



**US Army Corps
of Engineers®**



MEMORANDUM OF AGREEMENT
AMONG THE U.S. ARMY CORPS OF ENGINEERS,
THE U.S. ENVIRONMENTAL PROTECTION AGENCY,
THE U.S. FISH AND WILDLIFE SERVICE AND
THE NATURAL RESOURCES CONSERVATION SERVICE
FOR THE PURPOSE OF TRANSFERRING RESPONSIBILITY FOR
UPDATING AND MAINTAINING THE NATIONAL LIST OF VASCULAR
PLANT SPECIES THAT OCCUR IN WETLANDS

I. INTRODUCTION

The purpose of this Memorandum of Agreement (MOA) among the U.S. Army Corps of Engineers (Corps), the U.S. Environmental Protection Agency (EPA), the U.S. Fish & Wildlife Service (FWS), and the Natural Resources Conservation Service (NRCS) is to transfer the responsibility to maintain and update the “National List of Vascular Plant Species that Occur in Wetlands” (List) from the U.S. Fish & Wildlife Service to the U.S. Army Corps of Engineers. The List was last updated in 1988.

The FWS originally developed the List as part of their National Wetlands Inventory procedure for mapping wetlands in the United States. The Corps is the author of the 1987 Corps of Engineers Wetland Delineation Manual (Manual). The Corps and EPA share responsibilities for determining the geographic scope of Clean Water Act (CWA) jurisdiction.

Updating the List would assist the Corps in operating a more predictable, transparent, and scientifically-based regulatory program. Thus, the Corps agreed to take this responsibility, including providing adequate funding. Scientists at the Corps Engineer Research and Development Center (ERDC), Cold Regions Research and Engineering Laboratory (CRREL) in Hanover, New Hampshire, will maintain the List, in coordination with the ERDC Environmental Lab in Vicksburg, Mississippi, and share the data with all of the agencies and interested parties. National and Regional Interagency Review Panels, made up of representatives from the Corps, EPA, FWS, and NRCS, will prepare updated National and Regional Lists.

II. SCOPE AND APPLICABILITY

A. Section 404 of the CWA authorizes the Corps, or approved state CWA Section 404 program, to permit the discharge of dredged and/or fill material in waters of the U.S. The Federal regulations define waters of the U.S. and wetlands. Wetlands are “those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions” (33 CFR §328.3((b))). Such vegetation is referred to in the Manual as *hydrophytic vegetation*, and is identified by the indicator status of the plants in the approved List.

B. The List is also the primary basis for identifying hydrophytic vegetation for wetland determinations made by NRCS under the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*).

III. PROCEDURES

- A. The four signatory agencies agree to work collaboratively to update the List in a manner that encourages transparency and active public participation. The Corps is responsible for taking over leadership responsibility for updating and maintaining the List, and for convening National and Regional panels, made up of representatives from the four signatory agencies, to support this effort. The Corps is also responsible for publishing a draft National List in the Federal Register for public review and comment, and for obtaining official endorsement from the signatory agencies for the final List prior to its publication in the Federal Register.
- B. To enhance communication among the participating agencies and encourage public participation at each step in the review process, the Corps proposes to develop a dedicated web interface with multiple levels of accessibility, including a public forum, and a secure workspace for the interagency Regional and National Review Panels. This web interface will provide current wetland plant lists, and take input from agencies and the public on suggested indicator status changes. In addition, the Corps plans to use the web interface to receive and review public comments and to provide panel members the option of having an on-line forum to discuss proposed changes and vote on the modifications to the List.
- C. The Regional Panels are responsible for preparing Regional Lists of Vascular Plant Species That Occur in Wetlands, based on the best available data, expertise of panel representatives, and public input. The Regional Panels may also be called upon to respond to technical comments raised during the public comment period.
- D. The National Panel is responsible for reviewing the changes proposed by the Regional Panels, making modifications as needed in close consultation with the Regional Panels, and evaluating comments received in response to the public notice of the draft National List. As part of the National Panel's work, agency representatives to the panel are expected to involve their respective Headquarters offices during all phases of the process, and to provide technical recommendations to the appropriate Headquarters staff.
- E. To facilitate development of the List in a collaborative manner, the National Panel is responsible for developing specific operating protocols to be followed by the National and Regional Review Panels, including voting and science-based dispute resolution processes and procedures to implement each Agency's requirements for sound science. To this end, the National Review Panel is expected to follow the intent of the "Agreement for Coordination in the Refinement of the National List of Plant Species That Occur in Wetlands," signed in 1996 by the Corps, EPA, FWS, and NRCS, and the requirements of the Data Quality Act (Public Law 106-554) in developing the appropriate procedures for the current effort to update and revise the List.
- F. The signatory agencies are responsible for designating representatives to the panels with the appropriate wetland and plant expertise to support the development of the List, and to pay the necessary travel and labor costs associated with their representative's activities. In addition, the signatory agencies are expected to support the development of the interagency national wetland plant list web site with funding, if possible.
- G. The taxonomy and biogeography of the List will be updated to be consistent with the nomenclature used in the current version of the PLANTS database, which is maintained by NRCS in collaboration with the botanical community.

IV. INFORMATION SHARING

The list will be shared with all signatory agencies and interested parties. It is critical that the list reflect the highest standard of scientific accuracy and reliability.

V. GENERAL

1. Nothing in this MOA is intended to diminish, modify, or otherwise affect existing agreements among any of the signatory agencies related to the CWA Section 404 or the Food Security Act of 1985.

2. Nothing in this MOA is intended to diminish, modify, or otherwise affect the statutory or regulatory authorities or requirements of signatory agencies.


3. This MOA is not a fiscal or funds obligation document. This MOA defines in general terms the basis on which the signatory agencies will cooperate, and as such, may at sometime involve the transfer of funds from one signatory agency to another. Any activities involving reimbursement or contribution of funds between the signatory agencies will be handled in accordance with applicable laws, regulations, and procedures. Such activities will be documented, and subject to, separate supporting agreements that shall be affected in writing by representatives of the agencies participating in the support agreements.

4. This MOA will take effect on the date of the last signature below and will continue in effect until modified or revoked by agreement of all signatory agencies, or revoked by any of the signatory agencies alone upon 90 days written notice. Modifications to this MOA may be made by written mutual agreement and Headquarters level approval by all of the signatory agencies. Such modifications will take effect upon signature of the modified document by all the signatory agencies.

5. This MOA is not legally binding. This MOA does not create any right or benefit, substantive or procedural, enforceable by law or equity against the signatory agencies, their officers or employees, or any other person. This MOA does not direct or apply to any person outside the signatory agencies.

6. The U.S. Fish and Wildlife Service is responsible for the records related to the "National List of Vascular Plants that Occur in Wetlands" developed prior to the last signature of this agreement. The U.S. Army Corps of Engineers is responsible for new records as they are developed related to this agreed-upon transfer of responsibility in accordance with the requirements of the Federal Records Act (44 U.C.S. 3301).

SIGNATORS:

 12/12/06
(Date)

Gerald W. Barnes, P.E.
Chief, Operations
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U.S. Army Corps of Engineers

 12/09/06
(Date)

Lawrence Clark
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 12/8/06
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