

UPPER MISSISSIPPI RIVER RESTORATION
LAKE ODESSA
HABITAT REHABILITATION AND ENHANCEMENT PROJECT

OPERATION AND MAINTENANCE MANUAL

APPENDIX B
AMENDED COOPERATION AGREEMENT

AMENDED COOPERATIVE AGREEMENT
For Management of Corps General Plan Lands
Between the
Department of the Interior, U.S. Fish and Wildlife Service
and the
Iowa Department of Natural Resources

This agreement, effective on the date of last signature, between the Department of the Interior through the U.S. Fish and Wildlife Service, hereinafter referred to as the "Service", and the Iowa Department of Natural Resources, hereinafter referred to as the "State", replaces the Cooperative Agreement between the parties dated 11 October, 1963;

WHEREAS the United States through the Corps of Engineers within the Department of the Army, herein referred to as the "Corps", has acquired certain lands in fee for the improvement of navigation in the Upper Mississippi River to provide a 9-foot channel from the Missouri River to Minneapolis, and portions of the Illinois River, hereinafter referred to as the "Navigation Project", and

WHEREAS, pursuant to Section 3 of the Fish and Wildlife Coordination Act (48 Stat. 401 as amended by 60 Stat. 1080 and 72 Stat. 563; 16 U.S. C. 661 et seq.) certain Corps owned lands have been made available to the Service, consistent with navigation as the primary purpose of the Project, for the conservation, maintenance and management of habitat in support of the National Migratory Bird management program, as well as other fish and wildlife objectives. There have been General Plans (GP) formulated for the use of lands and waters of the Navigation Project for fish/wildlife conservation and management and the same have been approved by the Secretary of the Army, the Secretary of the Interior, and the Directors of the State agencies exercising administration over wildlife resources within the 5 Project states, and

WHEREAS, pursuant to the provisions of the General Plan a Cooperative Agreement exists between the Corps and the Service, as revised 31 July, 2001, for the management of GP lands (attached). Additionally, the Agreement provides authority to be delegated to the head of the State agency exercising administration over wildlife and wildlife resources, by subsequent cooperative agreement (FWS/State), administration of designated GP lands and waters, pursuant to the provisions of Sections 1 and 4 of the said Fish and Wildlife Coordination Act.

WHEREAS, the Department of Natural Resources has been created under the laws of the state of Iowa (Chapter 455A.2, Code of Iowa) with the primary responsibility for state parks and forests, protecting the environment, and managing fish, wildlife, and land and water resources with a mission "to conserve and enhance our natural resources in cooperation with individuals and organizations to improve the quality of life in Iowa and ensure a legacy for future generations, and

WHEREAS, the Service administers the National Wildlife Refuge System (Refuge System), with a mission, "to administer a national network of lands and waters for the conservation, management and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans", and

NOW THEREFORE, in accordance with the Fish and Wildlife Coordination Act and the aforesaid General Plans, the Service hereby makes available to the State the land and water areas of the Navigation Project as identified in the exhibits for the General Plans referred to above, as may be amended or delineated in Corps Master Plans, Land Use Allocation Plans, or Operational Management Plans, for the conservation, maintenance, and management of fish/wildlife resources thereof, and its habitat thereon, in connection with national migratory bird management and other fish/wildlife programs, pursuant to provisions contained in this Agreement, the attached Corps/Service Agreement, and said General Plans.

The State agrees to manage these Corps fee title lands under the "Coordination Area" designation of the National Wildlife Refuge System and they are therefore not subject to Service administrative and policy standards required of Service managed Refuge units, such as the compatibility policy. However, as a part of the Refuge System, these State administered lands are intended to contribute to the Refuge System mission. The Service does retain the authority to temporarily close migratory hunting on the lands and waters subject to this agreement, if so compelled by emergency (such as chemical spill), flyway population management concerns or quotas.

The Corps, Service, and the State shall continue to represent agency positions and discharge responsibilities related to other Mississippi River System issues independently, and not constrained by this Agreement. Both the Service and State will continue to foster and maintain partnerships with the Corps through specific regional working groups for addressing Navigation project issues that impact the conservation, maintenance and management of fish/wildlife resources throughout the entire Upper Mississippi River System.

The authority to operate State wildlife habitat operations and public use management programs on lands under this agreement shall be derived from the State, consistent with the General Plan, Corps regulations contained in CFR 36, and the specific conditions listed below:

- 1) The Corps reserves all rights to the lands subject to this Agreement, which are not herein specifically granted. The exercise of the privileges granted shall in no way interfere with navigation and shall be subject at all times to the occupation and use by the public for specific and related Navigation Project purposes and by the Corps for navigation, flood control, and all other Navigation project related purposes, including, but not limited to, change in water surface elevations, dredging and placement of dredged material there from, and construction of training works, bank protections, and navigation aids. The Corps

retains the right to use and improve existing roads to and from the Mississippi River or to other areas they administer.

2) No significant additions to or alterations, such as buildings, bridges, pump stations, roads, etc., shall be made by the State without prior written consent of the appropriate District Engineer, coordinated through the Service. The use, occupation, operations and maintenance of these lands shall be without cost or expense to the Service or Corps. Any damage to the property which results from the exercise of the privileges granted shall be promptly corrected by the State, and as approved by the Corps.

3) It is understood that this Agreement does not preclude the necessity of obtaining required Corps permits for management projects or structures, such as Section 404 of the Clean Water Act, or Section 10 of the Rivers and Harbors Act,

4) The State may post appropriate management area boundary lines for lands designated in this Agreement. The Corps, or Service, will provide survey data, preferably in electronic format, for this purpose to the extent that it is available. The State shall take appropriate action to prevent and resolve minor trespass or unauthorized use of the property. The State shall immediately report instances of unauthorized land use or serious trespass to the Service, which will involve the appropriate Corps Project Office. The State, Service, and Corps shall coordinate enforcement efforts or legal actions taken against those responsible.

5) The use of agricultural treatments and share crop agreements on lands covered hereunder shall ensure that crops accruing to the State are used exclusively for wildlife, or wildlife habitat management purposes on the described lands, and for no other purpose. In the event that all the yield thus made available for wildlife or habitat management is not used for that purpose, the State shall, in order to avoid waste, sell for cash the remaining crop. All proceeds from such disposal of surplus production may be used by the State in the development, conservation, management, and utilization of these lands. In

connection with this provision, if needed, the State shall establish and maintain adequate accounts and render statement of receipts and expenditures to the Service for distribution to Division and District Engineers in the annual management report. The Service and Corps may review this program periodically to ensure that cropland utilization is not consistently excessive to wildlife needs, where other appropriate habitat types would better meet the Refuge System mission.

6) The Corps retains responsibility for management of forest resources on these GP lands. The development of Corps forest management plans are coordinated with the State and Service for input and review to ensure compatibility, as defined by the Forest Cover Act, with wildlife management use of the project. Any specific State or Service plans will be considered in the guidance of Corps forest management activities. Overall, the Corps' forest management program should be viewed as a cooperative component to the State's day to day management of the out-granted General Plan area. Revenue from sale of any timber in conjunction with the Forest Cover Act Program shall be credited to the Corps.

7) The State Director shall designate a liaison for administrative matters pertaining to this agreement by way of letter to the Service Regional Director. The Service liaison for matters relating to this agreement is designated to be the Upper Mississippi River System Refuge Zone Supervisor. The Service liaison shall attempt to handle mutual management concerns regarding lands subject to this agreement at the field level with State Managers/Biologists, while maintaining coordination with the State liaison. The State liaison will act as the interagency point of contact for issues that may arise from provisions of this agreement, and for other issues that require a cross-program response or involvement on the part of the State.

8) The State shall regulate public use activities on these lands to the extent necessary to protect their natural resources, consistent with State resource goals and objectives, Refuge System mission and Corps conservation responsibilities.

Through the yearly reporting process, or as necessary, the State will supply the Service and Corps copies of updated State regulations which apply to these lands, subject to provisions herein, if there are any changes. The State is the lead enforcement agency for State regulations pertaining to lands subject to this agreement. The Corps and/or Service may assist with resource protection by utilizing applicable Code of Federal Regulations (CFR) in instances where State regulations prove to be inadequate to address an issue.

9) By March 1 of each year, the State will provide the Service a brief written summation of prior year management activities and relevant issues. This report will also address future plans for capital improvement, etc. addressing the above topics by the scheduled meeting date each year. Topics covered in annual report shall include, but not limited to, management issues listed below:

- (a) Boundary management problems, including actions to address trespass or unauthorized uses;
- (b) Report of completed construction and improvements, including project costs;
- (c) Report of planned future construction, as approved in existing management plans, or identified in new planning effort;
- (d) Report of conceived changes in land management strategy;
- (e) Cropland acreage utilized; amount of crop that was deemed excess to wildlife management needs including amount of receipts for sale of such crops; and amount and nature of expenditures derived from surplus crop funds;
- (f) Any changes to State and Federal regulations that pertain to these lands and responsibilities of each agency.
- (g) Any problems or opportunities relating to General Plan land management for interagency coordination or consideration.

The Service liaison will consolidate a concise written annual report from this submitted material for submission to the Corps. An annual coordination meeting will also be organized by the Service each year on or before April 1 with each of the three Corps District (St. Louis, Rock Island, and St. Paul) and the States managing General Plan lands (Illinois, Iowa, and Missouri). The agenda of the

meeting shall include information specific to any changes and activities during the previous calendar year and information concerning proposed future projects.

10) This agreement may be relinquished by the State at any time by giving the Service at least one-year's notice in writing, unless a shorter notice period is mutually agreed upon.

11) In the event that problems are identified in compliance with any of the terms and conditions of this agreement, the following dispute resolution procedures will be followed:

(a) State liaison will meet with Service liaison to discuss the matter and attempt to resolve the matter at the lowest administrative level.

(b) If the above step is unsuccessful the State liaison, Service Liaison and Corps District Operation Managers will meet to discuss the pertinent issue and seek resolution;

(c) In the event that informal efforts to resolve the issue at the field level are not successful, the State Division Chief and the Service Regional Refuge Chief will meet with the appropriate District Engineer to seek written resolution; and

(d) Finally, if the matter remains unresolved, it will be referred to the Corps Division Engineer whose decision will be final.

12) The State agrees to confer with the Service on any application for an instrument granting permanent rights-of-way for roads, telephone lines, power lines, and other similar uses over, across, in and upon the above described lands. During such conferral the State will indicate its recommendation as to the application, with a statement that such proposed uses will or will not interfere with the purposes for which these lands are made available to the State. No entry will be allowed by the State on such lands for these purposes until the State receives notice that permission is granted. If applications for such permanent rights-of-way are received firsthand by the Corps Division Engineer or the Service, they will be referred to the State for such recommendation as it may care to make relative to issuance of a permit.

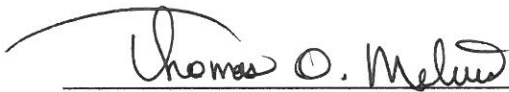
The provisions above in this Service/State "step-down" agreement have been modified for readability from the list of conditions which pertain to all GP lands, as detailed in the Cooperative Agreement between the Corps and the Service. If any clarifications in Agreement provisions are required, the source Agreement should be utilized.



3-22-12

(Date)

Director
Iowa Dept. of Natural Resources



3.21.12

(Date)

Regional Director, Region 3
U.S. Fish and Wildlife Service
Department of the Interior