

Warwick Group CONSULTANTS



Water Resources Policy, Public Finance & Advocacy

Since 1990, Warwick Group Consultants has provided analyses of the key coastal provisions in the Water Resources Development Acts (WRDA) passed periodically by Congress. WRDA2020 is part of the giant package signed into law by the President on December 27th. It sets new policies, modifies existing ones, and authorizes new studies and projects. However, it does not appropriate any funding. For comments and questions, please email howard.marlowe@warwickconsultants.net.

Sections 101 to 104. Harbor Maintenance Trust Fund: Created in 1986, the Harbor Maintenance Tax is intended to cover the some or all the costs of the operation and maintenance dredging costs for commercial ports from maritime shippers. Its revenues are based on a tax levied on commercial shippers arriving at U.S. coastal and inland ports. While legislation starting in WRDA 14 and continuing into the CARES act has sought to assure that annual Harbor Maintenance Trust Fund (HMTF) tax revenues (approximately \$1.9 billion) to the HMTF are appropriated and do not count against congressional spending caps, WRDA20 provides targets for accessing significant amounts of the untouched \$10 billion balance. It also provides new methods of allocating HMTF funds to Great Lakes ports as well as “emerging harbors” and “donor ports”. *How these funds will be allocated, including the degree of control of the House and Senate appropriations committees over those allocations, remains to be seen.*

Section 110. Implementation of the Water Resources Principles and Requirements: Requires the Corps to complete its guidance for implementing the new Principles and Requirements for Water Resource Planning in six months. Requires that the guidance fully identifies all national, regional, environmental, and societal benefits. Only recently has the Corps been given the ability to draft these guidelines. *The issue of identifying all benefits is not the same as counting them, however.* For more information on the P&R, download the PDF on [this page](#).

Section 111. Resiliency Planning Assistance: Allows the Corps’ Floodplain Management Assistance program to provide technical assistance to communities to avoid flooding or adapt to climate change. This can be done with full Federal funding or voluntary contributions from the requesting non-Federal interest. For more information and this and other Corps technical assistance programs, [click here](#).

Sections 114 and 116. Natural and Nature-Based Features. The first of these sections allows NNBF features to be included in the Section 205 Continuing Authorities Program for small flood control projects,

while the second requires all feasibility studies for flood risk management or hurricane and storm damage* to include an assessment of NNBF alternatives.

Section 117. Federal Interest Determination: *Many readers will find this as a Back to the Future kind of provision.* It requires the Corps to make a Federal Interest Determination prior to initiating a 3x3x3 project at a cost of \$100,000 is at full Federal expense. *That's the way things were before Congress legislated the 3x3x3 process.* However, it also provides that if a study is not economically justified but is otherwise technically sound and environmentally acceptable, the Corps can recommend to the non-Federal interest how the project might be modified so that the project "could be in the Federal interest and feasible."

Section 119. Communities subject to Repetitive Flooding: Provides the Corps with new authority to assist certain communities that have suffered repetitive flooding events. Communities would need to request assistance from the Assistant Secretary of the Army for Civil Works who would select projects based on criteria in this section and with total Federal funds of \$17.5 million. The types of measures that can be authorized are those considered "gray" (hard) to "green" (NNBF). *This program would first need to be funded by Congress. Watch for that a year from now as well as be on the lookout to see if the Corps publishes guidance prior to receiving funds.*

Section 120. Emergency Response to Natural Disasters: Communities that have received emergency assistance from the Corps in the past under PL 84-99 can submit proposals to increase the level of protection they received in the past. If accepted, the ASA(CW) has the authority to recommend the project be funded. If rejected because the Corps lacks the authority to undertake the repair or improvement without specific congressional approval, the project can be included in the annual [Section 7001 process](#). This new authority sunsets in five years. *Be on the lookout for Corps implementation guidance for this section in 2021.*

Section 124. Sense of Congress on Multipurpose Projects: *Anyone who has had a project that produces flood risk management and environmental benefits (also navigation benefits) knows the difficulties the Corps has created by creating Business Lines and projects that must fit the requirements of only one type of project.* This provision expresses the desire of Congress that those bureaucratic and planning barriers be eliminated.

Section 125. Beneficial Use of Dredged Material-Dredged Material Management Plans: *This is one of the strongest efforts Congress has made to date to cut into the waste of dredged material that is dumped offshore but could have other nearshore or onshore uses.* This section declares it to be national policy to maximize the beneficial use of dredged material. In evaluation the placement of dredged material, the Corps must consider the suitability for "a fully range of beneficial uses," and "the economic and environmental benefits, efficiencies, and impacts...of using the dredged material for beneficial uses." In evaluating what is known as the "least cost" or "federal" standard, a calculation of "benefits and efficiencies" shall be included. *The language in this section will require the Corps to issue guidance to determine if it changes the thinking of some Corps personnel who find it easier and cheaper to dump otherwise useful sand offshore where it is too hard and expensive to retrieve.*

Section 137. Criteria for Funding Environmental Infrastructure Projects: *Despite the name of this type of project, they are drinking water or storm water projects.* This section requires the ASA(CW) to develop written criteria to rank these projects for purposes of prioritizing funding. *That would be a first for any type of Corps project!*

Section 140. Coastal Storm Damage Reduction Contracts: For proposed coastal storm damage reduction projects, this section requires the Secretary to seek input from the community or communities affected by the project regarding opinions on how best to minimize damages. *It is not clear how the intent of this section differs from current Corps outreach efforts to solicit public input.*

Section 148. Coastal Mapping: This section amends WRDA 1996, Section 516, which deals with long-term planning for sediment management. It requires the Corps to map coastlines that are experiencing rapid coastline changes on a reoccurring basis. \$10 million is authorized for this purpose for Alaska, Hawaii and U.S. territories and possessions. *For the difference between authorized and appropriated funding, [click here](#).*

Section 165. Continuing Authority Programs: Requires the ASA(CW) to set up a pilot program for carrying out CAP projects in disadvantaged communities. It also increases the authorization for all Section 103 CAP projects to \$38 million; Section 204 RSM/Beneficial Use projects to \$63 million; and makes other increases in authorizations for other CAP programs. For a list of CAP programs, [click here](#).

Section 201. Authorization of New Feasibility Studies: Among the coastal storm risk management studies authorized are ones for:

1. Newbury and Newburyport, MA
2. Charleston, SC (both tidal and inland flooding)
3. Port Arthur and Orange County, TX (language seeks to avoid this being a new start and makes it part of the overall Coast of Texas study)
4. Port of Victoria, TX
5. Virginia Beach & Vicinity, VA (this may be for a renewal of the current 50-year project)

Section 202. Expedited Study Completions: Congress urges the following studies be expedited (only certain coastal studies listed here):

1. Aunu'u Harbor, American Samoa
2. Del Mar, CA (authorized by Committee Resolution in 1999)
3. Oceanside, CA (authorized by WRDA 2000); project for storm damage reduction
4. San Diego County, CA; project for coastal storm damage reduction, Southern California
5. East Hartford, CT
6. Fairfield and New Haven Counties, CT
7. Chicago Shoreline (authorized by WRDA 1996)
8. replacement of the Bourne and Sagamore Bridges, Cape Cod, MA
9. Howard Beach, Queens, NY
10. Dorchester County, SC
11. Myrtle Beach, SC
12. Bodongo Bay
13. St. Thomas, VI.

Note: Being on the list shows serious congressional interest in the named study. If the non-federal sponsor of the study and the local Corps district office also take appropriate advocacy actions, the study has a better chance of receiving Federal funds.

Section 203. Expedited Modifications of Existing Feasibility Studies: The one coastal study mentioned is a significant one related to the eroding coast of the City of San Francisco. The provisions of this section contain modifications to the original study authorization. This section also modifies the important post-Sandy focus area known as NYNJHATS to enable Corps planners to address both the impacts of low frequency rainfall as well as sea level rise.

Section 204. Assistance to Non-Federal Sponsors; Feasibility Analyses: *In the Department of It-Never-Ceases-to-Amaze-Us*, this provision seeks to provide Corps assistance to non-Federal interests who have proposed a new study for authorization as part of the Corps' outreach requirement under [the Section 7001 process](#) if there is any money appropriated for this purpose and if the proposed project is on the list of proposed projects contained in this section. Among the coastal studies listed are Stratford, CT; Woodbridge, CT; Gary, IN; Grande Isle, LA; Jefferson Parrish, LA (2 proposed studies); and others. Also, certain authorized studies are listed for the Corps to review, if funds are appropriated, to determine if they should be modified, including Charlotte County, FL (WRDA 1996).

Section 207. Additional Studies Under the North Atlantic Coast Comprehensive Study: Authorizes additional study focus areas for hurricane and storm damage* reduction "for any major metropolitan area" that was not included as a focus area in the NACS. Because original study recommendations.

Section 208. South Atlantic Coastal Study: Requires certain annual reports on activities and progress, including "a state-by-state [report], including information on the engagement of the Corps of Engineers with non-Federal interests..."

Section 222. Report to Congress on Authorized Studies and Projects: *Here is what the Senate committee said about this provision. It's a bit long, but as it may also be one of the most important in our Deep Dive, it's worth the 55 seconds it takes to read it.*

This section requires the Secretary to develop an annual report [due Feb 1st] that identifies each authorized study or authorized water resource development project submitted by non-federal interests for consideration through the annual Energy & Water Development appropriations bill. Criteria for inclusion in the report include -- projects that have been authorized by Congress; authorized studies and non-operations and maintenance projects for which the non-federal interest has entered into an appropriate agreement with the Corps; and demonstration of the legal and financial capability to satisfy the requirements of local cooperation for the study or project. The report must describe specified benefits for each authorized study and authorized water resources development project included in the annual report, as well as the name of the associated nonfederal interest; the purpose of the authorized study or authorized water resources development project; an estimate, to the maximum extent practicable, of the federal, non-federal, and total costs of the authorized study or authorized water resources development project; and an estimate, to the maximum extent practicable, of the monetary and nonmonetary benefits of the authorized study or authorized water resources development project. This section also requires the Secretary to include in the annual report an appendix listing the proposals submitted that were not included in the annual report and a description of why the Secretary determined that those proposals did not meet the criteria for inclusion. The Secretary shall also make the annual report to Congress publicly available on the internet. The Committee remains concerned that other annual reports from the Corps and OMB continue to be delayed, hindering the authorization process. To address this concern, the Committee has emphasized the requirement for the Corps and the Office of Management and Budget

(OMB) to provide this report annually, on time, and consistent with criteria outlined in the bill. *Watch for the guidance to be issued by the Corps for implementing this section.*

Section 301. Project Deauthorizations: Requires the ASA(CW) to prepare a list of studies authorized before Nov 8, 2007 for which PED has not been started or funded within the previous 10 years or certain other requirements have not been met and prepare a list of at least \$10 billion of such projects and publish the list for public comment prior to its submittal in final form to Congress.

Section 335. Portsmouth, New Hampshire: Requires the ASA(CW) to expedite the use of improvement dredging of this harbor to reinforce the stone revetment at Nantasket Beach, Hull, MA.

Section 401. Project Authorizations: *We are listing only those listed under paragraph (3) of this section, titled Hurricane and Storm Damage Reduction* --*

1. Delaware, Beneficial Use of Dredged Material, Delaware River;
2. New Jersey, Beneficial Use of Dredged Material, Delaware River;
3. Rahway River Basin, New Jersey Coastal Storm Risk Management;
4. Raritan Bay and Sandy Hook Bay Highlands (NJ);
5. East Rockaway Inlet to Rockaway Inlet and Jamaica Bay, Atlantic Coast of New York;
6. Fire Island to Montauk Point, New York, Reformulations;
7. Hashamomuck Cove Coastal Storm Risk Management (NY);
8. Pawcatuck River Coastal Storm Risk Management Project (RI);
9. Norfolk Coastal Storm Risk Management (VA).

*** While the legislation uses the term "hurricane and storm damage" that phrase is old terminology in the Corps' coastal program as well as its Flood Risk Management business line. The correct term is "coastal storm risk management".**

Please send us your comments and corrections: howard.marlowe@warwickconsultants.net