

OFFICE REPORT

**SUBJECT:** Analysis of Written Comments Received on Lakeshore Management Policy

1. Purpose. The purpose of this report is to summarize the response which was received as a result of the 30 May 1974 publication of the proposed Lakeshore Management Regulation in the Federal Register. This report has been prepared in two sections. Section 1 summarizes comments from the general public and Section 2 presents the comments received from the internal review within the Corps field offices.

2. Background.

a. General. It is imperative that the current regulations governing lakeshore management be updated, clarified and strengthened to meet the present day demands of recreational use. The demand is exerted by the general public who use our developed recreation facilities and also those who use undeveloped lakeshore and by the private individual who desires to take personal advantage of Federally owned land for his recreational experience under a permit program to install privately-owned facilities. Usually the private individual has control of a tract of land adjacent to the project boundary from which he seeks access to the lakeshore and the waters of the lake. This set of circumstances has generated a "private facility syndrome" in many of the land holders adjacent to our lakes.

Legislation has been enacted through the years to respond to the demand. The Flood Control Act of 1944, Section 4, authorized the Chief of Engineers "... to construct, maintain, and operate public park and recreation facilities in reservoir areas ... and permit the construction, maintenance and operation of such facilities." In 1959 and again in 1962 the Chief of Engineers issued instructions on inclusion of recreation development at reservoirs as a project purpose under specific limitation. The Flood Control Act of 1962 broadened the 1944 authority to include all water resource projects. The individual authorizing legislation for each project gives the Corps authority to protect and manage project lands for authorized project purposes which include fish and wildlife enhancement and recreation. P.L. 89-72, the Federal Water Project Recreation Act of 1965, requires cost sharing with a non-Federal sponsoring agency as well as operation and maintenance by the sponsor. The National Environmental Policy Act of 1969 (P.L. 91-190) was enacted to provide further legislative authority to protect public property. To further strengthen the nation's attitude on conservation of our natural resources, Executive Order 11514, 5 March 1970, stated that "... the Federal Government shall provide leadership in protecting and enhancing the quality of the Nation's environment ...."

Incl 4

Corps of Engineers policy in regard to protection of public property is contained in the following regulations:

- a. Chapter III, Title 36, Code of Federal Regulations. Regulations of the Secretary of the Army regarding recreation-resource management at Civil Works projects.
- b. ER 1130-2-400, Recreation Resource Management of Civil Works Water Resource Projects.
- c. ER 1165-2-400, Recreational Planning, Development, and Management Policies.
- d. ER 1130-2-333, Authority for Certain Private Floating Recreation Facilities on Civil Works Projects.
- e. ER 405-2-835, Leases.

The published Lakeshore Management Regulation represents an action to update and combine pertinent provisions of each of the above documents into a single working document.

Attached for review reference are the following inclosures:

1. Copy of the proposed Lakeshore Management Regulation as published in the Federal Register on 30 May 1974.
2. Copy of the news release dated 30 May 1974.
3. Schedule of events prior to publication.

b. Specific. The formulation of this published regulation began in 1971 using the existing ER 1130-2-333 as a basis from which to work. The thrust of the policy contained in the regulation reaffirms the administrative goal of the Corps as stated in Orders and Regulations, 15 October 1952, Section 24. The following statements on administration of project lands and waters are quoted therefrom: "Development of project areas will be controlled to maintain important public park and recreation and other resource values so as is consistent with obtaining the maximum sustained benefit for the greatest number of people. Private exploitation and despoilment will not be permitted." "...Sites in project areas should not be allocated for exclusive use of private individuals, or to limited membership organizations, if such areas are valuable for public park and recreation use now or in the future." This proposed regulation in its published form represents considerable effort in internal coordination and extensive field review to obtain the refinement and applicability necessary for implementation on a national scale. During its formulation the regulation draft was the subject of correspondence from the White House executive staff as well as from Congressional members. At the time

of publication in the Federal Register on 30 May 1974, the proposed regulation and the news release were furnished as inclosures in letters to each of the 67 members of Congress who had been involved in earlier instances. In addition, similar information was furnished to certain State and local governmental agencies, conservation and environmental organizations, newspapers and other press media, state senators, private individuals, private industry, Federal agencies and each of the Corps of Engineers Division offices.

### Section 1 of Summary Report

3. Response of General Public. As previously stated, response to the publication came from a wide spectrum, with opinions expressed in rather uncompromising and unyielding terms. The issues addressed by the regulations are such that concerned individuals automatically "took sides". While the official response period was limited to 45 days after the 30 May 1974 publication date, all comment which was received prior to 21 August has been included in this summary. As of the extended cut-off date, approximately 220 letters, telegrams, and postcards had been received with 246 expressions of comment. Two lake projects were represented by petitioners who submitted 188 petitions that contained approximately 4,278 signatures. Letters with expression of concurrence in all provisions of the proposed regulation numbered 47, while letters stating complete opposition totalled 45. The remaining 128 indicated various degrees of concurrence subject to their comment directed toward improvement of the regulation through revision action. The petitioners were almost totally opposed to imposition of the regulation. Only 2 petitions containing 186 names indicated opposition only to the proposed fee imposition for the permit program, the remaining 186 petitions carrying approximately 4,092 signatures were entirely negative. In order to fully analyze the response, the reply has been divided into twelve basic categories.

- a. Total opposition to final publication;
- b. Total concurrence;
- c. Concur, but want permits to be transferable;
- d. Concur, but want habitation of floating facilities;
- e. Concur, but want private use of lakeshore where private development fronts on the lake property line;
- f. Concur, but no inspection fee for floating facilities;
- g. Concur, but no permit fee for floating facilities;

- h. Concur, but disagree with relocating facilities to remote site;
- i. Concur, but disagree on % of shoreline designated for facilities in limited development areas;
- j. Non-committal (mostly requests for published copies);
- k. Non-committal, felt 45-day response period was too short;
- l. Concur, but disagree with Secretary of Army Authority as stated in regulation.

The correspondence within each category was then studied to determine the regional distribution and the basic public response to the new regulation. The following are summary analyses of each of the basic categories listed above:

a. Opposing the proposed published regulation. A total of 45 letters were received opposing the entire regulation. The people responding felt the current regulations were adequate to assume the protection of environmental and aesthetic aspects of our projects. In effect the Corps was accused of being power hungry and having the desire to drive away the private development around our lakes. Petition response was from Tenkiller Ferry Lake users, with approximately 4,092 signatures indicating total opposition.

Regional Response

<u>STATE</u>	<u>No. of Letters Telegrams and Petition Signatures</u>
Arkansas	7
Georgia	15
Missouri	13
North Dakota	1
Oklahoma	*4,107
South Carolina	10
Texas	1

\*Includes 186 petitions with approximately 4,092 signatures

b. Concur with the regulation as published. A total of 47 letters were received commending the Corps for their attempt to more positively manage the use of our lakeshores. Conservation and environmental groups responded 100% affirmatively according to reply received (12). Approximately one-half as many private individuals were totally in favor of the regulation as were totally opposed (24 pro and 40 con). Three letters from Federal agencies also indicated complete agreement.

Regional Response

<u>STATES</u>	<u>No. of Letters</u>
Alabama	1
California	2
Georgia	10
Minnesota	2
Missouri	1
New Jersey	1
New Mexico	1
Ohio	1
Oklahoma	1
Pennsylvania	2
So. Carolina	10
So. Dakota	1
Tennessee	2
Texas	1
Virginia	2
Utah	3
Washington, D. C.	6

c. Concur, but want permits transferable. A total of 25 letters were received from individuals in six states who favored a policy change to allow the transfer of permits at the time of change in property ownership. Lake frontage lots gain considerably in value because of the floating facility permit which the property owner has obtained at no expense.

<u>STATES</u>	<u>No. of Letters</u>
Arkansas	3
Georgia	5
Missouri	9
Oklahoma	4
So. Carolina	3
Texas	1

d. Concur, but want habitation of floating facilities. Two letters were received from persons in Georgia concerning this subject. The writers, members of the same yacht club holding a quasi-public lease were concerned that a policy stated in this regulation might change their use of floating habitable accommodations permitted under their club lease. This regulation will not affect the guidelines regarding club lease.

e. Concur, but want private use of the Lakeshore where private development fronts on the lake property line. These 22 letters of response came from persons with permits on private moorage facilities. They objected to the right of the public to use the facilities or the shoreline adjacent to their private land holding. Only two projects are identified with these comments; Clark Hill Lake and Lake Hartwell.

<u>STATES</u>	<u>No. of Letters</u>
Georgia	7
So. Carolina	15

f. Concur, but no inspection fee for floating facilities. Twelve letters came from persons who felt this fee was not proper since taxes had built the project. They also felt that inspections should be a part of the manager's daily work effort. Some persons felt that the proposed permit fee should cover inspection fees as well. There were five projects which could be identified from the letters received.

<u>STATES</u>	<u>No. of Letters</u>
Arkansas	3
Georgia	5
Missouri	3
So. Carolina	1

g. Concur, but no permit fee for floating facilities. Thirteen letters were received. They generally indicated that it was a well known fact that fees from a collection program do not even pay for the cost of collection. Bull Shoals Lake users responded by petitions.

<u>STATES</u>	<u>No. of Letters and petition signatures</u>
Arkansas	* 191
Georgia	5
Missouri	1
So. Carolina	2

\* Includes 2 petitions with 186 signatures.

. Concur, but disagree with relocation of facilities to a remote site. There were 37 letters of comment in regard to this relocation requirement. Six states were represented. The consensus opinion was generally that a grandfather clause should be applied or that the lakeshore allocation be changed to permit the facility to continue in place. Many letters presented personal arguments concerning inaccessibility, inconvenience, susceptibility to vandalism, etc.

<u>STATES</u>	<u>No. of Letters</u>
Alabama	1
Arkansas	2
Georgia	7
Missouri	16
Oklahoma	6
So. Carolina	3
Texas	2

i. Concur, but disagree on % of shoreline to be designated for facilities in limited development area. Two letters indicated the need for a stipulation more definitive than a maximum density of 50%. One letter proposal solved the problem by building more public facilities; conversely, the other stated there is too much emphasis on public development. The letters were from Georgia and South Carolina, with interest expressed in Hartwell and Clark Hill Lakes.

j. Non-committal. The majority of the 35 letters in this category requested copies of the regulation. A large number referred to the publication but discussed subjects which applied to meetings held at local level in regard to a specific lake project. The inquiries from outside the country were requests for copies of the regulation for use in guidance in preparing similar documents for resource management.

<u>STATES, DISTRICT AND COUNTRY</u>	<u>No. of Letters</u>
Arkansas	1
Georgia	7
Idaho	1
Illinois	2
Indiana	2
Minnesota	2
Missouri	3
No. Carolina	1
Pennsylvania	1
Oklahoma	2
So. Carolina	1
Louisiana	1
Texas	1
Virginia	2
Wisconsin	2
Washington, D. C.	2
Foreign Countries:	
Canada	2
Australia	2

k. Non-committal, felt 45-day response was inadequate. These writers had received notice belatedly and therefore seemed to place the problem as a Corps responsibility. Two letters were received in this category.

l. Concur, but disagrees that the Secretary of the Army has inherent or legislatively granted power to delegate authority and extend legislative powers to the District Engineer. This issue was raised in the letter from the South Dakota Department of Game, Fish and Parks. Paragraph (e)(4) of the proposed regulation is at issue.

4. Congressional Response. The response from Congressmen to the proposed regulation was generally non-committal on their part. The inquiries were generated by letters from constituents who offered comment. There were 25 letters received from Congressmen representing 9 states. Fifteen of the letters requested information concerning the need for moving facilities to a remote site and the inherent problems to the owner of the facility. Four letters were concerned with the non-transferability of permits. A reply was furnished to each letter to provide information for reply to constituents.

5. Federal Public Agency Response. Three letters were in concurrence and one letter requested a copy of the regulation. Response came from two offices of the EPA, the Forest Service and the U.S. Atomic Energy Commission requested the copy.

6. Non-Federal Public Agency Response. Nine out of thirteen responding letters were non-committal or in concurrence with the regulation. The South Dakota Department of Game, Fish, and Parks felt that short term non-land facility permits, for ice fishing houses, etc. should not be included in our permit program. The State presently handles this program. Their further comment is contained in 31, above. Responsive agencies are as follows:

Indiana Dept of Commerce  
Missouri Dept of Natural Resources  
Pennsylvania Fish Commission  
So. Dakota Dept of Game, Fish & Parks  
Tennessee Office of Urban and Federal Affairs  
Tennessee Wildlife Resources Agency  
Vermont Agency of Environmental Conservation  
City of New Orleans  
Chattahoochee-Flint Area, Georgia  
Chamber of Commerce LaGrange, Georgia  
Branson Planning Commission, Missouri  
Missouri State Senator:  
    Emory Melton  
So. Carolina Clark Hill Authority

7. Conservation Organizations and Environmental Groups. There was a unanimous response in concurrence with the proposed regulation and compliments were generally expressed. The following organizations responded:

National Wildlife Federation  
Trout Unlimited  
Sierra Club  
Sport Fishing Institute  
National Audubon Society, So. West Regional Office  
California Wildlife Federation  
Oklahoma Wildlife Federation

New Jersey State Federation of Sportman's Clubs  
 New Mexico Wildlife Federation  
 South Dakota Wildlife Federation  
 Tennessee Conservation League  
 St. Joseph Rod and Gun Club, Minnesota

8. Summary. An overall evaluation of the public response could be summarized as "opinionated". The majority of the responses were firm in presenting their particular view on a specific aspect of the proposed regulation. A total of 216 letters and telegrams and 4,278 signatures on petitions were received from 25 States and the District of Columbia. Four letters from two foreign countries asked for copies but did not comment thereafter. A vast majority of the responding letters originated from the States of Georgia, Missouri, Oklahoma and South Carolina. Of the petitions received, 186 out of 188 were from Tenkiller Ferry Lake residents, Oklahoma, the remaining two were from Bull Shoals Lake, Arkansas. A tabulation of response is furnished to provide a visually concise summary total of letters by origin, which complements the data herein.

STATE	Priv. Individ	Cong.	Agencies Lcl, St & Fed	Groups Cons & Env.	Industry	Col & Univ.	Groups Misc.	News Media	TOTAL
Al.	1	1							2
Ark.	8	4							12
Ca.				2					2
Ga.	43	4	4	1	2				54
Id.	1	1							2
Il.						1			1
Ind.			1			1			2
La.			1						1
Minn.				1		2			4
Mo.		8	3						32
N.J.				1					1
N.M.				1					1
N.C.						1			1
No. D.							1		1
Oh.	1								1
Ok.	19	2		1	3	1	1		27
Pa.	2		1						3
S.C.	33	2	1		1	1	1		39
So D.			1	1			2		4
Tn.			2	1					3
Tx.	2	2			2		2		8
Ut.	1	1							2
Vt.			1						1
Va.	2				1		1		4
Wi.						2			2
D.C.			2	3				1	6
Aus.			2						2
Can.			2						2
TOTAL	135	25	21	12	9	9	8	1	220

## Section 2 of Summary Report

9. Field Review Response. In-house field review of the proposed regulation at Division office level resulted in 65 comments. Input attributable to the District level totalled an additional 16 comments. Comment concerning the regulation fell into two general categories. Comments of the first category were oriented toward providing statements critiquing the provisions of the regulation as published. The second type of comment incorporated specific recommendations for further revisions to clarify the intent and application of the regulation. The following summary tabulation is furnished to demonstrate the diversity of comment which was received from each Division. District office comment has been grouped as a single unit for the purpose of the summary tabulation.

10. Partial Listing of Specific Field Response. Some comments which were received from the field and indicate need for further clarification of the proposed regulation are furnished as follows:

- a. Clarify how the regulation will be applied to distinguish between fee-owned reservoirs and easement-owned reservoirs.
- b. Clarify the method of preparing a lakeshore management plan for projects where two agencies have jurisdiction at the same project.
- c. Don't invite trouble by making this regulation apply to lakes where no private exclusive use of lakeshores exists.
- d. Don't require an Appendix on lakeshore management for new lakes or at lakes that do not have limited development areas.
- e. Don't require appendix for lakes where all available land is leased or licensed to another agency.
- f. The moratorium on accenting applications for private floating facilities should rather be on the issuance of permits.
- g. Add a land classification "Concession Buffer Area", to prevent infringement of private floating facilities upon the location of a concessionaire. Provide a minimum radius of distance for his protection. (No specific radius distance was proposed.)
- h. Recreation coordination action should be holistic and not incremental to avoid too many public meetings. Prepare master plans and appendices concurrently.

- i. Present wording of regulation does not cover fixed duckblinds for which permits are issued. Will these require the \$10.00 permit and \$5.00 annual inspection fee?
- j. How does this regulation effect non-transient trailers and cabins?
- k. The policy of this regulation should not supercede the Specified Acts permit which provides for short term activities of a management nature.
- l. Add the requirement for 24-hour surveillance by the owner over his private floating facility.
- m. Without further authority, the enforcement of "no human habitation at a fixed or permanent mooring point would be difficult to enforce.
- n. The permit should indicate a facility completion date to discourage applications to reserve sites for future construction.
- o. Modify Appendix C, subparagraph 21 to give authority to resource manager to perform necessary work in the interest of Safety and Erosion Control.
- p. In Appendix C, subparagraph 24 the review system for revoking permits appears involved and lengthy. Attempt to shorten the process.
- o. The long range effect of this regulation will make us dependent upon concessionaires. We should seek cost sharing methods to provide financial assistance to prospective concessionaires.
- q. The regulation is limited to lakeshore zoning and regulatory measures afforded under lakeshore permits. It does not address any plans or actions to be taken of an overt nature to protect or enhance the environment or mitigate any degradation attendant to the public use of the shoreline.
- r. The items falling under the Section 10 and Section 13 programs are not mentioned. Neither is management of lands by agricultural lease methods. Neither are the removal of crops, timber, minerals under sales contract.

- s. A policy directed toward colony type leases on Corps land is still necessary.
  - t. Require the permittees to define the property line between private and public by planting identifying trees or shrubs.
  - u. Will roads remain private or become public when on public land but privately maintained? Address the support facilities, ie. roads, wires, parking, etc.
  - v. Incorporate lakeshore management plan into the project master plan or into Appendix A.
  - w. Requirements of regulations governing master planning efforts already accomplish the same goals for administration and management of project resources. This is a duplication of effort.
  - x. Previous draft stated that private exclusive use facilities would not normally be permitted on new lakes or at lakes where they do not already exist. This is a good concept and should be followed. The NPS and FS follow this thinking.
  - y. This regulation will be a disaster because it will encourage private floating facilities. In the future not every American can be granted the right to such facilities.
  - z. Clarify how the regulation applies to the Mississippi Waterway where each pool is essentially a Corps Lake.
  - aa. When an area is under lease to another agency for management-- which agency will maintain control over private facilities?
  - bb. The regulation should mention private floating facilities that are secured to easement lands. It should be spelled out that our rangers will inspect these private floating facilities for proper construction and anchorage.
11. Summary Statement. A thorough review will be made of each field comment which was received. The review will determine whether recommendations are appropriate for consideration in the further revision of the regulation prior to final publication.

