



New Orleans Following Hurricane Katrina, NOAA

National Wildlife Federation Analysis ***Water Resources Development Act of 2013 – S. 601***

The National Wildlife Federation’s section by section analysis of the policy provisions in S. 601, the Water Resources Development Act of 2013, is below. While this bill advances important ecosystem restoration priorities, including for America’s Everglades and Coastal Louisiana, and includes some positive environmental provisions ***the bill must be substantially amended to protect communities, taxpayers, and the environment.***

America faces significant water resource challenges, driven in part by more intense coastal storms, more frequent and severe flooding, unprecedented droughts, and the unintended consequences from many already-constructed water resources projects. To address these challenges, the next WRDA must focus on national priorities and ensure that wetlands, floodplains and other natural systems – resources that are vital for water quality, flood protection and fish and wildlife habitat – are protected and not destroyed by Corps projects and project operations. To achieve those goals, the National Wildlife Federation urges the following amendments:

- **S. 601 should be amended to require the Corps to utilize nonstructural and restoration measures where they can provide an appropriate level of protection and benefits.** Low impact solutions are a cost-effective way to protect people, wildlife, and the many businesses that rely on healthy rivers, coasts, and wetlands. However, the Corps continues to promote environmentally destructive and costly structural projects even where less costly and environmentally protective nonstructural and restoration measures would provide better solutions.
- **S. 601 should be amended to require the Corps to evaluate and update operations plans and water control manuals for large-scale Corps projects at least every 10 years and implement needed operational changes.** Major Corps projects are being operated under decades-old operating plans that do not account for current conditions or science (including more intense storms and droughts), put communities at risk, and aggravate contentious water quantity conflicts.
- **S. 601 should be amended to require mitigation consistent with recommendations made by the nation’s fish and wildlife experts pursuant to the Fish and Wildlife Coordination Act.** Despite important criteria established in WRDA 2007 to ensure effective mitigation for fish and wildlife losses caused by Corps projects, the Corps continues to adopt mitigation plans that will not work, in part because they ignore expert recommendation made by federal and state fish and wildlife agencies.

The National Wildlife Federation also calls on Congress to strike sections 2033 and 2032 in the bill.

These provisions will significantly undermine effective environmental reviews of water projects and the critical protections provided by the National Environmental Policy Act and the nation’s other vitally important environmental laws. Sections 2033 and 2032 are based on the faulty assumption that the

environmental review process is a root cause of project delays. The environmental review process does not delay project planning; it is a prerequisite for responsible agency action. Effective environmental reviews protect people, wildlife, and taxpayer dollars by ensuring construction of better projects that serve the national good.

The National Wildlife Federation urges the Senate to address the problems identified below; changes highlighted in blue are particularly important.

ANALYSIS OF SELECTED POLICY PROVISIONS INCLUDED IN S.601

Sec. 1002 – Project Authorizations: Establishes a blanket authorization for constructing all Corps projects with a Chief’s Report and a referral to Congress by the Assistant Secretary of the Army for Civil Works as of the date of enactment. *This provision will allow continued progress towards restoring America’s Everglades and Coastal Louisiana as key restoration projects meet these criteria. Delay in restoring these two environmentally and economically valuable ecosystems would result in further degradation and higher costs in the long-run. However, other projects that meet these criteria would cost taxpayers billions of dollars while creating large scale environmental destruction and producing questionable benefits. In addition, the public currently has no way of knowing the full suite of projects that may be authorized through this provision.*

Sec. 1003 – Project Review: Allows the Secretary to significantly raise the authorized cost of a project without the Congressional approval currently required by law (often referred to as the 902 cap) provided the Secretary provides a report to Congress and receives an appropriation of construction funds after that submission. *Congress should carefully review cost increases under this section to ensure that the benefits of the project continue to outweigh the requested increased costs.*

Sec. 2003 – Continuing Authority Programs: Raises the authorized spending limits for a number of the Corps’ continuing authorities programs which allow the Corps to proceed with small scale projects without specific Congressional authorization. *Raising these spending limits will allow the Corps to meet the high demand for small scale restoration projects.*

Sec. 2004 – Continuing Authority Program Prioritization: Requires the Secretary to publish the criteria used by the Corps to prioritize annual funding for projects under the continuing authorities programs. *This will increase the transparency of decisions under these popular programs.*

Sec. 2005 – Fish and Wildlife Mitigation: Includes important provisions that clarify the type of impacts that must be mitigated. However it also has the potential to create an additional mitigation loophole by allowing the Secretary to evade requirements to mitigate to not less than in-kind conditions by simply stating why they are not doing so. Also allows development of programmatic mitigation plans to guide the development of the specific mitigation plans required by existing law. *Mitigation of damage to fish and wildlife resources is a critical component of water resources planning, and this section should be amended to ensure that damage from Corps projects will be fully and effectively mitigated.*

- This section should be amended to delete the language at lines 8-13 on page 15, which creates a new loophole to ignore the requirement to mitigate to not less than in kind conditions.
- This section should be amended to clarify that the Secretary may not use programmatic mitigation plans as replacements for the specific plans required by law, and to allow the Secretary to utilize only those programmatic mitigation plans that were developed utilizing

watershed-based mitigation, functional replacement standards, and other criteria identified in federal and applicable state mitigation laws and guidelines.

- This section should be amended to require the Corps to adopt mitigation plans that are consistent with recommendations made pursuant to the Fish and Wildlife Coordination Act, as discussed in more detail above.

Sec. 2006 –Mitigation Status Report: Establishes additional important criteria to improve the quality of the Corps’ required mitigation status reports to Congress. *These criteria will allow Congress and the public to better understand and track the effectiveness of the Corps’ civil works mitigation efforts.*

Sec. 2007 – Independent Peer Review: Improves effectiveness of the Corps’ independent review process by promoting early initiation of the review process and increasing transparency by requiring the Corps to provide timely notice of panel membership and qualifications, panel reports, and agency responses to panel reports. Extends the independent peer review requirements for 5 more years. *These changes are vital for ensuring the integrity of the review process, but additional changes are also needed.*

- This section should be amended to ensure that reviewers will comment on recommended plans and alternative approaches, and to require reviewers to solicit public input in the independent review process. These changes are critical for ensuring that independent review panels can provide a full and complete evaluation of the merits and possible shortcomings of Corps projects.

Sec. 2010, 2011, 2012, 2013: These sections address the crediting of in kind and advance work carried out by non-Federal sponsors towards future cost share requirements.

Sec. 2014 – Dam Optimization: Authorizes the Secretary to carry out activities that are necessary to improve efficiency of operations and maintenance and to maximize environmental protection and restoration for authorized projects. *This important provision would promote review and revision of outdated, inefficient, and sometimes dangerous operating plans for Corps dams. Ideally, this would be strengthened to make the authorized reviews and activities mandatory.*

Sec. 2020 – Vegetation Management Policy: Requires a comprehensive review of the Corps’ levee vegetation guidelines to determine whether regional variances are appropriate, and requires revision of the national levee guidelines within 2 years of enactment to incorporate recommendations from the review. The provision also prohibits the Corps from requiring removal of existing vegetation on levels pending completion of the revision of these guidelines. *This important provision would improve the Corps’ current flawed approach to vegetation management. The current, one-size-fits-all guidelines are strongly opposed by many states and conservation organizations because they require costly, destructive, and unnecessary removal of vegetation that provides important benefits to fish and wildlife, including endangered species.*

Sec. 2022 – Restoration of Flood and Hurricane Storm Damage Reduction Projects: Requires the Secretary to carry out “any measures necessary” to restore federally authorized and constructed flood and hurricane storm damage reduction projects to authorized levels of protection if the Secretary determines that the necessary work is feasible. The directive applies to projects that are no longer providing the authorized level of protection due to settlement, subsidence, seal level rise, etc. Standard

cost share rules apply. *In many cases, rebuilding to the authorized level in the same location would entail significant outlays of federal dollars without providing meaningful protection in the long term.*

- This section should be amended to ensure that modifications and/or rebuilding of existing federal projects will be undertaken only after a comprehensive evaluation of likely future conditions, including extreme weather and sea level rise, environmental impacts, and the importance of restoration for protecting public safety. The Corps should be required to first analyze whether nonstructural approaches and/or restoration of natural systems would provide the same or better benefits and if so, should be required to utilize those approaches instead of rebuilding structural projects. In all cases, the Corps should be required to identify less costly and less environmentally damaging alternatives to rebuilding in place.

Sec. 2024 – Dredging Study: Directs the Corps to carry out a study, in conjunction with other federal agencies and non-Federal interests, to identify the best techniques, methods, and technologies for dredging and to assess the nation’s dredging needs. *The Corps should always utilize the most up to date, least environmentally damaging, techniques and technologies. The study should also investigate and identify the least environmentally damaging techniques for dredging and dredged spoil disposal.*

Sec. 2025 – Non-Federal Project Implementation Pilot Program: Establishes a pilot program to evaluate the cost-effectiveness and efficiency of allowing construction of projects already authorized for construction by non-Federal interests. The program is limited to 12 projects, and construction must commence within 5 years of enactment. Explicitly requires the non-Federal interests to comply with all laws and regulations that would apply to the Secretary.

Sec. 2026 – Non-Federal Implementation of Feasibility Studies: Establishes a pilot program to evaluate the cost-effectiveness and efficiency of allowing non-Federal interests to carry out feasibility studies for Federal projects. The portion of the study costs that under the normal process would have been the responsibility of the Corps will be credited towards the non-Federal share of the cost of construction. *A key purpose of the feasibility study is to determine whether a project is in the national interest, and thus appropriate for federal investment and to identify the least damaging and most effective solution for a water resources problem. A non-Federal sponsor, who will may act as an advocate for their project, is not an appropriate party to act as arbiter of whether or not a project is in the national interest. As a result, such a pilot project should be limited to the development of feasibility studies to identify the most effective approaches and projects for implementing a comprehensive plan that the Corps has already determined to be in the national interest, for example, developing feasibility studies for specific projects to implement the Louisiana Coastal Protection and Restoration plan.*

- This section should be amended to limit the pilot program to the development of feasibility studies to identify the most effective approaches and projects for implementing a comprehensive plan that the Corps has already determined to be in the national interest, for example, developing feasibility studies for specific projects to implement the Louisiana Coastal Protection and Restoration plan.

Sec. 2030 Beach Renourishment: Allows the Chief of Engineers to extend the number of beach renourishments for authorized beach projects for 50 years or as long as recommended in the Chief’s Report, which could potentially be an unlimited period of time. Projects that already have a 50 year renourishment timeline can be extended by the Chief for up to 15 years longer. *This could require*

federal taxpayers to pay for periodic beach building for 65 years and potentially indefinitely, without up to date reviews of the need, effectiveness, or sustainability of those beach building activities.

Sec. 2032 – Study Acceleration: Imposes arbitrary time and cost limitations and encourages the Corps to impose page limitations on project studies. *This provision creates pressure to finalize studies even when critical information needed to assess environmental and public safety impacts is missing. The Corps should be required to carry out the level of analysis needed to fully understand whether a project is in the national interest – including a thorough evaluation of adverse impacts, potential benefits, and less environmentally damaging approaches – even if additional time is required.*

- This section should be stricken from the bill.

Sec. 2033 – Project Acceleration: This provision institutionalizes a convoluted bureaucratic process for strong-arming resource agencies into signing off on Corps projects despite valid objections or the need for additional information. It sets arbitrary and unreasonably short deadlines for reviews; allows the Corps to elevate disagreements over technical issues all the way to the President; and directs the Corps to impose multiple and ongoing fines on resource agencies that miss deadlines or disagree with the Corps on issues soundly within the expertise of the resource agencies. Fines can be \$20,000 per week. It directs the Corps to utilize programmatic reviews that are not appropriate for informing project-specific decisions, and could require use of emergency review procedures in non-emergency situations. It appears to give the Corps control over reviews outside of its jurisdiction, including consultation under Section 7 of the Endangered Species Act, review under the Fish and Wildlife Coordination Act, and reviews under laws governing activities in coastal areas and public lands. *This provision establishes arbitrary and unreasonably short deadlines for reviews of typically complex problems with potentially catastrophic ramifications for public safety and environmental protection, including decisions under the Endangered Species Act. It will create significant pressure to finalize reviews and decisions even when critical information for assessing environmental and public safety impacts is missing, and will have a severe chilling effect on a resource agency’s ability to meaningfully evaluate and raise important concerns and objections to federal water projects. It will prevent the Corps from properly determining whether a project is in the national interest and thus appropriate for funding by taxpayer dollars, and will significantly undermine the goals and protections provided by the National Environmental Policy Act and the nation’s other vitally important environmental laws.*

- This section should be stricken from the bill.

Sec. 2034 – Feasibility Studies: Requires the Corps to establish milestones for completion of feasibility studies, establish detailed project schedules for feasibility studies, and submit annual reports to Congress and the public on the status of those project schedules.

Sec. 2035 – Accounting and Administrative Expenses: Requires the National Academy of Public Administration to conduct a study of the impact of the Corps’ practice of funding staff salaries and administrative expenses through project-specific appropriations, and to develop recommendations for improving the Corps’ budgeting and administrative processes to increase efficiency in project delivery. *Changing the Corps’ internal funding procedures could produce significant improvements in Corps planning and this study is an important first step in that process.*

Section 2040 – Emergency Response to Natural Disasters: Modifies emergency response requirements under 33 USC 701n (often referred to as P.L. 84-99) allowing the Chief of Engineers to include modifications to structures rebuilt under this provision to address major deficiencies. *Under current law, P.L. 84-99 authorizes the Corps to fund 80% to 100% of the cost of restoring a publicly-owned flood project damaged by a flood to pre-disaster conditions. The Corps is prohibited, however, from using those funds to modify the project to ensure adequate flood protection in the future, and from utilizing nonstructural measures unless specifically requested to do so by the local sponsor. Removing these restrictions would ensure more effective and cost-efficient rebuilding, increase community safety, save taxpayer dollars, and improve the environment.*

- This section should be amended to also require the Corps to evaluate and, if appropriate, utilize nonstructural and restoration measures, including floodplain restoration, and levee setbacks and realignments when carrying out rebuilding activities.

Sec. 2042—Funding to Process Permits: Establishes clear reporting requirements to increase the transparency of permit reviews funded by a permittee. *This provision will help increase the public's confidence in permit decisions funded in this manner.*

Sec. 2043—National Riverbank Stabilization and Erosion Prevention Study and Pilot Program: Authorizes a study of issues related to riverbank stabilization and erosion prevention along inland and intracoastal waterways and establishes a 5 year pilot program for a national riverbank stabilization and erosion prevention program. *While promoting more river friendly techniques to traditional bank stabilization approaches would be beneficial (the Corps typically uses concrete or rock to attempt to hold river banks in place), it is critical that any such program also recognize, account for, and promote maintenance and restoration of the natural dynamic of rivers, including channel migration and erosion.*

Sec. 2044—Hurricane and Storm Damage Risk Reduction Prioritization: Establishes criteria to be followed by the Secretary to prioritize funding for projects and ongoing studies for hurricane and storm damage reduction. Also requires a plan for expeditiously completing projects that have been authorized for more than 20 years but are less than 75% complete. *The prioritization criteria provide important guidance for funding these types of projects. However, prioritizing completion of outdated projects may not be in the best interest of communities. The Corps should be required to reassess the need, benefits, approach, and adverse impacts of projects authorized more than 20 years ago that have not been constructed before prioritizing such projects for construction.*

- This section should be amended by deleting the language at lines 23-25 on page 147 that requires a plan for expeditiously completing long outdated projects.

Sec. 2045—Prioritization of Ecosystem Restoration Efforts: Establishes criteria to be followed by the Secretary to prioritize funding for ecosystem restoration projects. *The prioritization criteria provide important guidance for funding these types of projects. Restoration projects that meet any one of these vital criteria should be prioritized for funding.*

Sec. 2049—Project Deauthorizations: Increases the transparency regarding projects that are in the Corps' project backlog and projects that meet the conditions for deauthorization. Establishes and independent commission to recommend Corps projects for deauthorization. *This provision will provide important information to Congress and the public and help reduce the Corps' significant project backlog.*

Sec. 4002—Initiation of New Water Resources Studies: Establishes a blanket authorization for initiating a limited number of new feasibility studies during the 3 years after enactment.

Sec. 7003—Project Delivery Process Reforms (Inland Waterways): Establishes new requirements to improve the inland waterways project delivery process. Establishes new duties for the Inland Waterways Users Board. Requires the Secretary, in consultation with the Users Board, to develop a 20-year program for making capital investments in the system based on objective, national project selection prioritization criteria. Among other things, directs that those capital investments should be made in all geographical areas of the inland waterway system. *Construction and maintenance of little used portions of the inland waterway system typically causes significant damage to the environment and few, if any, national benefits.*

- This section should be amended to prioritize capital investments to high use waterways and to require review and assessment of the environmental implications of potential investment recommendations before such recommendations are made.

Sec. 8003 – Funding for Harbor Maintenance Programs: This provision promotes unnecessary harbor dredging by requiring the Corps to spend all moneys received by the harbor maintenance trust fund in a given year on maintenance activities during that same year, regardless of need. *Unnecessary dredging will cause significant and unnecessary harm to the environment.*

- This section should be stricken from the bill.

Sec. 8004—Harbor Maintenance Trust Fund Prioritization: This provision makes sweeping changes to the way harbor maintenance activities are funded and promotes unnecessary dredging. It increases the federal cost share, and thus the cost to taxpayers, for dredging deep draft harbors and establishes a new federal cost share for dredging private harbor berths. *This provision promotes unnecessary harbor dredging that will cause significant harm to the environment. It also imposes additional burdens on the federal taxpayer to fund new dredging with no assurance that the deeper depths will provide national benefits and no assurance that the dredging will not cause significant environmental harm*

- This section should be stricken from the bill.

Sec. 8005—Civil Works Program of the Corps of Engineers: Makes it out of order for Congress to appropriate less money for the Corps, not including funding for the harbor maintenance programs (and excluding all disaster funding), than was authorized the previous fiscal year except where a budget cut applies to all discretionary funds and programs of the Federal Government. Requires a 3/5 vote of the Senate to waive a point of order, and prohibits the House from doing so. *This provision would prohibit Congress from cutting the Corps' budget unless the Senate could muster a 3/5 vote. Such a hurdle is not required to cut funding at any other agency. In conjunction with Sec. 8003 this would virtually ensure that the Corps' budget will increase regardless of the impact on other national priorities.*

Title X—Innovative Financing Pilot Program: Establishes a pilot project for innovative financing of water resources infrastructure. Eligible projects include nonstructural measures, levees, dams, tunnels, aqueducts, reservoirs and other related water infrastructure, and desalinization plants. *While this Title states that all state and local permits must be obtained, it makes no mention of federal law.*

- This Title should be amended to clarify that all laws applicable to water resources project planning and construction carried out by the Secretary shall also apply to any water resources project that moves forward under Title X. The Title should also be amended to clarify that only projects in full compliance with federal and state laws shall be eligible for inclusion in the Title X pilot program.

Sec. 11001—Study on Risk Reduction: Requires the Secretary to enter into contract with the National Academy of Sciences not later than 18 months after enactment to carry out a study and make recommendations relating to options for reducing risk to human life and property from extreme weather events. The provision also identifies items to be studied by the NAS. *This study will provide critical information to assist the Corps in reducing the risks to communities of extreme weather events but the provision should also require the study to examine additional issues as outlined below, and should be undertaken as quickly as possible.*

- This section should be amended to also require an analysis of opportunities and benefits of utilizing nonstructural and restoration approaches to protecting communities from extreme weather as an element of the study. This section should also be amended to require an analysis of the unintended consequences of Corps projects on droughts and floods. In particular, the study should evaluate the unintended consequences on floods and droughts from outdated reservoir management regimes and construction of channel training structures.

Sec. 11002—GAO Study on Management of Flood and Drought: Requires the GAO to complete a report on the strategies used by the Corps for comprehensive management of floods storms and droughts, and identifies items to be addressed in the study. The report must be completed within 1 year of enactment. *This GAO study would provide critical information to assist Congress, the Corps, and the public in evaluating the effectiveness of the Corps' current approaches to flood and drought management. We recommend that the Committee ensure that GAO has access to water management and other experts outside of the federal government that could provide invaluable input for this study.*

Sec. 11003—Post-Disaster Watershed Assessments: Authorizes the Secretary to carry out watershed assessments in federally declared major disaster areas to identify specific flood or storm damage reduction projects, or ecosystem restoration projects that will help rehabilitate damaged infrastructure and reduce risks from future natural disasters. *This important provision will provide critical guidance for reducing future risks to people and infrastructure; such post-disaster assessments, however, should be mandatory.*

- This section should be amended to make the proposed post-disaster watershed assessments mandatory.

For more information please contact the National Wildlife Federation
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