

**MINUTES OF THE MEETING
ESTUARY HABITAT RESTORATION COUNCIL
AT HEADQUARTERS, U.S. ARMY CORPS OF ENGINEERS
441 G Street, N.W., WASHINGTON, DC
September 25, 2003**

The meeting convened at 10:15 a.m., with the following members present:

- **Mr. George S. Dunlop**, Deputy Assistant Secretary for Policy and Legislation, Civil Works, Department of the Army, Chairing;
- **Mr. G. Tracy Mehan, III**, Assistant Administrator for the Office of Water, U.S. Environmental Protection Agency;
- **Mr. Timothy R.E. Keeney**, Deputy Assistant Secretary of Commerce for Oceans and Atmosphere (NOAA);
- **Dr. Mamie Parker**, representing Dr. Steve Williams, Director, U.S. Fish & Wildlife Service;
- **Mr. David Gagner**, representing Mr. R. Mack Gray, Deputy Under Secretary for Natural Resources and the Environment, U.S. Department of Agriculture.

I. INTRODUCTORY COMMENTS:

Mr. Dunlop called the meeting to order and welcomed participants. He stated that he was grateful for the level of involvement of each of the Council's member-agencies and the supernumerary work of each of the agency representatives.

Mr. Mehan indicated he was pleased to be attending the meeting and made note that September 25th is National Estuaries Day, a great time to be moving forward on Estuary Restoration Act (ERA) project selection. Mr. Mehan mentioned the need for discussion of Paperwork Reduction Act as it applies to future project selection processes and thanked the Council workgroup staff for their work.

Mr. Keeney stated that he was also pleased to be in attendance. The workgroup, he said, has invested a lot of time since the last Council meeting identifying projects to recommend for ERA funding. Mr. Keeney recognized that these projects might come with their own issues since they were drawn from a pool of existing projects, and the proposals did not necessarily address the criteria that the Council previously approved for use in proposal evaluations. He continued that there will undoubtedly be some further information gathering necessary for whichever projects the Council decides to recommend to the Secretary of the Army. In reviewing the project proposals, Mr. Keeney asked the Council to consider the definition of "associated ecosystems" as approved in the national strategy.

Dr. Parker extended Dr. Steve Williams' regrets for being unable to attend the meeting. She indicated her own excitement about the prospect of restoring estuaries through the ERA program and said she felt some great proposals had been identified. These projects she said, will show action toward the goal of restoring 1,000,000 acres of habitat.

Mr. Gagner stated that he was pleased to be representing Mr. R. Mack Gray at the Council proceedings. He noted the habitat restoration work of both public and private partners and underscored the need for quantification of their achievements in the restoration arena.

II. MONITORING PROTOCOLS:

Dr. Mary Baker, NOAA, gave a presentation on the latest draft of monitoring guidelines for restoration projects supported by ERA. Dr. Baker stated that proposed guidelines had been made available via the listserve for public comment and that four comments were received. The "reference site" requirement of the guidelines was the most common topic of concern, she said. Other issues

addressed by public comment include: (1) the cost-burden of any monitoring, (2) a request for more detail in the guidelines, (3) the desire for monitoring requirements to be consistent among programs, and (4) the need for examples of successful restoration monitoring efforts. The monitoring guidelines were subsequently revised and reflect five critical elements. Dr. Baker made key points in relation to each of the five elements:

Parameters – must be linked to goals; should have success criteria based on goals; monitoring needs to be considered early in the planning process; should measure structural and functional parameters (in addition to acreage); lists of specific parameters are provided to choose from; and should continue until a trend is apparent.

Data Evaluation Methods – must be specified in advance of data collection; could include (1) statistical test of hypotheses, (2) statistical comparison to reference site, or (3) qualitative trend analysis.

Baseline Assessment – must occur and may include (1) pre-construction measurements, (2) historical measurements, or (3) historical estimates.

Reference Conditions – reference sites are not required but are strongly encouraged; reference sites need not represent target conditions for the site; reference conditions can be estimated from historical data; and natural variability and regional conditions should be considered in evaluating project success.

Frequency/Time Span – decreasing intensity over time may be appropriate; the project must include contingency plans or adaptive management; a minimum five-year monitoring period is required; frequency and timing depend on parameters; data and results must be shared.

Mr. Dunlop stated that he is interested in encouraging people to share data and improve transparency. He noted the important role monitoring has in differentiating between the relative efficacy of different approaches or applications. Learning what does not work, or what has relatively greater or lesser efficacy, can be as an important outcome as meeting or exceeding expectations for habitat restoration. Monitoring requirements should allow practitioners room to experiment without the fear that their techniques or their project will be characterized as a failure. Determining relative efficacy of restoration techniques should be one important objective of the monitoring effort.

Dr. Parker added that Office of Management and Budget (OMB) often scrutinizes success and that incorporating Mr. Dunlop's idea into the monitoring guidelines could change what constitutes a failure. Dr. Parker questioned whether monitoring costs were covered by ERA funding.

Mr. Dunlop stated that monitoring costs are not covered due to the ERA statute language, since it follows the standard Army Corps of Engineer cost-share model. He emphasized that project sponsors need to be aware up front that they are taking on a five year monitoring responsibility.

Ms. Ellen Cummings, U.S. Army Corps of Engineers, clarified that monitoring undertaken pre-construction and during construction of a project can be covered by the cost-share agreement, however post-construction monitoring is considered part of project "operation and maintenance" and is therefore not covered.

Mr. Mehan stated that he sees no way around requiring monitoring. The need to demonstrate success is not a debatable point since both society and OMB require us to judge performance.

Dr. Parker agreed that monitoring is necessary, she stated that she was just interested in how to help sponsors with the cost.

Ms. Suzanne Giles, Restore America's Estuaries (RAE), commented on monitoring costs saying that RAE members gave her a great deal of input on the difficulty of funding monitoring. Specifically, state grants are often prohibited from use for monitoring costs, academic institutions will not do monitoring for free, and thus the costs often fall squarely on the shoulders of the sponsor.

Dr. Baker responded that they have tried to make the monitoring requirements as minimally burdensome as possible and added that though there is a requirement for five years of monitoring, this does not mean monitoring has to be done every one of those years.

Ms. Cummings concurred that monitoring requirements have been softened. She also noted that the monitoring requirements provide data that feeds right into the ERA's database requirements.

Mr. Dunlop asked how much NOAA has spent on the database development.

Dr. Baker responded just over one million dollars.

Mr. Dunlop asked for a motion to approve the monitoring requirements, with revision to encourage experimentation and clarify the implications of determining project success, as discussed previously.

Mr. Mehan moved that the monitoring requirements be so approved. **Dr. Parker** seconded the motion. Approved unanimously.

III. REVIEW OF ERA PROGRAM OBJECTIVES AND PROJECT EVALUATION CRITERIA:

Ms. Cynthia Garman-Squier, Department of the Army, welcomed Ms. Susan Mangin of the U.S. Fish and Wildlife Service, as a new member of the Council workgroup. Ms. Garman-Squier reviewed ERA program objectives as contained in Section 102 of the ERA, listing each of the four enumerated in the Section. She then addressed evaluation criteria for restoration projects, stating that the criteria were drawn from Act language and presented to the Council approximately one year ago. At that time, the Council amended and then approved the criteria. In June 2003, the Council directed the workgroup to select projects from existing proposals within the Council member agencies. Ms. Garman-Squier noted that since these proposals were initially solicited under different grants programs, they did not necessarily specifically address all of the ERA evaluation criteria as approved by the Council. Though this presented some challenges, the workgroup was able to rank the proposals using the evaluation criteria as the main guide.

Mr. Dunlop noted for context, that Ms. Garman-Squier was speaking about the proposals in front of the Council. They have a history, he said. This selection process is a preliminary way to fund projects and future funding will go through a request-for-proposals (RFP) process once Paperwork Reduction Act requirements have been met.

Ms. Garman-Squier said that with some RFP refinement, she anticipated that many of the challenges could be avoided in the future. She also noted that the first tier of projects on the list of ranked proposals have a total budget of less than the one million dollars since the amount originally appropriated to ERA projects has undergone "savings and slippage". The current amount available to these projects from the Army Corps' budget is approximately \$815,000.

Ms. Cummings further described the budget "savings and slippage". First, the ERA appropriation was affected by a 0.65 percent rescission applied by Congress to the Fiscal Year (FY) 2003 Omnibus appropriations bill. Second, the ERA program budget is located in the Army Corps' Construction General Account and is therefore subject to a general reduction applied to the account by Congress. The reduction gets applied with the knowledge that some of the construction projects in the account will either not proceed as quickly as anticipated (slippage) or cost less than anticipated (savings). This reduction is applied across the board to projects in the Construction General Account and represents money that is therefore not allocated to the Army Corps. The chance of getting "savings and slippage" funds back is fairly unlikely.

Ms. Giles asked if that was Congressionally decided.

Ms. Cummings affirmed.

Dr. Parker asked if the funds are no-year money.

Ms. Cummings affirmed.

Dr. Jed Brown, U.S. Fish and Wildlife Service, asked if there is any way to request the money back from Congress.

Ms. Cummings said that some money could be gotten back from the account if some other projects had slippage, however, since we were discussing the use of FY 2003 funds in FY 2004, it was

unlikely that recovery of the FY 2003 savings and slippage would be possible. Agency overhead will also be taken from the amount available but the Army Corps will work to minimize those charges.

IV. REVIEW AND DISCUSSION OF PROPOSAL LIST:

Mr. Greg Colianni, EPA, presented the first two restoration proposals. Both proposals were provided by EPA through the National Estuary Program, he said. The Alligator Creek, FL project will restore hydrology to a salt tern via backfilling of mosquito ditches. The project was ranked number one by the workgroup and is particularly strong in its ecosystem benefits and agency coordination. The cost range for the project is listed as \$400,000-\$500,000. The proposal was written for a \$900,000, broader scope of work. The workgroup decided to consider one stand-alone phase of the project for consideration of support under ERA, thereby reducing the required funding amount. The Saw Mill Creek, NY project will restore hydrology to a salt marsh via berm removal and was ranked second by the workgroup. It complements a 100-acre adjacent site that was previously restored and is itself a high priority restoration site for the New York / New Jersey Harbor National Estuary Program.

Mr. Dunlop asked about any possible unintended consequences related to mosquitoes or berm removal.

Mr. Colianni replied that surrounding development has reduced mosquito breeding habitat and that control measures are in place that maintain mosquito populations so that filling in the ditches would not have unintended consequences. Mr. Colianni also stated that an engineering review of berm removal plans would be conducted to assure no flooding issues are created

Dr. Parker stated that she has visited Saw Mill Creek and was impressed with the educational efforts being conducted there.

Ms. Susan Mangin, U.S. Fish and Wildlife Service, said she was pleased to have joined the Council workgroup and then presented the Virginia Eastern Shore SAV proposal. The project targets restoring eight to sixteen acres of eelgrass, she said, with expected benefits including improved water quality and improved oyster reef health.

Dr. Rebecca Allee, NOAA, presented the Raging River, WA proposal saying that the project site is located approximately ten miles above head of tide and that the project involves removal of a levee to reconnect the river to its adjacent floodplain. The project would benefit salmon and restore approximately seven acres of habitat. The federal cost-share on the project is currently listed as 69 percent, exceeding the 65 percent maximum required under the ERA. Dr. Allee stated that the actual cost-share might be different, however.

Mr. Dunlop inquired as to who owns the floodplain.

Dr. Allee replied that King County, WA does. She then presented the next proposal, Robinson Estuary, FL. The Robinson Estuary project, she said, will increase the quantity, improve the quality and protect the diversity of coastal wetlands within the Sarasota Bay and Tampa Bay watersheds.

Ms. Cummings presented the Maritime Forest Ridge and Marsh Restoration, LA project. Since the Corps does not have a grants program, she said, the Corps District Offices forwarded existing good proposals they knew of, for consideration. The Maritime Forest Ridge project involves removal of a berm to restore both maritime forest and adjacent marsh habitat. The first phase of the project is currently underway. The second phase is the portion under consideration for ERA support and would restore 15 acres of forest as well as 15 acres of marsh. This project is one of the first instances in which these two habitat types are being jointly restored.

Mr. Dunlop asked if this project needs a Section 404 permit.

Ms. Cummings replied that the project is already totally permitted.

Dr. Allee presented the Goose Island, TX proposal. This project also has all its permits, she said, and entails using dredge material to build 22 acres of marsh. This project currently has a federal cost-share of 74 percent; however there was initially more state funding available to the project and there is a potential to recapture it, reducing the federal share to a permissible level.

Dr. Parker asked if this is the project that uses a breakwater.

Dr. Allee affirmed.

Dr. Brown asked what the marsh habitat was being built upon and whether it may be worthwhile habitat in its own right.

Dr. Allee stated that the dredge material was to be placed on an area of former marsh that had been lost due to subsidence, and that it would not be displacing useful habitat.

Ms. Mangin presented the James River SAV, VA proposal. The project will expand SAV plantings in four areas of the James River and supports restoration planning efforts in the Chesapeake Bay Agreement. Ms. Mangin continued by presenting the Lemon Bay, FL proposal saying the Bay's watershed has been degraded and that the project will help to accomplish a number of things including: re-establishment of hydrology, removal of non-native species, and native vegetation plantings.

Mr. Dunlop said that the presentations had given the Council a flavor of the scope of project types and pointed out that most adhere to the strict definition of "estuarine habitat", though the Raging River project is located above head of tide. He asked if Raging River was the only project restoring habitat considered to be "associated habitat type". Workgroup members affirmed.

Dr. Brown asked about the James River project. Workgroup members said it is a tidal freshwater site.

Mr. Dunlop discussed the spirit of the law and whether the Council would want to go beyond the head of tide for consideration in ERA projects.

Mr. Mehan said that even upland areas are important to aquatic habitat and asked if the question was of a legal or technical/policy nature.

Dr. Allee indicated that it is a technical decision and read a section of the Estuary Habitat Restoration Strategy that states that estuary habitat includes the estuary and its associated ecosystems. The strategy lists potential associated ecosystem types as examples, but these are not meant to be all-inclusive, Dr. Allee pointed out.

Mr. Dunlop asked if the Council would be sending a message, by considering a project above head of tide, that ERA funds are open to associated habitats. Should the Council concentrate solely on estuarine habitats at this time, he asked.

Mr. Keeney said that he thinks it within the focus of the Act to look more broadly at habitat types and that he feels it appropriate to consider a project above head of tide.

Mr. Mehan said, ecologically speaking, he agreed.

Ms. Cummings pointed out that there are other funding mechanisms and programs that are geared to support associated habitats.

Mr. Gagner agreed with Ms. Cummings. He also added that the Raging River project seems to be very expensive and wondered about a further breakout of cost.

Dr. Baker said she thought the cost reflective of the fact that it is an urban river. Further discussion followed.

Mr. Mehan asked what leeway the Council has with funding levels. He proposed possibly offering a lower amount to a project sponsor with the hope that they would pick up the slack. He indicated that a project's cost-per-acre is an important factor for consideration during ranking.

Ms. Garman-Squier said the workgroup did its best to rank proposals in a worthwhile order but that no workgroup member would fall on their sword over a particular ranking. It is for the Council to decide, she said. She said that it is probably necessary to give the Corps some funding leeway when negotiating the cost-share agreements for selected projects. Additionally, some project sponsors may not be interested in a cost-share agreement and could potentially fall off the list of potential projects altogether. The cost estimates on the proposal list before the Council are not carved in stone.

Dr. Baker said she envisioned the Corps talking with each sponsor to see where the project cost-share amount would fall, indicating that the federal cost share could be more or less than requested on the initial proposal.

Mr. Dunlop stated that the Council needs to decide if they want to move any of the proposals from the rank order submitted by the workgroup.

Ms. Cummings said the Council could instruct the Corps to cap the cost-share amount offered to the projects. The law requires the Council to provide a prioritized list to the Secretary of Army.

Mr. Mehan said that he would like to see the Alligator Creek project capped at \$400,000 and Raging River capped perhaps at \$100,000. Further, he said, he was worried that the Robinson Estuary project proposal is somewhat weak.

Dr. Allee replied that the proposal is weak but that NOAA field staff has assured her that the project itself is strong.

Mr. Mehan said he would feel better about the chance to get five projects funded rather than just four.

Mr. Keeney said that he feels reluctant to cap cost-share amounts. He relies on the work of the workgroup and feels it somewhat arbitrary to knock \$50,000 off here and \$100,000 off there.

Dr. Baker pointed out that there is also uncertainty in what the Corps can do for the money. It may be different than what the sponsor envisioned when initially preparing the proposal and project cost estimate.

Mr. Mehan said that the cap would at least provide a backstop.

Dr. Parker added that she feels capping is acceptable. That way at least five projects can be funded.

Mr. Keeney asked what is known about the FY '04 appropriations for the ERA.

Ms. Garman-Squier replied that at this point, the House has allocated \$1.5 million and the Senate had not allocated anything.

Mr. Dunlop asked if the Council is comfortable with capping. Workgroup members noted that capping might result in a reduced scope of work being achieved. Mr. Dunlop inquired then, if workgroup staff were opposed to capping. Workgroup members indicated that in general, they oppose capping.

Mr. Darrell Brown, EPA, said the Comprehensive Conservation and Management Plans, developed by the 28 National Estuary Programs, contain many potential projects. The NEPs are always looking for opportunities to complete the projects and would jump at the chance to obtain funding.

Dr. Allee said that in NOAA's Community-based Restoration Program, funding amounts are often negotiated.

Dr. Parker said she felt the Council should go ahead with prioritization and that projects not funded could always re-apply under the next cycle.

Mr. Dunlop stated that by consensus of the Council, Alligator Creek would be capped at \$400,000. He then asked again if the Council was happy with the current prioritization list.

Ms. Cummings stated that the way the law is written, the Secretary of the Army has the option to pick any of the projects on the prioritized list for funding; he does not have to follow the ranked order.

Mr. Dunlop worried that the Secretary will not know where the funding cut line is.

Ms. Cummings said that perhaps two to three projects could be negotiated simultaneously.

Dr. Brown said that Raging River is a good project; however he expressed concern that supporting it may open up more habitat for ERA funding than the Act writers envisioned.

Mr. Dunlop said that he does not agree that funding Raging River sets a precedent since this funding cycle and proposal gathering process were handled differently than future ones will be.

Ms. Giles asked if project sponsors have been contacted and agree to enter into a cost-share.

Ms. Garman-Squier replied that they have not been contacted.

Mr. Dunlop proposed accepting the proposals in the rank order presented by the workgroup. Board members clarified that the funding for the Alligator and Raging River projects would be capped at \$400,000 and \$100,000 respectively.

Mr. Keeney made a motion to accept the list as stipulated. **Dr. Parker** seconded the motion. Approved unanimously.

Mr. Dunlop then moved to discussion of the following year's funding process and asked whether the Council wants the Paperwork Reduction Act pursued as quickly as possible. Alternatively, he said, the same mechanism from the current funding process could be used for one more year.

Ms. Cummings said that the Corps program personnel had proposed using the same approach used this year, for next year, since ERA appears to be getting at most \$1.5 million in appropriations. Initially she felt that next year's funds could be awarded by simply continuing down the list of currently ranked proposals. Now, however, the workgroup feels that there may not be enough projects on the list for this option. She also noted that the Paperwork Reduction Act process has to go through Army, meaning it becomes a more cumbersome process than it might otherwise be.

Mr. Dunlop concurred that the Army process takes a while. He said that the Paperwork Reduction Act process should be started but if it winds up taking too long for next year's funding, then the Council could direct the workgroup to go with the old process. The decision does not have to be made at this point, he concluded.

Ms. Garman-Squier said that the first order of business would be to revise the draft request-for-proposals based on the things learned during this selection process. The Paperwork Reduction Act obligations could then be carried out.

V. PUBLIC COMMENT

There being no public comment, the meeting was adjourned at 12:20 p.m.