DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, D.C. 20314-1000

CECW-LRD

AUG 14 2017

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Implementation Guidance for Section 1140 of the Water Resources Development Act of 2016 (WRDA 2016), Federal Cost Limitation for Certain Projects

1. Section 1140 of the WRDA 2016 Act amends subsection (c) of section 506 of the Water Resources Development Act of 2000 (42 U.S.C. 1962d-22(c)) to allow for the inclusion of compatible recreation features at projects carried out pursuant to paragraph (3) of that subsection: projects that can be carried out pursuant to section 506(c)(3) are projects that support the restoration of the fishery, ecosystem, and beneficial uses of the Great Lakes. Compatible recreation features are defined as those features that provide recreation benefits but that do not diminish the ecosystem restoration benefits of the project. As provided in section 1140, the federal cost of any such feature may not exceed 10 percent of the federal ecosystem restoration costs of the project. Section 506(c) as modified by section 1140 is enclosed.

2. Consistent with other ecosystem restoration authorities, inclusion of recreation features must be compatible with the ecosystem restoration purpose of the project, and must be appropriate in scope and scale to the opportunity provided by ecosystem restoration projects. See ER 1165-2-501 para. 13; EP 1165-2-502. As stated above, the level of financial participation by the Corps in recreation development at a project carried out pursuant to section 506(c) may not increase the federal cost of the ecosystem restoration project by more than ten percent. Because this ten percent limit is a statutory restriction, the Secretary may not authorize recreation features that exceed this cost.

3. Project partnership agreements for projects carried out under section 506(c) shall follow the Model Agreement for Section 206 Aquatic Ecosystem Restoration Projects for projects with recreation features until such time as publication of a model agreement for section 506 projects.

4. Implementation guidance issued for section 506, as amended by section 5011 of the Water Resources Development Act of 2007, and dated June 10, 2011, included the statement that projects or features for recreation would not be implemented under section 506 until such time as Congress specifically appropriated funds for section 506 projects: that statement is no longer in effect as of the date of issuance of this Guidance.

SUBJECT: Implementation Guidance for Section 1140 of the Water Resources Development Act of 2016 (WRDA 16), Federal Cost Limitation for Certain Projects

5. Questions regarding this implementation guidance should be directed to Janet Cote, Planner, Great Lakes and Lower Ohio Division, (202) 761-4589 or Janet.Cote@usace.army.mil.

Encl

JAMES C. DALTON, P.E.
Director of Civil Works

DISTRIBUTION:
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SEC. 1140. FEDERAL COST LIMITATION FOR CERTAIN PROJECTS.
"Section 506(c) of the Water Resources Development Act of 2000 (42 U.S.C. 1962d–22(c)) is amended by adding at the end the following:
(5) RECREATION FEATURES.—A project carried out pursuant to this subsection may include compatible recreation features as determined by the Secretary, except that the Federal costs of such features may not exceed 10 percent of the Federal ecosystem restoration costs of the project.".

SECTION 506(c) AS AMENDED BY SECTION 1140
(c) Great Lakes fishery and ecosystem restoration.

- (1) Support plan.
  - (A) In general. Not later than 1 year after the date of enactment of this Act [enacted Dec. 11, 2000], the Secretary shall develop a plan for activities of the Corps of Engineers that support the management of Great Lakes fisheries.
  - (B) Use of existing documents. To the maximum extent practicable, the plan shall make use of and incorporate documents that relate to the Great Lakes and are in existence on the date of enactment of this Act [enacted Dec. 11, 2000], such as lakewide management plans and remedial action plans.
  - (C) Cooperation. The Secretary shall develop the plan in cooperation with--
    - (i) the signatories to the Joint Strategic Plan for Management of the Great Lakes Fisheries; and
    - (ii) other affected interests.
- (2) Reconnaissance studies. Before planning, designing, or constructing a project under paragraph (3), the Secretary shall carry out a reconnaissance study--
  - (A) to identify methods of restoring the fishery, ecosystem, and beneficial uses of the Great Lakes; and
  - (B) to determine whether planning of a project under paragraph (3) should proceed.

  (3) Projects. The Secretary shall plan, design, and construct projects to support the restoration of the fishery, ecosystem, and beneficial uses of the Great Lakes.

  (4) Evaluation program.
  - (A) In general. The Secretary shall develop a program to evaluate the success of the projects carried out under paragraph (3) in meeting fishery and ecosystem restoration goals.
  - (B) Studies. Evaluations under subparagraph (A) shall be conducted in consultation with the Great Lakes Fishery Commission and appropriate Federal, State, and local agencies.

  (5) Recreation features. A project carried out pursuant to this subsection may include compatible recreation features as determined by the Secretary, except that the Federal costs of such features may not exceed 10 percent of the Federal ecosystem restoration costs of the project.

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

JUN 1 0 2011

MEMORANDUM FOR THE DIRECTOR OF CIVIL WORKS

SUBJECT: Implementation Guidance for the Water Resources Development Act of 2007 (WRDA 2007) - Section 5011, Great Lakes Fishery and Ecosystem Restoration Program

1. Section 5011 of WRDA 2007 amends Section 506 of WRDA 2000, Public Law 106-541, to require preparation of a reconnaissance study, at 100 percent Federal cost, to identify methods of restoring the fishery, ecosystem, and beneficial uses of the Great Lakes and determine whether planning of a project under this authority should proceed; raise the amount of non-Federal contributions that may be provided in the form of services, materials, supplies, or other in-kind contributions for planning, design, construction, and evaluation of a project from 50 percent to 100 percent; and allow a nonprofit entity be a sponsor in accordance with Section 221 of the Flood Control Act of 1970, as amended, (42 U.S.C. 1962d-5b). A copy of Section 506 of WRDA 2000, as amended, for the Great Lakes Fishery and Ecosystem Restoration (GLFER) Program is enclosed.

2. Section 506 of WRDA 2000, as amended by Section 5011 of WRDA 2007, authorizes the Secretary of the Army to develop a plan for activities of the Corps of Engineers that support the management of the Great Lakes fisheries in cooperation with the signatories to the Joint Strategic Plan for Management of the Great Lakes Fisheries and other affected interests; to plan, design, and construct projects to support the restoration of the fishery, ecosystem, and beneficial uses of the Great Lakes; and develop a program to evaluate the success of the projects carried out under the GLFER authority in meeting fishery and ecosystem restoration goals in consultation with the Great Lakes Fishery Commission and appropriate Federal, state, and local agencies. Section 506 authorizes to be appropriated a Federal Program Limit of $100,000,000 to carry out GLFER studies and projects.

3. This guidance replaces the Section 506 of WRDA 2000 guidance issued December 12, 2001 and updates the implementation procedures in the GLFER Support Plan, dated April 2006. The project implementation processes in this guidance will apply to all GLFER projects initiated (received initial work allowance) after October 1, 2011. Any ongoing GLFER projects will transition into the implementation processes in this guidance as follows:

a. Feasibility phase is ongoing and decision document not approved – Follow procedures below for completion of feasibility study and decision document, with 100 percent Federal financing of feasibility phase costs, then follow procedures below for design and implementation phase of project. The costs of the feasibility phase in

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excess of $100,000 will be included in total project costs and shared in accordance with terms of the project partnership agreement.

b. Feasibility phase is complete and design is ongoing - stop work and negotiate project partnership agreement for remaining design and construction work.

4. Projects undertaken pursuant to Section 506 of WRDA 2000, as amended, will be implemented in two phases: a feasibility phase and a design and implementation phase consistent with the implementation of continuing authority projects as described in Appendix F of ER 1105-2-100, except as follows.

a. General.

(1) Non-Federal Sponsor. Any study or the implementation of any project will require cost sharing with a qualified non-Federal sponsor in accordance with Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C.1962d-5b). A non-Federal sponsor may include a nonprofit entity with the consent of the affected local government in which the project is located. The non-Federal sponsor must meet the requirements specified in Section 221(b) as amended by Section 2003(b) of WRDA 2007 implementation guidance. In the event a private interest expresses an interest in serving as sponsor, the district should contact the Great Lakes and Ohio River Division Regional Integration Team located in Washington, DC (LRD RIT) for additional guidance.

(2) Peer Review. All work under Section 506, as amended, will follow the current guidance for District Quality Control (DQC), Agency Technical Review (ATR), and Independent External Peer Review (IEPR) applicable for the Section 206 Continuing Authority Program.

(3) Federal Per-Project Participation Limit. Total Federal participation in planning (including both reconnaissance and feasibility activities), design, and construction (including monitoring) for any one project implemented under Section 506, as amended, is limited to $10 million. Any per-project costs in excess of $10 million will be a 100 percent non-Federal responsibility.

(4) Types of Projects to be Implemented. The types of projects to be implemented under Section 506, as amended, will be limited to projects that produce ecosystem restoration outputs. Projects or features for recreation will not be implemented under Section 506, as amended, unless funds are specifically appropriated by Congress for such project.

b. Feasibility Phase.

(1) General. Upon identification of a potential project and appropriation of funds, up to $100,000 will be allocated to a project for a reconnaissance study to identify methods of restoring the fishery, ecosystem, and beneficial uses of the Great Lakes and

determine whether planning of the project should proceed. If the reconnaissance study determines planning of a project should proceed, any remaining portion of the original $100,000 will be used for preparation of a Project Management Plan, initiation of the decision document, and negotiation of a Feasibility Cost Sharing Agreement (FCSA). No FCSA is required if the feasibility phase (consisting of all required reconnaissance and feasibility activities) can be completed for $100,000 or less. All reconnaissance study activities must be completed within the $100,000 that is Federally funded. Any feasibility phase costs in excess of $100,000 will be shared with the non-Federal sponsor at 65 percent Federal and 35 percent non-Federal pursuant to the terms of a FCSA executed by the District Commander and the non-Federal sponsor. No costs in excess of $100,000 will be incurred for the project until the FCSA or Project Partnership Agreement, as applicable, is executed. A Preliminary Restoration Plan (PRP) or a Planning Design Analysis (PDA) cannot be used as the decision document.

(2) Feasibility Cost Sharing Agreement (FCSA).

(a) An adaptation of the Continuing Authorities Program (CAP) FSCA reflecting the GLFER authority will be used as a base to draft FCSAs for studies pursuant to this authority. Close coordination should be maintained through the vertical team in development of the initial study specific FCSA. Until the necessary changes to the CAP FCSA for addressing Section 506, as amended, are approved, LRD will forward to the LRD RIT for processing 6 FCSA packages as described in the Submission Requirements for Agreement Review Packages located on the Forms Subpage of the PPA web page. The LRD RIT will coordinate the HQ-level review and the Director of Civil Works (DCW) will approve the FCSA. Further, the LRD RIT will coordinate with this office for approval of pre-approved deviations for use on other GLFER FCSAs until the necessary changes to the CAP FCSA are approved.

(b) After execution of the FCSA, no work may be initiated until the non-Federal sponsor's appropriate proportional share of feasibility phase costs over $100,000 has been made available either in cash or through an agreed upon schedule for an estimated value of in-kind contributions. Section 506(f)(3)(B) of WRDA 2000, as amended, provides that the non-Federal sponsor may be afforded credit toward its required share of study costs shared under the FCSA for the value of in-kind contributions (services, materials, supplies, or other in-kind contributions) performed during the feasibility phase (only work performed after execution of the FCSA is eligible for credit). Credit for in-kind contributions will be afforded toward the non-Federal sponsor's cash contribution remaining after subtracting from the non-Federal sponsor's share of total study costs the collective value of the non-Federal sponsor's participation in the Study Coordination Team and certain audit-related activities. In no event will the non-Federal sponsor be reimbursed for the value of in-kind contributions provided or performed for the study that exceed the amount of credit that can be afforded. The actual value of the in-kind contributions will be determined in accordance with the terms and conditions of the FCSA.

(3) Required Milestones for Feasibility Phase. The purpose of the two required milestones listed below is to assure that continuing work on the feasibility phase is consistent with the policies, principles, priorities, procedures, and constraints of Section 506 of WRDA 2000, as amended, thus preventing excessive expenditures on questionable projects. The LRD Commander shall develop requirements, to be submitted by the district to LRD, for the information necessary to support the determinations made at these milestones. These requirements should be consistent with the scope and scale of the situation under study. The LRD Commander may establish additional milestones as deemed necessary for each study.

(a) Federal Interest Determination. The first milestone is the determination of whether planning of a project under this authority should proceed. The purpose is analogous to that served by a 905(b) Report. The review would include consideration of problem specification, identification of Federal interest and potential for solution(s) that would result in a policy consistent project of a scope appropriate for GLFER, with a willing and capable sponsor. This determination will be accomplished early enough in the Federally funded portion of the feasibility phase to ensure that there are no impediments to proceeding with the project.

(b) Alternative Formulation Briefing. The single required milestone in the decision document development stage is an Alternative Formulation Briefing (AFB) that takes place after alternative plans have been formulated and prior to MSC approval for the release of the draft decision document for public review. Additional milestones may be added at the discretion of the LRD Commander. The purpose of the AFB is to ensure, that plans have been properly formulated, any legal and policy issues have been identified and resolution has been reached, and LRD concurs with the plan that will likely proceed into the design and implementation phase. The LRD RIT participation in the AFBs will be limited to decision documents where there are policy or legal issues requiring HQ resolution.

(4) Decision Document Requirements and Approval. The requirements contained in paragraph F-10.f. of Appendix F of ER 1105-2-100 for the Continuing Authorities Program apply to any study conducted under Section 506, as amended. A Preliminary Restoration Plan (PRP) or a Planning Design Analysis (PDA) cannot be used as the decision document.

c. Design and Implementation Phase.

(1) General. This phase includes all of the activities that would normally be included in the Preconstruction Engineering and Design (PED) and construction phases of specifically authorized projects. The design and implementation phase will be conducted pursuant to the provisions of a Project Partnership Agreement (PPA) executed by the District Commander and the non-Federal sponsor. All costs incurred for this phase will be shared with the non-Federal sponsor as discussed below. An initial $100,000 will be allotted to the project to pay the Federal costs of negotiating the PPA and initiating design. While these efforts are 100 percent Federally funded prior to

the PPA, once the PPA is executed the costs for these efforts will be included in total project costs and shared with the non-Federal sponsor pursuant to the terms of the PPA. No costs in excess of $100,000 will be incurred for the design and implementation phase prior to execution of the PPA.

(2) Non-Federal Responsibilities. The non-Federal sponsor will be responsible for 35 percent of total project costs during the design and implementation phase. In accordance with the terms of the PPA, the non-Federal sponsor must provide all lands, easements, rights-of-way, relocations, and dredged or excavated material disposal areas (LERRD) required for the project; participate in the Project Coordination Team; perform necessary non-Federal audits; and perform investigations necessary to identify the existence and extent of hazardous substances on all lands, easements, and rights-of-way required for the project. If the value of the non-Federal sponsor's contributions listed above is less than 35 percent of total project costs, the non-Federal sponsor must provide a cash contribution so that its total contributions equal 35 percent of total project costs.

(3) In-Kind Contributions.

(a) Section 506(f)(3)(B) of WRDA 2000, as amended, provides that the non-Federal sponsor may be afforded credit toward its share of total project costs shared under the PPA for the value of in-kind contributions (services, materials, supplies, or other in-kind contributions) performed during the design and implementation phase (after execution of the PPA).

(b) Section 221 of the FCA 1970, as amended, established that a PPA may provide credit toward the non-Federal share of the cost of a project for the value of in-kind contributions provided or performed by non-Federal interests prior to the effective date of the PPA. The guidance and procedures contained in ER 1165-2-208 In-Kind Contribution Provisions of Section 221 must be followed to determine eligibility of credit for such in-kind contributions.

(c) Credit for in-kind contributions will be afforded toward the non-Federal sponsor's cash contribution remaining after subtracting from the non-Federal sponsor's share of total project costs the collective value of the non-Federal sponsor's participation in the Project Coordination Team, certain audit-related activities, performance of investigations for existence and extent of hazardous substances, and the value of real estate interests required for the project. In no event will the non-Federal sponsor be reimbursed for the value of in-kind contributions provided or performed for the project that exceed the amount of credit that can be afforded. The actual value of the in-kind contributions will be determined in accordance with the terms and conditions of the PPA.

(4) Project Partnership Agreement (PPA).

(a) As of the effective date of this guidance, there is no approved model PPA for the GLFER authority. However, this office has designated two project specific PPAs (Chautauqua Creek PPA and 63rd Street Dune and Beach PPA) as interim models for use for GLFER projects. The PPA for Chautauqua Creek should be used to develop PPAs for GLFER projects when credit will be afforded for in-kind contributions to be provided after execution of the PPA and monitoring is required. The PPA for 63rd Street Dune and Beach should be used to develop PPAs for GLFER projects when credit will be afforded for in-kind contributions performed before and after execution of the PPA; Great Lakes Restoration Initiative (GLRI) funds will be used; and monitoring is not required. Until a GLFER model PPA is formally approved by this office and approval and execution authority is delegated in an implementation memo, PPAs for GLFER projects must be approved by DCW (if no deviations from an interim model) or this office (if deviations from an interim model).

(b) LRD will submit to the LRD RIT for processing 6 PPA packages as described in the Submission Requirements for Agreement Review Packages located on the Forms subpage of the PPA web page. The LRD RIT will coordinate the HQ-level review and obtain approval of the PPA by DCW or this office, as applicable.

d. Monitoring and Adaptive Management.

(1) Monitoring. The term "monitoring" means the activities performed, including the collection and analysis of data that are necessary to determine if predicted outputs of the project are being achieved. Monitoring plans for Section 506 projects will not be complex but the scope and duration will address the minimum monitoring actions necessary to evaluate project success.

(a) When conducting a feasibility study for a Section 506 project, the recommended plan will include a plan for monitoring of the ecosystem restoration features. Development of the plan will be initiated during the plan formulation process and will focus on the key indicators of project performance. The monitoring plan presented in the decision document must describe: the details of the monitoring proposed to be performed including the duration and/or frequency of monitoring; the rationale for performing the monitoring; the key project specific parameters to be measured and how those parameters relate to achieving the desired outputs of the project; the intended use of the information obtained; the disposition of the information and analyses; the costs of the monitoring to be performed; identification of the party that will perform the monitoring; and a monitoring closeout plan. The appropriateness of the aspects of the monitoring plan will be reviewed as part of the decision document review including ATR and IEPR, as necessary.

(b) Monitoring, as described in the monitoring plan, will be initiated upon the written notification by the District Engineer to the non-Federal sponsor, that except for

monitoring, the entire project is complete. Monitoring will continue until ecological success is determined by the LRD Commander and may be cost shared for a period not to exceed 10 years. Ecological success will be documented through an evaluation of the outcomes predicted in the approved decision document as measured against the actual results. Once ecological success has been documented by the District Engineer, in consultation with the applicable Federal and State resource agencies, and a determination is made by the LRD Commander that ecological success has been achieved; no further monitoring will be performed. The costs of monitoring incurred within the 10 year period beginning upon the date of the written notification to the non-Federal sponsor described above but prior to the LRD Commander determining that ecological success has been achieved will be included in total project costs and shared with the non-Federal sponsor in accordance with the terms of the PPA. If at the expiration of the 10 year period ecological success has not been achieved, the non-Federal sponsor will continue to perform the monitoring as described in the Monitoring Plan until the LRD Commander determines in writing that ecological success has been achieved. Any monitoring performed after the expiration of the 10 year period or after, the LRD Commander's determination that ecological success has been achieved will be performed by the non-Federal sponsor and the costs will be a 100 percent non-Federal responsibility. Further, if and when the Federal costs of planning, design, and implementation (including monitoring) for a project reaches $10,000,000, any remaining costs of monitoring, regardless of when it is performed, will be 100 percent non-Federal responsibility.

c) The non-Federal sponsor will be responsible for performance of operation, maintenance, repair, rehabilitation, and replacement (OMRR&R) of the project during the cost shared monitoring period.

(2) Adaptive Management. The term "adaptive management" generally means measures undertaken after construction of a project to adjust its features, or its operation, in response to monitoring results so that predicted outputs of the project are achieved. Because projects implemented under this authority generally should be low risk, adaptive management will not be proposed or performed as a cost shared activity for Section 506, as amended, projects.

e. Operation, Maintenance, Repair, Rehabilitation, and Replacement (OMRR&R). Upon the written notification by the District Engineer to the non-Federal sponsor that, except for monitoring, the entire project is complete, the non-Federal sponsor will be responsible for the OMRR&R of the project.

5. Section 506(d), as amended, states that in carrying out Section 506 the Secretary may enter into a cooperative agreement with the Great Lakes Commission or any other agency established to facilitate active State participation in management of the Great Lakes. No cooperative agreements will be entered into under Section 506(d) unless the Congress specifically appropriates funds for such purpose. At such time that funds are appropriated to enter into cooperative agreements under this subsection, additional guidance will be provided.

6. The District should proceed with work that can be accomplished within the existing funds previously provided for this Program. Additional work may be undertaken as additional funding is specifically appropriated for the GLFER Program, or additional GLRI funding is specifically approved to be used for such work as discussed in paragraph 7, below.

7. On May 6, 2010, an interagency agreement between the Environmental Protection Agency and the Department of the Army was executed under which the Environmental Protection Agency agreed to transfer funds to the Army Corps of Engineers to carry out projects in support of the Great Lakes Restoration Initiative (GLRI), pursuant to the authority provided by Title II, Division A of the Department of Interior, Environment, and Related Agencies Appropriation Act, Public Law 111-88. The Corps is reminded that they may not use GLRI funding for work undertaken under GLFER without prior written approval by this office that specifically identifies the work to be accomplished with such funds. Such written approval must be received prior to approval of the applicable cost share agreement.

Jo-Ellen Darcy

Encl

Jo-Ellen Darcy
Assistant Secretary of the Army
(Civil Works)

SEC. 506 of WRDA 2000, as amended, GREAT LAKES FISHERY AND ECOSYSTEM RESTORATION.

(a) FINDINGS.—Congress finds that—

(1) the Great Lakes comprise a nationally and internationally significant fishery and ecosystem;

(2) the Great Lakes fishery and ecosystem should be developed and enhanced in a coordinated manner; and

(3) the Great Lakes fishery and ecosystem provides a diversity of opportunities, experiences, and beneficial uses.

(b) DEFINITIONS.—In this section, the following definitions apply:

(1) GREAT LAKE.—

(A) IN GENERAL.—The term ‘‘Great Lake’’ means Lake Superior, Lake Michigan, Lake Huron (including Lake St. Clair), Lake Erie, and Lake Ontario (including the St. Lawrence River to the 45th parallel of latitude).

(B) INCLUSIONS.—The term ‘‘Great Lake’’ includes any connecting channel, historically connected tributary, and basin of a lake specified in subparagraph (A).

(2) GREAT LAKES COMMISSION.—The term ‘‘Great Lakes Commission’’ means the Great Lakes Commission established by the Great Lakes Basin Compact (82 Stat. 414).

(3) GREAT LAKES FISHERY COMMISSION.—The term ‘‘Great Lakes Fishery Commission’’ has the meaning given the term ‘‘Commission’’ in section 2 of the Great Lakes Fishery Act of 1956 (16 U.S.C. 931).

(4) GREAT LAKES STATE.—The term ‘‘Great Lakes State’’ means each of the States of Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, New York, and Wisconsin.

(c) GREAT LAKES FISHERY AND ECOSYSTEM RESTORATION.—

(1) SUPPORT PLAN.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall develop a plan for activities of the Corps of Engineers that support the management of Great Lakes fisheries.

(B) USE OF EXISTING DOCUMENTS.—To the maximum extent practicable, the plan shall make use of and incorporate documents that relate to the Great Lakes and are in existence on the date of enactment of this Act, such as lakewide management plans and remedial action plans.

(C) COOPERATION.—The Secretary shall develop the plan in cooperation with—(i) the signatories to the Joint Strategic Plan for Management of the Great Lakes Fisheries; and (ii) other affected interests.

(2) RECONNAISSANCE STUDIES - Before planning, designing, or constructing a project under paragraph (3), the Secretary shall carry out a reconnaissance study-

(A) to identify methods of restoring the fishery, ecosystem, and beneficial uses of the Great Lakes; and

(B) to determine whether planning of a project under paragraph (3) should proceed.

(3) PROJECTS.—The Secretary shall plan, design, and construct projects to support the restoration of the fishery, ecosystem, and beneficial uses of the Great Lakes.

(4) EVALUATION PROGRAM.—

(A) IN GENERAL.—The Secretary shall develop a program to evaluate the success of the projects carried out under paragraph (3) in meeting fishery and ecosystem restoration goals.

(B) STUDIES.—Evaluations under subparagraph (A) shall be conducted in consultation with the Great Lakes Fishery Commission and appropriate Federal, State, and local agencies.

(d) COOPERATIVE AGREEMENTS.—In carrying out this section, the Secretary may enter into a cooperative agreement with the Great Lakes Commission or any other agency established to facilitate active State participation in management of the Great Lakes.

(e) RELATIONSHIP TO OTHER GREAT LAKES ACTIVITIES.—No activity under this section shall affect the date of completion of any other activity relating to the Great Lakes that is authorized under other law.

(f) COST SHARING.—

(1) DEVELOPMENT OF PLAN.—The Federal share of the cost of development of the plan under subsection (c)(1) shall be 65 percent.

(2) PROJECT PLANNING, DESIGN, CONSTRUCTION, AND EVALUATION.—Except for reconnaissance studies, the Federal share of the cost of planning, design, construction, and evaluation of a project under paragraph (3) or (4) of subsection (c) shall be 65 percent.

(3) NON-FEDERAL SHARE.—

(A) CREDIT FOR LAND, EASEMENTS, AND RIGHTS-OFWAY.— The Secretary shall credit the non-Federal interest for the value of any land, easement, right-of-way, dredged material disposal area, or relocation provided for carrying out a project under subsection (c)(3).

(B) FORM.—The non-Federal interest may provide up to 100 percent of the non-Federal share required under paragraphs (1) and (2) in the form of services, materials, supplies, or other in-kind contributions.

(4) OPERATION AND MAINTENANCE.—The operation, maintenance, repair, rehabilitation, and replacement of projects carried out under this section shall be a non-Federal responsibility.

(5) NON-FEDERAL INTERESTS.— In accordance with section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b), for any project carried out under this section, a non-Federal interest may include a private interest and a nonprofit entity.

(g) AUTHORIZATION OF APPROPRIATIONS.—

(1) DEVELOPMENT OF PLAN.—There is authorized to be appropriated for development of the plan under subsection (c)(1) $300,000.

(2) OTHER ACTIVITIES.—There is authorized to be appropriated to carry out paragraphs (2) and (3) of subsection (c) $100,000,000.

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

REPLY TO
ATTENTION OF:

CECW-PM

12 DEC 2001

MEMORANDUM FOR Commander, Great Lakes and Ohio River Division

SUBJECT: Great Lakes Fishery and Ecosystem Restoration Program - Guidance for Implementation of Section 506 of the Water Resources Development Act (WRDA) of 2000

1. Citation. The full text of Section 506 of the WRDA of 2000 (Public Law 106-541, 114 STAT. 2645) is provided as an enclosure.

2. Synopsis. Section 506 of the WRDA of 2000 provides programmatic authority for restoration of the Great Lakes fishery and ecosystem. Section 506 calls for the Secretary to develop a plan to support the management of Great Lakes fisheries not later than one year after the date of enactment of the legislation. It also provides for the planning, design, construction, and evaluation of projects to restore the fishery, ecosystem, and beneficial uses of the Great Lakes in cooperation with other Federal, State, and local agencies and the Great Lakes Fishery Commission. Costs for development of the support plan and for planning, design, construction, and evaluation of restoration projects are to be shared 65 percent Federal and 35 percent non-Federal. Non-Federal interests may contribute up to 50 percent of their share of the support plan and projects in the form of services, materials, supplies, or other in-kind contributions. Non-Federal interests will also receive credit for the value of lands, easements, rights-of-ways, relocations, and dredged material disposal areas needed for project construction. Non-Federal interests are responsible for the operation, maintenance, repair, rehabilitation, and replacement of projects. The law also provides for the non-Federal sponsor of projects to include private and non-profit entities. Federal appropriations in the amounts of $300,000 for the support plan and $100,000,000 for the planning, design, construction, and evaluation of specific restoration projects are authorized.

3. Guidance.

a. Funding. Funds for program implementation have not been appropriated. Ecosystem restoration is currently a project purpose for which USACE may request funding. Subject to determining that there is an appropriate non-Federal entity (e.g., Great Lakes Fishery Commission) willing to share the cost to develop the support plan, CELRD should consider requesting funds for program implementation via the normal budget process. No work to carry out any provision of Section 506 shall be undertaken until funds are appropriated.

b. Agreement. Subject to appropriation of funds, the first action will be to negotiate and execute an agreement with non-Federal interests to share the cost of developing the support

plan (i.e., program management plan). The agreement should be based on the model Feasibility Cost Sharing Agreement (FCSA). Headquarters must approve deviations from the model FCSA prior to execution of the cost sharing agreement. The agreement will be supported by a document that describes the scope, schedule, and cost of the effort required to prepare the plan. Non-Federal interests will be required to contribute 35 percent of the total cost to develop the plan of which up to 50 percent of their share may be in the form of services, materials, supplies, or other in-kind contributions. All Federal costs incurred prior to execution of the cost sharing agreement shall be counted toward the 65-percent Federal share and the $300,000 amount authorized to be appropriated for development of the plan.

c. Program Management Plan (PMP). The PMP will make use of and incorporate documents currently existing such as the lakewide area management plans and remedial action plans to define the specific restoration goals of the program. The PMP will document program management responsibilities and establish the procedures for planning, design, construction, and evaluation of restoration projects consistent with current policy. The scope of required decision and implementation documents, including independent technical review and legal review, and approval authority shall be defined. Conceptually, the program should be managed similar to the continuing authorities program. The PMP should provide for the development of a model project cooperation agreement and for review and approval of deviations at Headquarters. The PMP should establish guidelines for scoping the monitoring and evaluation of projects and provide for submission of periodic reports to Headquarters. The PMP should be completed within one year following receipt of appropriations and will be submitted to Headquarters for review and approval by the Assistant Secretary of the Army (Civil Works).

FOR THE COMMANDER:

James F. Johnson

Encl

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GREAT LAKES FISHERY AND ECOSYSTEM RESTORATION PROGRAM

Section 506 of the Water Resources Development Act of 2000 (Public Law 106-541, 114 STAT. 2645)

SEC. 506. GREAT LAKES FISHERY AND ECOSYSTEM RESTORATION.

(a) FINDINGS.-- Congress finds that--

(1) the Great Lakes comprise a nationally and internationally significant fishery and ecosystem;

(2) the Great Lakes fishery and ecosystem should be developed and enhanced in a coordinated manner; and

(3) the Great Lakes fishery and ecosystem provides a diversity of opportunities, experiences, and beneficial uses.

(b) DEFINITIONS.-- In this section, the following definitions apply:

(1) GREAT LAKE.--

(A) IN GENERAL.-- The term "Great Lake" means Lake Superior, Lake Michigan, Lake Huron (including Lake St. Clair), Lake Erie, and Lake Ontario (including the St. Lawrence River to the 45th parallel of latitude).

(B) INCLUSIONS.-- The term "Great Lake" includes any connecting channel, historically connected tributary, and basin of a lake specified in subparagraph (A).

(2) GREAT LAKES COMMISSION.-- The term "Great Lakes Commission" means the Great Lakes Commission established by the Great Lakes Basin Compact (82 Stat. 414).

(3) GREAT LAKES FISHERY COMMISSION.-- The term "Great Lakes Fishery Commission" has the meaning given the term "Commission" in section 2 of the Great Lakes Fishery Act of 1956 (16 U.S.C. 931).

(4) GREAT LAKES STATE.-- The term "Great Lakes State" means each of the States of Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, New York, and Wisconsin.

(c) GREAT LAKES FISHERY AND ECOSYSTEM RESTORATION.--

(1) SUPPORT PLAN.--

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(A) IN GENERAL.-- Not later than 1 year after the date of enactment of this Act, the Secretary shall develop a plan for activities of the Corps of Engineers that support the management of Great Lakes fisheries.

(B) USE OF EXISTING DOCUMENTS.-- To the maximum extent practicable, the plan shall make use of and incorporate documents that relate to the Great Lakes and are in existence on the date of enactment of this Act, such as lakewide management plans and remedial action plans.

(C) COOPERATION.-- The Secretary shall develop the plan in cooperation with--

(i) the signatories to the Joint Strategic Plan for Management of the Great Lakes Fisheries; and

(ii) other affected interests.

(2) PROJECTS.-- The Secretary shall plan, design, and construct projects to support the restoration of the fishery, ecosystem, and beneficial uses of the Great Lakes.

(3) EVALUATION PROGRAM.--

(A) IN GENERAL.-- The Secretary shall develop a program to evaluate the success of the projects carried out under paragraph (2) in meeting fishery and ecosystem restoration goals.

(B) STUDIES.-- Evaluations under subparagraph (A) shall be conducted in consultation with the Great Lakes Fishery Commission and appropriate Federal, State, and local agencies.

(d) COOPERATIVE AGREEMENTS.-- In carrying out this section, the Secretary may enter into a cooperative agreement with the Great Lakes Commission or any other agency established to facilitate active State participation in management of the Great Lakes.

(e) RELATIONSHIP TO OTHER GREAT LAKES ACTIVITIES.-- No activity under this section shall affect the date of completion of any other activity relating to the Great Lakes that is authorized under other law.

(f) COST SHARING.--

(1) DEVELOPMENT OF PLAN- The Federal share of the cost of development of the plan under subsection (c)(1) shall be 65 percent.

(2) PROJECT PLANNING, DESIGN, CONSTRUCTION, AND EVALUATION.-- The Federal share of the cost of planning, design, construction, and evaluation of a project under paragraph (2) or (3) of subsection (c) shall be 65 percent.

(3) NON-FEDERAL SHARE.--

(A) CREDIT FOR LAND, EASEMENTS, AND RIGHTS-OF-WAY.-- The Secretary shall credit the non-Federal interest for the value of any land, easement, right-of-way, dredged material disposal area, or relocation provided for carrying out a project under subsection (c)(2).

(B) FORM.-- The non-Federal interest may provide up to 50 percent of the non-Federal share required under paragraphs (1) and (2) in the form of services, materials, supplies, or other in-kind contributions.

(4) OPERATION AND MAINTENANCE.-- The operation, maintenance, repair, rehabilitation, and replacement of projects carried out under this section shall be a non-Federal responsibility.

(5) NON-FEDERAL INTERESTS.-- Notwithstanding section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b), for any project carried out under this section, a non-Federal interest may include a private interest and a nonprofit entity.

(g) AUTHORIZATION OF APPROPRIATIONS.--

(1) DEVELOPMENT OF PLAN.-- There is authorized to be appropriated for development of the plan under subsection (c)(1) $300,000.

(2) OTHER ACTIVITIES.-- There is authorized to be appropriated to carry out paragraphs (2) and (3) of subsection (c) $100,000,000.