

CECW-PR Regulation No. 1165-2-27	Department of the Army U.S. Army Corps of Engineers Washington, DC 20314-1000	ER 1165-2-27 18 Aug 89
	Water Resources Policies and Authorities ESTABLISHMENT OF WETLANDS AREAS IN CONNECTION WITH DREDGING	
	Distribution Restriction Statement Approved for public release; distribution is unlimited.	

DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
Washington, D.C. 20314-1000

CECW-PR

Regulation
No. 1165-2-27

18 August 1989

Water Resource Policies and Authorities
ESTABLISHMENT OF WETLAND AREAS IN CONNECTION WITH DREDGING

1. Purpose. This regulation provides guidance for the establishment of wetland areas in connection with dredging required as part of water resources development projects.

2. Applicability. This regulation is applicable to all field operating activities having Civil Works responsibilities.

3. References.

a. Section 150, Water Resources Development Act of 1976 (PL 94-587)

b. Section 907, Water Resources Development Act of 1986 (PL 99-662)

c. EM 1110-2-5026

d. ER 200-2-2

e. Technical Report D5-78-16, "Wetland Habitat Development with Dredged Material: Engineering and Plant Propagation." Available from Waterways Experiment Station, P.O. Box 631, Vicksburg, MS 39181-0631, and from National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (NTIS No. AD-A073 493)

f. Technical Report D-89-1, "Long-Term Monitoring of Eleven Corps of Engineers Habitat Development Field Sites Built of Dredged Material, 1974-1987." Available from Waterways Experiment Station, above address.

4. Legislative Provisions. Section 150 of PL 94-587 authorizes the Chief of Engineers to plan and establish wetland areas as part of water resources development projects.

a. Establishment of any wetland area in connection with the dredging required for an authorized water resources development project may be undertaken in any case where the Chief of Engineers in his judgment finds that:

(1) Environmental, economic and social benefits of the wetland area justify the increased cost thereof above the cost required for alternative methods of disposing of dredged material for such project; and

(2) the increased cost of such wetland area will not exceed \$400,000; and

This regulation supercedes ER 1165-2-27, 30 July 1982

ER 1165-2-27
18 Aug 89

(3) there is reasonable evidence that the wetland area to be established will not be substantially altered or destroyed by natural or man-made causes.

b. Whenever the Secretary of the Army, acting through the Chief of Engineers, submits to Congress a report on a water resources development project, such report shall include, where appropriate, consideration of the establishment of wetland areas.

c. In the computation of benefits and cost of any water resources development project, the benefits of establishing any wetland area shall be deemed to be at least equal to the cost of establishing such area. All costs of establishing a wetland area shall be borne by the United States.

5. General Policies. Paragraph 4a above applies to operating projects, authorized projects, including those under construction, and continuing authority projects. Paragraphs 4b and c apply only to study reports on projects not yet authorized by Congress.

a. Wetland areas established under the Authority provided by Section 150, PL 94-587 must be primarily the result of dredged material placement, and must be designed to produce beneficial functional values. The types of wetland areas which may be established under this authority are not limited to vegetated wetlands. Some examples of wetland types which may be established under the authority of this Section are listed in reference 3c.

b. The Section 150 authority is intended to increase the extent of wetlands within an area as compared to the without project/activity, and shall not apply to the replacement or restoration of wetlands for mitigation purposes.

c. The provisions of Section 150 are to be considered after determination of the best plan for project/activity accomplishment in the interest of authorized project purposes. (That plan may already, irrespective of Section 150, involve creation of wetlands, either incidentally--where the most economical plan for disposal of dredged material would result in usable wetland configuration--or as might be required for mitigation.)

d. Section 150 states that there must be reasonable evidence that the wetland area will not be substantially altered or destroyed by natural causes. Wetland areas normally occurring in a particular ecosystem are generally well adapted to natural destructive forces such as flooding, fire, and ice. Therefore, in establishing a wetland area, preference should normally be given to those types of wetland which would be expected to occur naturally at the particular site being considered. Design of the wetland area should consider those natural forces which might alter or destroy the wetland area prior to the area becoming sufficiently established to withstand such forces. Some destruction or alteration of the wetland area is expected to occur as a result of natural forces.

e. The Corps will not acquire lands in order to establish a Section 150 wetland. Ordinarily such wetlands should be established in waters subject to the navigation servitude. In any case where real estate interests might be required, Section 150 wetlands development will not be proposed unless other entities (Federal or non-Federal) make the related lands available for siting the proposed Section 150 wetland without Corps cost.

f. In Feasibility, Legislative Phase I General Design Memorandum (GDM) and Special and Continuing Authority Studies involving dredging, establishment of wetland areas will be addressed throughout the planning process in accordance with current planning guidance. If during planning, the district commander judges the environmental, economic, and social benefits of establishing specific wetland areas in connection with dredging as part of a proposed water resources development plan outweigh any increased costs above the cost required for the NED plan involving alternative methods of disposal, then the benefits of the wetland area can be considered equal to the costs of establishing them. Section 907 of the Water Resources Development Act of 1986 (reference 3b) shall apply in determining the overall project benefit-cost ratio.

g. For operating projects, authorized projects, including those under construction, and continuing authority projects, the following additional policies are applicable.

(1) The establishment of an individual wetland area for which the increased cost exceeds \$400,000 is not authorized by Section 150. For continuing authority projects, the Federal cost limitation will include the cost of wetland creation.

(2) The determination of "increased costs" will be based on comparison of the total cost of each project alternative which involves the establishment of a specific Section 150 wetland area or areas with the total cost of the otherwise best plan (see 5c, above). Up to a \$400,000 cost increment may be added to project costs for each individual Section 150 wetland area proposed.

(3) Non-Corps interests will retain any real estate interests needed for the original establishment and subsequent maintenance of a Section 150 wetlands area, and will provide assurances that such area will be operated and maintained by them for the expected beneficial values of the wetland.

h. In study reports for projects not yet authorized by Congress, the incremental project construction costs for establishment of wetlands which, but for the provisions of Section 150, would not have been included in the recommended project plan, shall be assigned wholly to the Federal Government (and any associated real estate costs to non-Federal interests).

ER 1165-2-27
18 Aug 89

6. Procedures. In order to insure that the Chief of Engineers is aware of actions implementing Section 150, the following procedures will be used:

a. Division commanders will advise HQUSACE (CECW-0) of the initiation of any Operation and Maintenance (O&M) studies relative to the establishment of wetland areas in connection with completed portions of any authorized water resource project. Upon completion of these studies, district commanders shall forward a letter report, addressing the requirements of 4a(1), (2) and (3) and show the proposed plan of improvement. Appropriate NEPA documentation will accompany the report. The NEPA process shall be completed before the proposed plan is approved. Approval for the establishment of wetland areas under the authority of Section 150 on completed projects shall be forwarded to HQUSACE (CECW-0) by the division commander, together with his/her decision as to whether or not the report is approved.

b. For projects under design or construction, reports should be included in the GDM or a GDM Supplement together with the necessary NEPA documents.

c. No separate reporting procedures are required for Feasibility, Legislative Phase I GDM, and Special or Continuing Authority Studies.

d. The Environmental Laboratory, Waterways Experiment Station, has reviewed the Environmental Effects of Dredging Programs (EEDP) to identify all studies relevant to the authorization. The Engineer Manual referenced as 3c, above, and the two reports referenced as 3e and 3f, are particularly pertinent. Advisory assistance on wetlands area development with dredged material from maintenance works is available without cost to Corps elements through Dredging Operations Technical Support (DOTS), EEDP. Information about the EEDP is available from the Waterways Experiment Station, P.O. Box 631, Vicksburg, MS 39180-0631.

7. Funding. Costs related to the establishment of wetland areas for a project in the survey, planning and design, construction, or maintenance stage will be charged against the appropriate appropriation title. Such activities must be accomplished within basin monetary authority limitations where pertinent and, for small projects under continuing authorities, within the cost limitations for such projects. Funding will be obtained through normal project budgetary and funding procedures.

FOR THE COMMANDER:



ALBERT J. GENETTI, JR.
Colonel, Corps of Engineers
Chief of Staff