

will document the location, reach, and cross-section at these points.

(3) *Maintenance.* Project maintenance analysis will evaluate the maintenance performance of the non-Federal sponsor, and deficiencies of the project. This evaluation should reflect the level of maintenance needed to assure the intended degree of flood protection, and assess the performance of recent maintenance on the project. The effects of structures on, over, or under the flood control work, such as buried fiber optic cables, gas pipelines, etc., will be evaluated for impact on the stability of the structure.

(4) *Other structural features.* Other features that may be present, such as pump stations, culverts, closure structures, etc., will be evaluated.

(e) *Ratings.* Inspected flood control works will receive a rating in accordance with the table below. The table below provides the general assessment parameters used in assigning a rating to the inspected flood control work.

Rating	Assessment
A—Acceptable	No immediate work required, other than routine maintenance. The flood control project will function as designed and intended, and necessary cyclic maintenance is being adequately performed.
M—Minimally Acceptable.	One or more deficient conditions exist in the flood control project that need to be improved/corrected. However, the project will essentially function as designed and intended.
U—Unacceptable ...	One or more deficient conditions exist which can reasonably be foreseen to prevent the project from functioning as designed, intended, or required.

(f) *Sponsor reclama.* If the results of a Corps evaluation are not acceptable to the project sponsor, the sponsor may choose, at its own expense, to provide a detailed engineering study, preferably certified by a qualified Professional Engineer, as a reclama to attempt to change the Corps evaluation.

§ 203.49 Rehabilitation of Hurricane and Shore Protection Projects.

(a) *Authority.* The Chief of Engineers is authorized to rehabilitate any Federally authorized hurricane or shore protection structure damaged or destroyed by wind, wave, or water action of an other than ordinary nature when, in the discretion of the Chief of Engi-

neers, such rehabilitation is warranted for the adequate functioning of the project.

(b) *Policies.* (1) Rehabilitation of HSPP's is limited to the repair/restoration of the HSPP to a pre-storm condition that allows for the adequate functioning of the project, provided that the damage was caused by an extraordinary storm.

(2) To be eligible for Rehabilitation Assistance, HSPP's must be:

(i) A completed element of a Federally authorized project; or,

(ii) A portion of a Federally authorized project constructed by non-Federal interests when approval of such construction was obtained from the Commander, Headquarters, U.S. Army Corps of Engineers (HQUSACE), or his designated representative; or,

(iii) A portion of a Federally authorized project constructed by non-Federal interests and designated by an Act of Congress as a Federal project; and

(3) Rehabilitation Assistance for sacrificial features will be limited to that necessary to reduce the immediate threat to life and property, or restoration to pre-storm conditions, whichever is less.

(4) To be eligible for rehabilitation, the sacrificial features of an HSPP must be substantially eroded by wind, wave, or water action of an other than ordinary nature. The determination of whether a storm qualifies as extraordinary will be made by the Director of Civil Works, and may be delegated to the Chief, Operations Division, Directorate of Civil Works.

(5) Rehabilitation will not be provided for uncompleted HSPP's. An HSPP (or separable portion thereof) is considered completed when transferred to the non-Federal sponsor for operation and maintenance.

(6) *Definition of extraordinary storm.* An extraordinary storm is a storm that, due to prolongation or severity, creates weather conditions that cause significant amounts of damage to a Hurricane/Shore Protection Project. "Prolongation or severity" means a Category 3 or higher hurricane as measured on the Saffir-Simpson scale, or a storm that has an exceedance frequency equal to or greater than the design storm of the project. "Significant

§ 203.50

33 CFR Ch. II (7-1-10 Edition)

amounts of damage'' have occurred when:

(i) The cost of the construction effort to effect repair of the HSPP or separable element thereof (exclusive of dredge mobilization and demobilization costs) exceeds \$1 million and is greater than two percent of the original construction cost (expressed in current day dollars) of the HSPP or separable element thereof; or,

(ii) The cost of the construction effort to effect repair of the HSPP or separable element thereof (exclusive of dredge mobilization and demobilization costs) exceeds \$6 million; or,

(iii) More than one-third of the planned or historically placed sand for renourishment efforts for the HSPP (or separable element thereof) is lost.

(c) *Procedural requirements.* Rehabilitation of HSPP'S will be done in accordance with §203.45, except as modified by this section.

(d) *Combined rehabilitation and periodic nourishment.* In some cases, the non-Federal sponsor may wish to fully restore the sacrificial features of a project where only a partial restoration is justifiable as Rehabilitation Assistance. In these cases, a cost allocation between Rehabilitation Assistance and periodic nourishment under the terms of the project PCA will be determined by the Director of Civil Works.

§ 203.50 Nonstructural alternatives to rehabilitation of flood control works.

(a) *Authority.* Under Public Law 84-99, the Chief of Engineers is authorized, when requested by the non-Federal sponsor, to implement nonstructural alternatives (NSA's) to the rehabilitation, repair, or restoration of flood control works damaged by floods or coastal storms.

(b) *Policy.* (1) The option of implementing an NSA project (NSAP) in lieu of a structural repair or restoration is available only to non-Federal sponsors of flood control works eligible for Rehabilitation Assistance in accordance with this regulation, and only upon the request of such non-Federal sponsors.

(2) A sponsor is required for implementation of an NSAP. The NSAP sponsor must be either a non-Federal sponsor as defined in §203.15, or an-

other Federal agency. The NSAP sponsor must demonstrate that it has the legal authority and financial capability to provide for the required items of local cooperation.

(3) The Corps shall not be responsible for the operation, maintenance, or management of any NSAP implemented in accordance with this section.

(4) The Corps may, in its sole discretion, reject any request for an NSA that would:

(i) Lead to significantly increased flood protection expenses or flood fighting expenses for public agencies, flood control works sponsors, public utilities, or the Federal Government; or,

(ii) Threaten or have a significant adverse impact on the integrity, stability, or level of protection of adjacent or nearby flood control works; or,

(iii) Lead to increased risk of loss of life or property during flood events.

(5) The principal purposes of an NSAP are for:

(i) Floodplain restoration;

(ii) Provision or restoration of floodways; and,

NOTE TO PARAGRAPHS (b)(5)(i) AND (ii): Habitat restoration is recognized as being a significant benefit that can be achieved with an NSAP, and may be a significant component of an NSAP, but is not considered to be a principal purpose under PL 84-99 authority.

(iii) Reduction of future flood damages and associated flood control works repair costs.

(c) *Limitation on Corps expenditures.* Exclusive of the costs of investigation, report preparation, engineering and design work, and related costs, Corps expenditures for implementation of an NSAP are limited to the lesser of the Federal share of rehabilitation construction costs of the project were the flood control work to be structurally rehabilitated in accordance with subpart D of this part, or the Federal share of computed benefits which would be derived from such structural rehabilitation. This limitation on Corps expenditures may be waived by the Director of Civil Works or the Chief, Operations Division, Directorate of Civil Works when compelling reasons exist.