



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

REPLY TO
ATTENTION OF:

CECW-P

MAR 9 2009

MEMORANDUM FOR DIVISION COMMANDERS

SUBJECT: Implementation Guidance for Maintenance of Navigation Channels-Section 5001 of the Water Resources Development Act of 2007 (WRDA 2007)

1. Section 5001 of the Water Resources Development Act of 2007 authorizes the Federal assumption of maintenance for the listed projects only following receipt and review of a request from a non-Federal interest. Further, it requires that the Secretary make a determination that such maintenance is economically justified and environmentally acceptable and that the channel was constructed in accordance with applicable permits and appropriate engineering and design standards and to notify the non-Federal interest of the determination not later than 6 months after receipt of the request. A copy of Section 5001 is enclosed.

2. At such time that funds are appropriated, the District shall conduct a feasibility level investigation to make a determination that such maintenance is economically justified and environmentally acceptable. Up to \$100,000 may be expended at Federal expense to prepare a Project Management Plan to define the scope of the evaluation needed to make the required determination and to execute a Feasibility Cost Sharing Agreement. The District will make maximum use of non-Federal interest provided information and analysis including materials developed to support their permitting requests to accomplish the improvements for which maintenance is sought. Non-Federal interests may also complete at non-Federal expense a feasibility level report to support the required Secretarial determination. However, funding for any additional Corps of Engineers work required for the investigations supporting a finding of economic justification and environmental acceptability will be budgeted as a study new start. The 6-month timeframe for the Secretarial determination and notification to the non-Federal sponsor should be viewed as a goal from the date funds are provided.

3. The feasibility level study and report to address the assumption of maintenance will address the Secretarial determinations in Section 5001(a) and will include:

a. Environmental Acceptability. Since the non-Federal interest would have obtained all necessary Federal, State, and local permits for project construction, environmental concerns should have been addressed adequately through the permitting process. However, appropriate documentation must be completed to meet National Environmental

CECW-P

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Policy Act requirements. The analysis will also document that the channel, breakwater or other General Navigation Feature was constructed in accordance with applicable permits and appropriate engineering and design standards.

b. Economic Justification. In order to find the proposed work economically justified, it must be demonstrated that project benefits, as defined by the Water Resources Council's Principles and Guidelines, exceed project Operations and Maintenance costs. Further, it must be demonstrated that the last increment is justified by evaluating lesser depth alternatives to the existing project.

c. Consistency with Federal Policy. Maintenance of the project must be consistent with other Federal policies including being limited to General Navigation Features and consistent with the policy that the benefits from the project not accrue to a single private ownership.

d. Dredged Material Management Plan (DMMP). The study and report must include a dredged material management plan and demonstrate that there is adequate disposal capacity for 20-years of operation and maintenance of the channel to be assumed for Federal maintenance considering other Federal maintenance requirements.

4. The study and report process should include appropriate milestones to address any policy issues. The report including any non-Federally prepared report will be submitted to the appropriate Headquarters Regional Integration Team for review by the Office of Water Policy Review and approval by the Assistant Secretary of the Army (CW). At such time that a report is approved, budgeting for the O&M of the project will be subject to existing budgetary policy and will compete for funding during the annual budget process.

FOR THE COMMANDER:



STEVEN L. STOCKTON, P.E.
Director of Civil Works

Encl

SEC. 5001 MAINTENANCE OF NAVIGATION CHANNELS.

(a) IN GENERAL. – Upon request of a non-Federal interest, the Secretary shall be responsible for maintenance of the following navigation channels and breakwaters constructed or improved by the non-Federal interest if the Secretary determines that such maintenance is economically justified and environmentally acceptable and that the channel or breakwater was constructed in accordance with applicable permits and appropriate engineering and design standards.

- (1) Manatee Harbor basin, Florida.
- (2) Tampa Harbor, Sparkman Channel and Davis Island, Florida
- (3) West turning basin, Canaveral Harbor, Florida
- (4) Bayou LaFourche Channel, Port Fourchon, Louisiana.
- (5) Calcasieu River at Devil's Elbow, Louisiana
- (6) Pidgeon Industrial Harbor, Pidgeon Industrial Park, Memphis Harbor, Tennessee.
- (7) Houston Ship Channel, Bayport Cruise Channel and Bayport Cruise turning basin, as part of the existing Bayport Channel, Texas.
- (8) Pix Bayou Navigation Channel, Chambers County, Texas.
- (9) Jacintoport Channel at Houston Ship Channel, Texas.
- (10) Racine Harbor, Wisconsin.

(b) COMPLETION OF ASSESSMENT. – Nor later than 6 months after the date of receipt of a request from a non-Federal interest for Federal assumption of maintenance of a channel listed in subsection (a), the Secretary shall make a determination as provided in subsection (a) and advise the non-Federal interest of the Secretary's determination.