon Reef, off of the Texas coast, will restore about 20 acres of oyster reef. The hydrology was recently restored to a salinity regime more suitable for oyster propagation and growth. The cost per acre would be about \$64,000, including monitoring. The Nature Conservancy submitted the proposal but most of the funding would come from the Texas General Land Office.

The Terry's Creek project sponsor is Suffolk County, New York. The sponsor would restore tidal flow and create at least 15 acres of wetland habitat. This project is approximately \$68,000 per acre and would cost \$640,000, including monitoring.

The Deadman's Island project sponsor is the City of Gulf Breeze, Florida. The project would use vertical oyster reefs as erosion barriers, which have been successfully used elsewhere. The project would utilize dredge spoil as backfill and would include planting. The project will provide a good variety of habitat. The cost per acre is \$48,000-\$114,000 depending on the number of acres restored.

This year's solicitation produced fewer proposals but higher quality. Half Moon Reef was ranked first and would need approximately \$839,000 in funding.

A discussion of funding options followed with the decision made to approve Half Moon Reef, although funds are available only for a scaled down version of that project. The Half Moon sponsor will be contacted and given the option to proceed with a smaller project and the Robinson sponsor (a past project) will be urged to reconfirm commitment to the project in the next two months, or consideration will be given to terminating the project.

There was also discussion about recommending the three projects to Army for consideration.

Mr. Frazer mentioned that Terry's Creek was a relatively high cost, but they all seemed high cost. He also mentioned that Terry's Creek seemed difficult to carry out. He suggested that perhaps it would be better to wait and see if in response to the next solicitation we would receive proposals for projects with lower risks and costs.

Ms. Schwartz, U.S. Environmental Protection Agency (EPA), said she is reluctant to say we are not going to fund projects since the staff looked at them and felt confident in them. If it turns out that Half Moon Reef declines the funding, the Council would likely want to get together for another meeting about other projects.

The motion moved to recommend Half Moon for funding.

Ms. Schwartz asked if there were projects where it seems no work is going on.

Ms. Cummings replied that there has been active work going on at all but Robinson.

Mr. Dunlop requested that the staff create a spreadsheet of project status.

Ms. Cummings replied that she will do that.

Mr. Frazer suggested that if a project is approaching the pain threshold, we send a letter indicating that they may lose funds.

Mr. Keeney said the Council has to be specific about what progress means.

Ms. Cummings said that internally in the Corps, they have been thinking about this, i.e., you must complete this task by this point in time. We cannot lay it all on the sponsor or all on the Corps.

Mr. Dunlop said that folks need to know that funds can be disengaged.

V. PUBLIC COMMENT PERIOD

Mr. Greg Colianni, EPA, suggested that since it was 4:00 p.m., instead of following the schedule, we allow the public time to speak first then go back to the agenda. The Council agreed.

Mr. Jeff Benoit, President of Restore America's Estuaries (RAE), mentioned the January 25 letter sent to the Council members regarding the ERA WRDA 2007 amendments. RAE has engaged in 600 projects with 250,000 volunteers. The Council has, since 2000, approved 13 projects with funding, implemented one and we are waiting on the others. RAE thought the changes to ERA in WRDA 2007 would be a stimulus to get projects moving, and they would like to see the transfer of funds. RAE is willing to work with all the agency groups on other projects, and recommends that the Corps consider delegating projects to other agencies or others that may be able to get the projects implemented. He said that it takes partnerships to accomplish the work. Other agencies have mechanisms to transfer funds and work with private agencies.

Mr. Dunlop said that we are only as good as the proposals presented. We have had too small of a universe to choose from.

Mr. Benoit mentioned that it might be the size of projects, not the number of them or the cost. Colleague agencies can work on small projects in a streamlined manner, which makes RAE's job easier when they are asking for funding on the Hill. Mr. Benoit mentioned that RAE is bringing ERA to Congress' attention and that they want to offer help to the Council. They have volunteers ready to go. He also mentioned that the scale is doable, and that they have completed over 600 restoration projects. He said that they

understood the obstacles. If projects were delegated to partner agencies, they could carry them out but everyone would receive credit for them, but we foremost need to get projects out.

Mr. Dunlop said that by saying we will write letters, we have shown interest in getting projects out and on-the-ground.

Mr. Benoit also mentioned that RAE is worried to hear that the changes to ERA in WRDA 2007 are now tied to other things in WRDA 2007 by the Corps.

Mr. Frazer said for Half Moon Reef, USFWS has a coastal program office there, the Corps has an interest there, and that he would be more than happy to work with the Corps on this project.

Mr. Dunlop said that the Corps does not have a delivery mechanism problem- that is not the issue. He does not think the Corps perceives it has a problem with carrying out projects.

Mr. Benoit explained that RAE has been very involved in the Act from the beginning and with the WRDA 2007 amendments. He said RAE comes here in good faith. Mr. Benoit also disagreed with Mr. Dunlop and said that the Corps does have a delivery mechanism problem, and that they have a much more complicated process than USFWS, NOAA, or the Natural Resources Conservation Service.

Mr. Dunlop asked that Ms. Cummings please be in touch with RAE about the guidance.

Mr. Benoit suggested having a dialogue with Council agencies about their willingness to delegate projects.

Mr. Dunlop said he would like the Work Group to talk about this.

Ms. Cummings said that is already being worked on.

Mr. Keeney mentioned that in the future, the Council may want to consider the delegation issue. There may be more efficient and effective means to get projects done. The current process discourages applicants and they end up going somewhere else.

Mr. Dunlop said that people need to have forward motion with these projects, or we may have to consider more effective ways, such as other agencies doing projects.

Mr. Jason Albritton, The Nature Conservancy (TNC), thanked the Council for considering Half Moon Reef and that he hopes the Council will work together in recognizing that each agency has its own expertise. He said that TNC is well aware of the Corps process. He then mentioned that TNC also signed the letter and that they hope to help the Council get more proposals in and work with them to get the word out about the RFPs. He said TNC would also like to get more appropriations in for the program and said that one of the biggest drivers to get appropriations is to show success. TNC wants to be able to get Congress and staff out to show them projects.

Mr. Dunlop said that the Council appreciates TNC's work.

VI. ERA STRATEGY REVISION UPDATE

Mr. Colianni told the Council that the Work Group would like to revise the Strategy that was published in 2000. Possible changes identified by the work-group include:

- Going back to prioritize activities given our resources and staffing and to address WRDA 2007 amendments;

- Clarifying the Strategy by reorganizing it. For example, putting the watershed approach at the beginning will clarify how important this is;
- Including more detail. For example, in the estuary management we want to consider habitat trends in doing work;
- Updating the monitoring section with new tools, for example, the monitoring planner. The minimum monitoring standards also need to be included;
- Adding the ERA WRDA 2007 amendments, such as delegation of projects; and
- Capturing new topics, such as climate change and sea level rise, and determining how that figures into planning and project design.

Mr. Colianni said that the revision process will allow stakeholders to comment when it is published in the Federal Register. The Work Group will flesh the Strategy revisions out later this year.

Mr. Frazer expressed that climate change seems more than an emerging issue. It is a fundamental change and needs to inform all decisions and work. Do traditional concepts of restoration still apply? Developing this revision will be a good place to start exploring this.

Mr. Dunlop said that focusing on an ecosystem watershed based approach is sound and that it seems like the Work Group is on the right track.

VII. MENTION OF THE SOCIETY OF WETLAND SCIENTISTS SYMPOSIUM, UPDATE ON THE NATIONAL ESTUARIES RESTORATION INVENTORY, AND INTRODUCTION OF THE NOAA MONITORING RESTORATION SUCCESS PROJECT

Ms. Jenni Wallace, NOAA, mentioned that the Work Group submitted a symposium panel proposal to the Society of Wetland Scientists Conference dealing with coastal restoration in the face of climate change. The symposium was accepted. There will be representatives from state, non-profit, USGS, and the USACE on the panel. There will be an overview of climate change and restoration given by USGS, the USACE will discuss how they are performing research on climate change, the state will explain how they're taking climate change into account in planning, and the non-profit will talk about how they factored climate change into an on-the-ground project. The Work Group will use the symposium to look at ideas to consider when doing priority setting of coastal restoration projects. The Work Group also has a panel session accepted at The Coastal Society conference, and they are trying to determine potential speakers at that session.

Ms. Wallace then gave an update of the National Estuaries Restoration Inventory (NERI) and said that a lot of progress was made this past year. NERI now contains 162,000 acres, including the USFWS acres which were imported recently. The NERI lead will work with the Corps this year to get their data into NERI, specifically working with the USACE Great Lakes Habitat Initiative Steering Committee, who has developed a regional project tracking system. NOAA receives its own line of funding to work on NERI and monitoring. NOAA is also examining monitoring success, and partnered with the National Estuarine Research Reserve System to study restoration projects and nearby reference sites to try and determine success. NOAA is also exploring if there is some way to get other agencies involved.

Mr. Dunlop said the Corps will promulgate new mitigation rules shortly that add greater flexibility. This will empower mitigation banks and provide opportunities for the U.S. government to use mitigation bank sites as reference sites. This bears watching in the future because mitigation bank monitoring is required.

Mr. Dunlop closed the meeting at 5:00 p.m.