Impediments to the Regional Planning And Management of Coastal Water Resources

I. BACKGROUND AND INTRODUCTION

There is general acceptance of the many advantages of linking of navigation, ecosystem restoration, and coastal storm damage reduction projects, including efforts to increase the beneficial use of sand and regional sediment management, and to that a watershed management or a systems approach to meeting water resource needs. e s. The meeting in Hoboken, New Jersey on April 24th representatives from stat and Army Corps of Engineer from the Mid-Atlantic States will seek to identify actions that can be taken, which will provide for more efficient and effective implementation of coastal protection projects on a regional basis, and to facilitate a holistic view of a region's water resource needs that will increase coastal resiliency, through implementing "regionality? For purposes of this paper, the term "regionality" is used to connote the linking planning and management of these three types of projects to increase coastal resiliency[1], achieve cost efficiencies, and maximize local, regional and national economic, environmental and social benefits.

This call for regionality has been echoed in three recent reports. Noting that natural disasters do not recognize state or local political boundaries, the HUD Sandy Rebuilding Task Force concluded that it was clear that, historically, too little consideration was given to inherent interdependencies – whether between multiple states, neighboring counties, or seaside towns,"[2] concluding that:

> *"Examples from Sandy that illustrate the need for regional coordination of resilience investments were seen in many instances. …Removing sand from one location in the region to rebuild beaches in another location could weaken coastal protection in the source location, and/or impact local fisheries and tourism. Addressing such vulnerabilities will require the cooperation of New Jersey, New York City, and New York State, as well as private sector owners and operators."*

The Army Corps of Engineers *Performance Evaluation Report* also observed that:

> *"[M]ore comprehensive protection can only be realized when individuals and government agencies at the non-Federal and Federal levels collectively recognize, understand, and act to manage and effectively reduce risks attributed to threats posed by flooding and coastal storms….Interestate collaboration (i.e., state compacts) can be integral to facilitating successful comprehensive proptection through coastal flood risk management projects,"*

"*The North Atlantic Coast Comprehensive Study"* (NACCS) states that:

> "*Addressing coastal risk requires collaboration among local, regional, Tribal, State and Federal entities, NGOs, academia, business, and industry."*[3] *In addressing issues of risk and resilience standards, it specifically recommends the development of "regional and watershed-based plans, including a broad base of benefits, benefit quantification, and multi-objective approaches"*[4] *and concludes that "regional coordination will help guide efficient spending to optimize coastal storm risk management"*[5].

Corps' Coastal Systems Portfolio Initiative (CSPI)

The development of the Corps' Coastal Systems Portfolio Initiative (CSPI) database makes it possible to have an informed collaborative discussion about the prioritization of projects across the region. While the Corps is developing enhancements to the database, it currently includes a wealth of information about the status of existing federal and state CSDR, environmental restoration, and navigation projects nationwide. Base level knowledge of when a CSDR project needs to be nourished, when a channel needs to be dredged, and what population and environmental resources are at risk make a discussion of

project prioritization and funding needs possible. The dredging of the channels would be planned to make maximum beneficial use of the sediment without having to dump it offshore. Available sediment could also be sold to the private sector to help generate funding for the regional program. If there weren't sufficient funds to complete all of the work for this regional program in a given fiscal year, the needs would move to the top of the prioritization for the following year.

***Hoboken Mee*ting**
Workshop Questions

- Can regionality serve as an interim step toward a more holistic national coastal protection system? I
- If yes, what step(s) are needed in the interim to achieve regionality in the Mid-Atlantic, so as to serve as national example for future coastal protection?
- How can states and the Corps work with each other in a more efficient and effective manner with existing authorities and within the current regulatory framework.
- What specific regulatory or legislative changes are needed, and if so, how might they be achieved.
- What are the long term and interim goals and what can be done now to work towards their fruition?

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II. IMPEDIMENTS TO "REGIONALITY" - POSSIBLE SUSPECTS

1. The Project by Project Approach?

The current system may be inefficient and less effective than it could be, but it is known to all parties. The current project-by-project approach to promoting coastal resilience also encourages non-federal sponsors to focus on a "my project" approach to planning. For example, Will "my project" get enough federal funding to be dredged (or renourished)? Is regionality going to endanger my project's funding? The previous gathering of state and Corp representatives from NY and New Jersey in August 2014 in Newark, NJ highlighted a shared enthusiasm for increasing collaboration on coastal protection and other water resource projects. There was also a recommendation that the group be expanded to ten Mid-Atlantic region, and the group need to identify interim goals and actionable steps that would enhance regionality. There was a suggestion to look at new approaches, or to look at best practices and success stories from the region and approaches in a new way. Further, that long term strategy should emphasize the risk reduction value and consider maintenance needs of projects. Finally, it was determined that it is important

to have a consistent coastal message regarding project requirements and funding needs, one that includes both the interim and long term goals and the correlating value of those projects.

A subset of this issue is the important issue of understanding and communicating risk, which was covered in the NACCS report, among others. As used here, however, communications concerns are meant to focus on the need for consistent messages that focus on themes such as the following[6]:

- **Collaborating** to protect the coast
- Strengthening communities by **reducing risk**
- Attracting businesses and adding new jobs by **increasing resilience**
- Enhancing environmental resources through a **holistic regional approach**

2. The Federal Process for Study, Authority and Funding

Every Corps of Engineers study must first be requested by a state or local government, followed by a lengthy administrative and legislative process consistent with legal and regulatory requirements. In the end, projects are proposed, studied, authorized and funded as ***individual projects***. With the adoption of a somewhat limited regional sediment management program in the Water Resources Development Act of 2007[7], there was authority for small regional projects that were tied to sediment obtained from Federal projects. In addition, Congress has in the past authorized regional studies for the coasts of Florida, Texas and California. For various reasons, some of which will be covered by impediments cited below, these studies have not resulted in the implementation of regional approaches to meeting water resource needs.

To most of us, money is all green. That's not the case with the Corps of Engineers. Congress provides funding for the Corps in three separate accounts for planning and implementing water resource measures. General Investigations (GI) is used for studying proposed projects. Construction General (CG) is used to implement coastal storm damage reduction and environmental restoration projects that have been authorized by Congress; and Operations & Maintenance (O&M) is used to dredge Federal channels.[8] Combining funding from different accounts to do one project is rare. There are a few coastal projects where the sediment obtained from dredging using Operations & Maintenance money is placed on a section of a Federal shore protection project while dredges are used to obtain additional sand from offshore sources using Construction General funding.

The Corps manages its programs using eight business lines: Navigation, Flood Risk Management, Environment, Hydropower, Regulation of Aquatic Resources, Disaster Response and Emergency Management, Recreation (i.e. Corps lakes), and Water Supply. Projects involving obtaining sand from dredging while also obtaining sand from offshore or nearshore sources involves cooperation between the Navigation and Flood Risk Management and/or Environment business lines. Without new regional authority and the funding to implement that authority which mandates, or at least encourages, the mixing of funding from different accounts that cuts across Corps business lines, it will be difficult to regionalize the Nation's coastal water resources programs in order to meet economic, resilience, recreational and environmental needs.

3. The Shortage of Adequate Federal Funding

While the funding of water resource projects is the subject of a future meeting, it is clear that without adequate funding, the most farsighted program authorities and agency policies are meaningless. The Corps' budget is essentially declining in current dollars. Even if it were maintained at a level of roughly $5.5 billion, it would be declining due to inflation. Funding for coastal storm damage reduction projects is declining to a point where it is likely to remain below $100 million a year. Neither of these two figures includes post-disaster spending which is the only way that the Federal program has been able to maintain any semblance of normalcy. The scarcity of regular Federal appropriations coupled with the unpredictability of major storms creates understandable concerns on the part of non-Federal sponsors that their specific project will not be funded when it needs nourishment. **Attachment C** contains an expanded discussion of this subject, as well as bar charts to illustrate the scarcity of funding for CSDR projects.

When combined with the project-by-project approach and its endemic requirement that no new initiative can be studied, let alone implemented, without a request from a non-Federal interest, there is no incentive and no reward to have a regional "project" whose focus is (a) determining regional water resource needs; (b) assigning priorities to those needs; (c) finding non-Federal sources of funding to supplement Federal funding; (d) enabling states and other non-Federal interests to have access to sufficient data and expertise from private sector sources to assume a greater role in the planning, implementation and management of regional water resource measures; and (e) expanding the role of key stakeholders such as the environmental community and the private for-profit sector in decision-making.

There is currently a severe shortage of Federal funding for coastal storm damage reduction (CSDR), navigation and environmental restoration. That funding gap will increase annually, relying on emergency, post-disaster funding to make up a portion of the deficiency. Instead of this reactive and shortsighted approach, a proactive regional systems approach is needed.

4. The Federal System

- There is a complex web of Federal and state, executive and legislative entities, and laws with coastal-related responsibilities and effects. [9] There is little, if any, coordination among the programs, practices and even the objectives of these agencies. The Corps' coastal storm damage reduction program is itself an example of uncoordinated objectives. Administration budget policies place an inordinate priority on high benefit-cost ratios. This has the effect of rewarding projects with the most densely concentrations of people and infrastructure at risk and punishing communities that have taken steps to reduce those risks.[10]

- In addition, the Corps' internal structure and process can make it more difficult for multi-purpose projects to be authorized or obtain funding. This not only is a potential barrier to regional projects, but also a barrier to the consideration of environmental benefits. The current method of evaluating benefits and costs gives greater weight to costs at the expense of fully evaluating all of the economic benefits of a proposed project.

- Preparations for the President's proposed budget begin 30 or more months before the beginning of the Federal fiscal year. Even if Congress were to approve a budget by the start of the Federal fiscal year – a feat that has not been performed since 1996 – it is no longer the passage of the appropriations bill for the Corps that it is the key determinant of which projects are funded. That does not come until release of the Corps' Work Plan several months later. [11]

5. It's Not the Lack of Statutory Authority – Or Is It?

- The primary authorities for regionality, regional sediment management, and beneficial use are discussed in Attachment D. Section 1037 of WRDA 2007 carries the statutory title of "Regional Sediment Management," but it is actually a modification of a beneficial use of sediment provision that had been in place for many years. Now referred to as the Section 204 program (or by its previous names of Section 933 or Section 145) it provides the authority to conduct a study of the beneficial use of sand taken from a Federal navigation channel. The cost of the study is borne entirely by the Federal government and the cost of placement of the sediment itself is divided as follows: (A) 100% Federal for the portion of the cost that is the same as the least cost method of disposal, and (B) 65% Federal/35% non-Federal for the additional cost above the least cost disposal method. The "color of money" (discussed below) for the (A) portion is "navigation" and for the (B) portion it is "Construction General". This Section 204 authority is a Continuing Authorities Program with overall cost limits discussed below. The Corps has interpreted the authority to approve a project if all of the sand comes from a Federal navigation channel. None can come from offshore or upland sources. The Section 204 program has a special authorization for the Corps to provide assistance to States doing comprehensive water resources planning.

- In a similar vein, the Planning Assistance to the States program **(Attachment E)** is a separate authority for the Corps to assist States in the preparation of comprehensive plans for the development, utilization, and conservation of the water and related resources of drainage basins, watersheds, or ecosystems located within the boundaries of such State and to submit to Congress reports and recommendations with respect to appropriate Federal participation in carrying out such plans. While the program has been used to get small amounts of funding to States for projects that are not always comprehensive, its authorization limits were recently raised by Congress. If that support is followed by actual funding, this authority may be a mechanism for funding the initial stages of a Mid-Atlantic Regional Collaboration.

6. It's Definitely Not the Least Cost Method of Sediment Disposal Requirement

It is often said that the "least cost" requirement for disposing of sediment obtained from dredging a federal channel poses a barrier to beneficial use of that sand. However, a reading of applicable law and regulations leads to the conclusion that there is currently ample authority to plan, implement, and maintain water resource projects on a regional basis. (See Appendix B for an explanation of this conclusion. Similarly,

Congress has provided statutory authorities that, at the very least, enable a broader use by the Corps of regional sediment management practices. Why is this the case, and what are some of the real impediments to regionality? The following section discusses only a partial list of barriers to be surmounted, not listed in any particular order. While others have divided the barriers into groups, such as Policies, Institutional Barriers, and Public/political barriers, we have chosen to focus on specific barriers, some of which can be placed in more than one bucket category.[12]

7. Prioritizing

The development of the Corps' Coastal Systems Portfolio Initiative (CSPI) database now makes it possible to have an informed collaborative discussion about the prioritization of projects that are part of a regional program.[13] While the Corps is developing enhancements to the database, it currently includes a wealth of information about the status of existing Federal and state CSDR, environmental restoration, and navigation projects nationwide. Base level knowledge of when a CSDR project needs to be nourished, when a channel needs to be dredged, and what population and environmental resources are at risk make a discussion of project funding prioritization possible. The dredging of the channels would be planned to make maximum beneficial use of the sediment without having to dump it offshore. Available sediment could also be sold to the private sector to help generate funding for the regional program. If there weren't sufficient funds to complete all of the work for this regional program in a given fiscal year, the needs not met would move to the top of the prioritization for the following year. *A handout exhibiting part of the online database will be provided for the April 24th meeting.*

8. Regulatory Process

Both Federal and state reviews and permits are project-based. If our hypothetical regional program contemplates actions for two CSDR and two navigation projects in this fiscal year, the holdup of a permit on any one of these could have a significantly negative impact on the regional program. Programmatic permits and agreements with Federal and state resource agencies which provide flexibility in meeting the requirements of dredge windows do not currently exist. To the extent that permits can be in place long before a regional project is undertaken, permit delays can be eliminated. There are also issues of environmental windows which prohibit dredging at certain times of the year. In order to implement a regional program, Federal and State resource agencies as well as environmental stakeholders may have to be convinced to expand those windows in return for components of the program that are specifically designed to provide environmental enhancements.