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# H.R. 3080 and S. 601: Comparison of Select Provisions and Conference Developments

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## Summary

Conference report H.Rept. 113-449 would resolve differences between H.R. 3080, the Water Resources Reform and Development Act of 2013 (WRRDA 2013), and S. 601, the Water Resources Development Act of 2013 (WRDA 2013). Both bills represented omnibus authorization legislation for water resource activities, principally associated with the U.S. Army Corps of Engineers (Corps).

**Authorizing and Deauthorizing Projects.** The conference report would authorize 34 construction projects totaling \$25.65 billion (\$15.64 billion federal, \$10.01 billion nonfederal). The report would establish expedited House and Senate procedures for bills authorizing construction projects meeting specified criteria. The conference report would require an annual report from the Administration identifying proposed new studies, completed feasibility reports, and project modification reports. The conference report would create a process to deauthorize previously authorized projects with federal costs-to-complete totaling \$18 billion; the process would be led by the Administration, with opportunities for public input and congressional disapproval.

**Expediting Studies, Environmental Reviews, and Permits.** The conference report, like H.R. 3080 and S. 601, aims to expedite Corps studies and compliance with applicable environmental laws, including the National Environmental Policy Act (NEPA). The conference report would raise the project cost trigger for independent peer review of feasibility studies from \$45 million to \$200 million.

**Expanding Project Delivery and Financing Opportunities.** The conference report, like H.R. 3080 and S. 601, would encourage nonfederal opportunities in delivering water resources projects. It would expand opportunities for crediting for nonfederal work, financial, and study and project management. Like S. 601, the conference report also would establish a pilot program known as the Water Infrastructure Finance and Innovation Act (WIFIA) to finance water infrastructure projects. The Corps and the U.S. Environmental Protection Agency would administer the WIFIA pilot program.

**Investing in Navigation.** The conference report would encourage increased spending from the Harbor Maintenance Trust Fund (HMTF). It modifies prioritization of HMTF funding among different types of harbors but retains similar provisions contained in H.R. 3080 and S. 601 reserving certain portions of funds to harbors with less cargo. The conference report, like H.R. 3080 and S. 601, would not enact changes to inland waterway revenues in general but would increase the threshold for major rehabilitation efforts on inland waterways, authorize changes to waterway project delivery, and alter the cost-share for one project (Olmsted Locks and Dam). These changes may increase the likelihood of Inland Waterways Trust Fund (IWTF) monies being available for use on other inland waterway construction projects.

**Reducing Flood Risks.** The conference report would establish a levee safety initiative—a scaled-down version of S. 601 provisions—that would authorize Corps technical assistance and training to promote levee safety, Federal Emergency Management Agency (FEMA) assistance in establishing or improving state and tribal levee safety programs, and Corps levee rehabilitation assistance. Like H.R. 3080 and S. 601, the conference report would require the Corps to develop national levee safety guidelines and review.

**Restoring and Protecting Aquatic Ecosystems.** The conference report would provide additional direction on various efforts for regional river and coastal restoration (e.g., Chesapeake Bay, North Atlantic coastal restoration) and authorize the construction of projects which have previously been studied in the Everglades and Coastal Louisiana, among other places. It also would add to Corps authorities for the prevention, control, and eradication of invasive species.

**Addressing Other Issues.** The conference report includes provisions amending the applicability of the scope of the Environmental Protection Agency's oil spill prevention, control, and countermeasure regulations, by exempting certain farms from the requirements. It also includes amendments to certain water infrastructure provisions of the Clean Water Act (CWA). These CWA provisions, while representing the first amendments to CWA Title VI since 1987, do not address many of the more long-standing or controversial CWA issues. The conference report does not include the ocean-related provisions of H.R. 3080 and S. 601. Instead, it would authorize the Corps studies and limited construction of Corps projects to enhance ocean and coastal ecosystem resiliency.

## Contents

Conference Report Developments .....	1
Comparison of H.R. 3080, S. 601, and Conference Report.....	3
Expediting Studies, Environmental Reviews, and Permits.....	4
Corps Studies.....	5
Environmental Reviews.....	7
Corps Permitting.....	10
Expanding Project Delivery and Finance Opportunities.....	16
Nonfederal Work and Leadership on Studies and Projects.....	16
Water Infrastructure Finance and Innovation Act (WIFIA).....	16
Authorizing Projects and Managing Subsequent Authorizations .....	26
Project Authorizations and Authorized Project Purposes .....	26
Subsequent Authorization Processes .....	27
New Studies.....	27
New Project Authorizations and Modifications of Project Scope .....	27
Project Cost Modifications and Project Modifications .....	28
Investing in Navigation.....	32
Harbors .....	32
Inland Waterways .....	33
Reducing Flood Risks.....	39
Restoring and Protecting Aquatic Ecosystems .....	45
Ecosystem Restoration .....	45
Invasive Species .....	46
Deauthorizing Projects and Managing the Backlog.....	49
Addressing Other Issues .....	52
Oil Spill Prevention on Farms .....	52
Clean Water Act Amendments.....	52
Ocean Policy.....	53

## Tables

Table 1. Provisions Covered by CRS Report.....	4
Table 2. Select Expediting Study and Permit Provisions.....	11
Table 3. Select Provisions Intended to Expedite Environmental Reviews .....	13
Table 4. Select Provisions to Expand Project Delivery and Financing Opportunities.....	18
Table 5. Select WIFIA Provisions.....	23
Table 6. Select Project Authorization Provisions.....	29
Table 7. Select Provisions on Subsequent Authorizations of Studies, Projects, and Project Modifications.....	30
Table 8. Select HMTF Provisions.....	35
Table 9. Select Inland Waterways Provisions .....	38

Table 10. Select Flood Safety Provisions ..... 41  
Table 11. Select Ecosystem Restoration and Invasive Species Provisions ..... 47  
Table 12. Select Provisions on Deauthorization and Managing the Backlog ..... 50  
Table 13. Select Ocean Policy, Oil Spill Prevention, and Clean Water Act Provisions ..... 54  
Table A-1. Crosswalk of Conference Report, H.R. 3080, and S. 601 Bill Titles ..... 57

## **Appendixes**

Appendix. Crosswalk of Titles and Subtitles of Conference Report, H.R. 3080, and S. 601 ..... 57

## **Contacts**

Author Contact Information..... 58

## Conference Report Developments

Conference report H.Rept. 113-449 would resolve differences between the House-passed H.R. 3080, the Water Resources Reform and Development Act of 2013 (WRRDA 2013), and the Senate-passed S. 601, the Water Resources Development Act of 2013 (WRDA 2013).<sup>1</sup> The conference report adopts Water Resources Reform and Development Act for the act's title. Both bills represented omnibus authorization legislation focused on water resource activities, principally of the U.S. Army Corps of Engineers, and a few other environmental issues. The bills addressed many similar issues, but often used different means. During the House and Senate deliberations, some Members expressed frustration with how long Corps projects take. Some Members also expressed interest in authorizing new projects and deauthorizing older unconstructed projects. Some Members want more prominent nonfederal roles. Others support more funding for harbor maintenance and improved inland waterway construction. The earmark debate and concerns about congressional roles also shaped each bill's approach. The Administration provided comments during congressional deliberations. The two most recent communications consisted of a December 11, 2013, letter from the Assistant Secretary of the Army (Civil Works), hereinafter referred to as the ASA, to the conference managers;<sup>2</sup> and Army Corps testimony before the U.S. House Committee on Transportation and Infrastructure (T&I), Subcommittee on Water Resources and Environment, on April 29, 2014.

**Authorizing Projects.** The conference report would authorize a fixed set of 34 new construction projects totaling \$25.65 billion (\$15.64 billion in federal costs and \$10.01 billion in nonfederal costs),<sup>3</sup> and increase the authorization of appropriations for eight previously authorized projects. The report would establish expedited House procedures for the remainder of the 113<sup>th</sup> Congress and expedited Senate procedures through 2018 for bills authorizing construction projects that meet specified criteria. The conference report would require an "Annual Report" from the ASA to Congress identifying proposed new studies (including studies proposed by nonfederal entities) and completed feasibility and project modification reports. When the Senate passed S. 601 on May 15, 2013, there were an estimated 19 construction projects representing approximately \$10.8 billion (\$6.3 billion federal and \$4.5 billion nonfederal) that appeared to meet the new project authorization criteria in S. 601. When the House passed H.R. 3080 on October 23, 2013, it would have authorized a fixed set of 23 new construction projects at a total cost of \$13.0 billion (\$7.7 billion in federal costs and \$5.3 billion in nonfederal costs). The conference report included no comparable title to Title III of S. 601, Project Modifications.

**Expediting Studies, Environmental Reviews, and Permits.** The conference report, like H.R. 3080 and S. 601, would encourage completion of Corps studies within three years, limit study costs, and establish new procedures intended to expedite Corps completion of environmental

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<sup>1</sup> On October 31, 2013, the Senate considered H.R. 3080, and replaced the text passed by the House with the text of S. 601 as passed by the Senate. The Senate insisted on its amendment and requested a conference. While the House and Senate versions of H.R. 3080 are the basis for conference, this report compares H.R. 3080 as passed by the House and S. 601 as passed by the Senate, which is identical to the Senate version of H.R. 3080.

<sup>2</sup> Letter from Jo-Ellen Darcy, Assistant Secretary of the Army, Civil Works, to Senator Barbara Boxer, Senator David Vitter, Representative Bill Shuster, and Representative Nick J. Rahall, II, December 11, 2013, [http://www.eenews.net/assets/2013/12/12/document\\_daily\\_03.pdf](http://www.eenews.net/assets/2013/12/12/document_daily_03.pdf); hereinafter ASA's December 2013 letter to conference managers.

<sup>3</sup> These amounts represent the project construction cost (including beach nourishment); they do not include operation and maintenance. These amounts do not represent the same information as a CBO score of the potential budget impact of authorizing these projects.

compliance requirements, including the National Environmental Policy Act (NEPA). Independent peer review was among the “reforms” adopted in WRDA 2007 (P.L. 110-114). The conference report would raise the standard threshold for performing an independent peer review of a feasibility study from \$45 million total project costs to \$200 million, and extend applicability of the review requirement to studies initiated through 2019.

**Expanding Project Delivery and Financing Opportunities.** The conference report, like H.R. 3080 and S. 601, would encourage nonfederal opportunities in delivering water resources projects through provisions on crediting for nonfederal work and increasing opportunities for nonfederal contributions and nonfederal study and project management. The conference report would require the ASA to establish a five-year pilot program for nonfederal management of studies and a five-year pilot program of 15 projects for nonfederal management of project construction. The report also would consolidate various authorities under which nonfederal entities can perform construction on water resources projects and allow the federal share of construction costs to be reimbursed or credited (and credit transferred to other projects). Like S. 601, the conference report also would establish a pilot program known as the Water Infrastructure Finance and Innovation Act (WIFIA) to finance water infrastructure projects. The Corps and the U.S. Environmental Protection Agency (EPA) would administer the pilot program.

**Investing in Navigation.** The conference report, like H.R. 3080 and S. 601, would encourage increased spending from the Harbor Maintenance Trust Fund (HMTF). As in S. 601, the conference report eliminates the 50% nonfederal cost sharing requirement for harbor maintenance between 45 and 50 feet deep. It modifies prioritization of HMTF funding among different types of harbors but retains similar provisions contained in H.R. 3080 and S. 601 reserving certain portions of funds to harbors with less cargo. The conference report, like H.R. 3080 and S. 601, would not enact changes to inland waterway revenues in general but would increase the threshold for major rehabilitation efforts on inland waterways, authorize changes to waterway project delivery, and alter the cost-share for one project (Olmsted Locks and Dam). These changes may increase the likelihood of Inland Waterways Trust Fund (IWTF) monies being available for use on other inland waterway construction projects.

**Reducing Flood Risks.** The conference report would establish a levee safety initiative that would authorize: Corps technical assistance and training to promote levee safety, Federal Emergency Management Agency (FEMA) assistance in establishing or improving state and tribal levee safety programs, and authorize the Corps to provide levee rehabilitation assistance. Elements of the initiative are similar to provisions in S. 601, but with either no or lower levels of authorizations of appropriations. Like H.R. 3080 and S. 601, the conference report would require the ASA to develop national levee safety guidelines and review and update Corps guidelines for vegetation on levees. Similar to S. 601, the conference report would allow the ASA to repair a levee to the design level of protection (rather than to pre-storm conditions) or if needed modify the project to address major deficiencies or implement nonstructural measures. The conference report would direct the ASA to ensure that part of its levee inspection program provides adequate information for reaching a levee accreditation decision for purposes of floodplain mapping related to FEMA’s National Flood Insurance Program (NFIP) mapping.

**Restoring and Protecting Aquatic Ecosystems.** The conference report would potentially provide additional direction of various efforts for regional river and coastal restoration (e.g., Chesapeake Bay, North Atlantic coastal restoration) and authorize the construction of projects which have previously been studied in the Everglades and in Coastal Louisiana, among other

places. Similar to H.R. 3080, it would also add to Corps authority to undertake activities for the prevention, control, and eradication of invasive species at Corps projects.

**Deauthorizing Projects and Managing the Backlog.** The conference report would create a one-time process aimed at deauthorizing previously authorized projects with federal costs-to-complete totaling \$18 billion; the ASA would lead the process, and would provide opportunity for public input and congressional disapproval. This one-time process and other backlog provisions included in the conference report combine elements of the deauthorization and backlog management provisions of H.R. 3080 and S. 601.

**Addressing Other Issues.** The conference report includes provisions, different from those in S. 601, that would amend the applicability of the Environmental Protection Agency’s oil spill prevention, control, and countermeasure regulations. The conference report also includes certain water infrastructure provisions of the Clean Water Act (CWA) that were not included in H.R. 3080 or S. 601. These CWA provisions, while representing the first amendments to CWA Title VI since 1987, do not address many of the more longstanding or controversial CWA issues. Most of the CWA provisions included in the conference report address CWA Title VI, which authorizes grants to states to capitalize state loan programs (State Revolving Funds, or SRFs) for wastewater treatment facility projects.

The conference report does not include the ocean-related provisions of the House and Senate bills. H.R. 3080 would have prohibited programs or actions authorized by H.R. 3080 to be used for furthering implementation of Executive Order 13547 on coastal and marine spatial planning. S. 601 would have created a National Endowment for the Oceans. Instead, it would authorize the ASA to undertake studies of Corps projects in coastal zones to enhance ocean and coastal ecosystem resiliency; it also would authorize the construction of smaller projects or inclusion of recommendations for congressional authorization in the Annual Report.

## **Comparison of H.R. 3080, S. 601, and Conference Report**

The remainder of this report provides a side-by-side analysis of selected provisions of H.R. 3080, S. 601, and the conference report. The selection of provisions addressed herein was based on attention during congressional deliberations, significance for the Corps and its activities, or policy differences between the bills. Many of the project-specific or geographically specific provisions (e.g., provisions of Titles III and V of S. 601, Title IV of the conference report) generally are not discussed. The **Appendix** identifies the comparable titles of the two bills and conference report. The report is divided into the sections shown in **Table 1**.



**Table I. Provisions Covered by CRS Report**

<b>CRS Report Section</b>	<b>Sections of H.R. 3080</b>	<b>Titles and Sections of S. 601</b>	<b>Titles and Sections of Conference</b>
“Expediting Studies, Environmental Reviews, and Permits”	101, 102, 103, 104	2033, 2034, 2042	1001, 1002, 1005, 1006, 1044
“Expanding Project Delivery and Finance Opportunities”	107, 108, 109, 112, 116, 117	2011, 2012, 2013, 2025, 2032, Title X, 11005	1007, 1014, 1015, 1016, 1017, 1018, 1020, 1043, 5021-5035
“Authorizing Projects and Managing Subsequent Authorizations”	111, 118, 121, 133, 143, 401, 402	1002, 1003, 1004, 2003, 2004, 2014, 2055, 4002, Title V	1023, 1030, 1036, 1045, 7001, 7002, 7003, 7004
“Investing in Navigation”	201, 202, 206, 212, 213, 214, 216	7003, 7004, 7005, 7006, 7007, 7008, 8003, 8004, 8005	2002, 2003, 2004, 2006, 2007, 2101, 2102, 2104, 2105, 2106, 2107
“Reducing Flood Risks”	122, 124, 126, 127, 147	2003, 2020, 2021, 2022, 2030, 2040, 6004, 6005, 6007, 6009, Title IX, 11004	1030, 1036, 1037, 3001, 3013, 3014, 3016, 3017, 3025, 3029,
“Restoring and Protecting Aquatic Ecosystems”	137, 144, 145	2045, 2052, 3018, 5002, 5003, 5007	1011, 1039, 4009, 4010, 4011
“Deauthorizing Projects and Managing the Backlog”	119, 301, 302, 303	2049	6001, 6002, 6003
“Addressing Other Issues”	146	Title XII, 13001	1049, 4014, 5001-5013

## Expediting Studies, Environmental Reviews, and Permits

Like both the House and Senate bills, the conference report includes provisions aimed at expediting water project delivery and permit processing. Most of these provisions intend to expedite—

- Corps studies by establishing deadlines, schedules, or funding limits for feasibility studies and eliminating certain study requirements;
- environmental compliance requirements, including primarily provisions intended to expedite Corps compliance with the National Environmental Policy Act and outside agency issuance of any permit, review, or other approval required under any applicable federal law; and
- Corps permitting.

During the House and Senate deliberations, some Members expressed frustration with the cost and duration of Corps studies. Most Corps feasibility studies are cost-shared 50% federal and 50% nonfederal. The degree to which various factors and requirements contribute to the time it takes to complete a Corps study is difficult to parse out and attribute to a single environmental requirement. For example, activities performed to demonstrate compliance with applicable environmental requirements may occur concurrently to the Corps completing actions required by other laws (e.g., preparing analyses necessary to determine a project’s economic costs and benefits). The larger, more complex, and costly the project being studied, often the longer each

step in the study process may take to complete. Anecdotal evidence indicates that individual studies may take longer due to disagreements with federal resource agencies or state permitting agencies, but there are limited data available to determine whether such delays are systemic or project-specific. The role that Congress plays in authorizing studies and project construction and the timing of appropriations have been identified as factors having significant effect on the duration of studies and ultimately project delivery.<sup>4</sup> For example, in terms of the project development process, years may pass *between* the following steps shown in each bullet:

- approval to initiate a study, to appropriation of federal funds for the study,
- complete reconnaissance study, to initiation of feasibility study,<sup>5</sup> and
- ASA transmission to Congress of the feasibility report, to congressional construction authorization.

At an April 29, 2014, House T&I Subcommittee on Water Resources and Environment hearing, the Corps witness testified that, while the agency is committed to expediting the Corps planning process:

certain elements of provisions in the proposed legislation regarding the elimination of reconnaissance studies, fixed lengths for feasibility studies, project permitting and environmental streamlining, study authority resolutions, and the application of Independent External Peer Review, could actually become counterproductive. By constraining the Corps from exercising the same initiative that led to Civil Works Transformation and Planning Modernization, certain requirements could lead to a less flexible, overly restrictive program that reduces efficiency, hinders project approval, and increases the probability of a project being terminated ...<sup>6</sup>

## Corps Studies

The conference report would require the Corps to complete feasibility studies within certain time limits (with more flexibility provided for timing of study completion than in H.R. 3080) and federal funding limits. Like §104 of the House bill, the conference report would eliminate the requirement to prepare a separate reconnaissance study and instead direct the Corps to include

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<sup>4</sup> On June 5, 2013, Major General Michael Walsh, Deputy Commanding General for Civil and Emergency Operations, testified at the House T&I Subcommittee on Water Resources and Environment's hearing "A Review of the United States Army Corps of Engineer's Reports" (testimony available at <http://transportation.house.gov/hearing/review-united-states-army-corps-engineers-chief%E2%80%99s-reports>). In response to various questions from several Members of Congress, the General discussed issues that may delay project delivery, as well as efforts being implemented by the Corps to streamline project delivery. Processes or procedures related to meeting environmental compliance requirements were not included among those that delayed projects or that were being changed to accelerate delivery, he testified. The limited availability of funds necessary to continue the number of projects authorized for construction was identified as the primary factor affecting the timing of project delivery. When asked specifically whether or which environmental regulatory requirements implemented by outside agencies could be eliminated to expedite project delivery, the General stated that he could not identify a single set of requirements established by Congress that he would suggest eliminating to streamline the process.

<sup>5</sup> A feasibility study cannot be begun for most projects until a feasibility cost-share agreement with the nonfederal entity has been negotiated and signed. Also, beginning a feasibility report may be considered as starting a new study phase during Administration budget development; ongoing studies, rather than studies entering new phases, have been prioritized for appropriations in recent years.

<sup>6</sup> U.S. Congress, House Committee on Transportation and Infrastructure, Subcommittee on Water Resources and Environment, *Army Corps of Engineers Chief's Reports*, 113<sup>th</sup> Cong., 2<sup>nd</sup> sess., April 29, 2014.

analysis required for those studies (preliminary analysis of the federal interest and the costs, benefits, and environmental impacts of the project) in a feasibility report. Like §2034 of the Senate bill, the conference report would require the Corps to develop a detailed project schedule for certain milestones needed to complete feasibility studies. Selected provisions related to study acceleration are shown in **Table 2**.

### **Findings and Responses to Independent Peer Review of Corps Studies**

Whether independent peer review provisions of WRDA 2007 (P.L. 110-114) have improved Corps projects and decision-making continues to be discussed. In a November 2013 Corps report on peer review, the Corps stated:

only one significant change to any project study recommended plan has resulted from IEPR. A review comment on the Olmsted Lock and Dam exposed a flaw in the treatment of contingencies within the cost estimate. Correcting the cost estimate revealed a significant underestimation of the costs and necessitated revising the report supporting a reauthorization request required under section 902 of WRDA 1986, as amended. Overall, most review comments have focused on the need for improved documentation (e.g., assumptions, methods, and rationale) and additional or more rigorous analyses.

The report also stated that peer review panel reports covering “68 project studies have produced 1155 total comments, with 353 considered high significance.” Average cost per review was \$175,000. The Corps responds, but does not always adopt a panel’s comments. For example, a 2013 panel made a high significance comment that the “Federal interest has not been demonstrated ... because a multi-port analysis assessing competition among regional ports is not provided.” In 2014, the Corps chose not to adopt this comment explaining that: “it makes the most sense to assume the net effect this [regional competitor port] interplay would be equilibrium. As such it is valid to assume that each seaport will continue to retain its historical share of regional cargo...shifting cargo benefits among regional ports is excluded from the decision making process.”

In a 2010 Corps report on peer review, the Corps stated that a high significance comment “describes a fundamental problem with the project that could affect the recommendation, justification, or success of the project.” The 2010 report included per project review costs and summarized Corps responses. At that time, the project with the highest review cost was the Louisiana Coastal Protect and Restoration project at \$586,000; changes made to the project in response to panel findings included: additional analyses to address risk assessments of structural measures, additional documentation of tradeoffs to inform plan selection and address tradeoffs, and actions to coordinate activities across coastal Louisiana programs and business lines. The least costly review was \$97,000. This 2010 Corps report found: “A frequent comment provided to the [coastal storm damage reduction] was that the design analyses were deficient and that a more refined analysis of design and build needed to be conducted” and “The reviewers of the [deep draft navigation] reports commented that assumptions regarding future business (e.g., trucking costs, longshoreman association fees, cement industry, transportation costs) and the benefits provided were not supported by analysis.”

A 2012 Government Accountability Office (GAO) report on Corps’ peer review identified that in addition to direct costs of peer reviews, Corps resources also are used to manage reviews; the GAO report also stated: “the addition of peer review to the Corps study process has resulted in indirect costs by altering project study schedules to allow for time needed to complete peer reviews.” GAO found: “By choosing to apply peer review late in the project study process, the Corps has effectively chosen to not use the results of peer review to enhance its decision-making process and ensure selection of the most effective project alternatives.” GAO recommended: “the Corps to, among other actions, better track peer review studies, revise the criteria for determining which studies undergo peer review and the timing of these reviews, and improve its process for ensuring contractor independence.” The 2013 Corps peer review report documents progress made on GAO’s recommendations.

**Sources:** U.S. Army Corps of Engineers, *Report on the Implementation of Independent Peer Review*, Nov. 2013, and *Summary of Independent External Peer Review Final Panel Comments*, Nov. 5, 2010; and Memorandum from L.G. Thomas P. Bostick, Chief of Engineers, to Assistant Secretary of the Army (Civil Works), on Jacksonville Harbor, Duval County, Florida - Final USACE Response to Independent External Peer Review, April 16, 2014, <http://www.usace.army.mil/Missions/CivilWorks/ProjectPlanning/CompletedPeerReviewReports.aspx>; U.S. GAO, *Peer Review Process for Civil Works Project Studies Can Be Improved*, GAO-12-352, March 8, 2012.

Independent peer review was among the “reforms” adopted in WRDA 2007 (P.L. 110-114).<sup>7</sup> The conference report would raise the standard threshold for performing an independent peer review of a feasibility study; it would go from \$45 million total project costs to \$200 million. Like S. 601, the conference report would extend the requirement for independent peer review from those studies initiated between 2007 and 2014 to those initiated between 2007 and 2019, and amend the congressional requirements on the reporting on decisions not to perform peer review and distribution of the results of the peer review and the agency’s responses.

## **Environmental Reviews**

Project acceleration provisions in the conference report (§1005) are intended to expedite the Corps’ overall project development by expediting one element of the feasibility report process—preparation of documents necessary to comply with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 et seq.). To do so, the conference report (§1005(a)) would amend Section 2045 of WRDA 2007 (P.L. 110-114, codified at 33 U.S.C. 2348) to replace existing “Project Streamlining” requirements.

The NEPA compliance process is sometimes referred to as the environmental review process. Broadly, NEPA requires federal agencies to fully consider a project’s significant impacts on the environment, and to inform the public of those impacts, *before* making a final decision about the project.<sup>8</sup> Provisions in the conference report (§1005(a)) would expand the definition of “environmental review process” to include the “process for and completion of any environmental permit, approval, review, or study required for a water resources project under any Federal law other than NEPA.”<sup>9</sup> Provisions in the conference report, however, would apply primarily to actions taken by the Corps within the context of demonstrating compliance with NEPA.

In accordance with its broader obligation to determine a project’s potential economic, social, and environmental benefits and detriments, Corps planning is performed in accordance with its “Environmental Evaluation and Compliance” process. That process is implemented by the Corps to ensure that activities necessary to identify and demonstrate compliance with any applicable environmental requirements are integrated into the Corps’ overall planning process. The Environmental Evaluation and Compliance process includes steps necessary to ensure compliance with environmental requirements that arise from local, tribal, state, or federal laws and regulations that may apply as a result of project-specific impacts to protected resources. The NEPA compliance process generally forms the framework that the Corps uses to identify applicable project-specific requirements and to coordinate with outside agencies, if necessary, to comply with those requirements. For projects that require a feasibility study, the Corps usually must prepare an environmental impact statement (EIS), pursuant to NEPA. Generally, it is Corps

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<sup>7</sup> Another “reform” included in WRDA 2007 related to changes in how the Corps mitigates its project’s environmental impacts. The conference report adopts provisions related to mitigation (§1044 and §1045), which are similar to provisions in S. 601. The conference report also includes language (§1028) authorizing the Corps to participate in cost-shared fish habitat measures at Corps projects with fish hatcheries that have been authorized to compensate for fish losses.

<sup>8</sup> Regulations implementing NEPA, applicable to all federal agencies, were promulgated by the Council on Environmental Quality (CEQ) under 40 C.F.R. 1500-1508. Corps procedures to implement NEPA supplement the CEQ regulations, at 33 C.F.R. 230, take into account issues specific to Corps projects, including requirements explicitly applicable to the preparation of a feasibility study.

<sup>9</sup> See also the definition of “project study,” in the conference report (§1005(a)), that would refer to feasibility study carried out under 33 U.S.C. 2282.

practice to ensure that any outside agency consultations and decisions regarding any permits or approvals are complete before a feasibility study/EIS is complete.

Many of the project acceleration provisions in the conference report (§1005(a)) pertain to outside agency involvement in the NEPA process or in making decisions under other environmental laws. Those provisions are largely intended to coordinate actions or input from outside federal agencies which have some expertise regarding an affected resource or jurisdiction by law to control the impacts to that resource (e.g., an agency authorized to issue a permit or other approval associated with an impact to that resource).<sup>10</sup>

Currently, Section 2045 of WRDA 2007 (33 U.S.C. 2348) requires that the Corps establish a coordinated review process for any water resources project that requires the preparation of a feasibility study and an EIS under NEPA. When implementing that process, the Corps was authorized to establish a schedule for federal, state, or local government agencies or Indian tribes to process, approve, or issue all reviews, analyses, opinions, permits, licenses, and approvals required for a water resources project (which is also allowed under existing regulations implementing NEPA).<sup>11</sup> The conference report would similarly apply to project studies that require the preparation of an EIS under NEPA, but could also be applied to other projects as deemed appropriate by the ASA.

As in the existing Section 2045, many of the provisions in the conference report would codify requirements that are largely similar to existing regulations implementing NEPA<sup>12</sup>. However, some provisions may add to or change existing Corps practices or requirements in order to demonstrate compliance with NEPA, or change outside agencies' procedures for completing their respective decision-making processes. Selected provisions that may result in such changes are listed in **Table 3**. While the conference report may change certain procedures applicable to environmental reviews, none appear to substantially affect the Corps' obligation to comply with existing environmental requirements (established under NEPA or any other environmental law) that may apply to a project.

Until the Corps interprets the project acceleration provisions and integrates them with its current Environmental Evaluation and Compliance process, it is difficult to determine whether the procedural changes would expedite environmental reviews. Some of provisions could add time to the Corps' already-complex planning process. For example, the Corps would be required to prepare a coordination plan to coordinate and schedule outside agency participation in the environmental review process (see **Table 3**). When preparing the plan, the Corps would be

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<sup>10</sup> The Corps is obligated to coordinate its analysis of project impacts with other federal agencies that have jurisdiction over any affected resource or that may have expertise necessary to assess the degree to which the project may have a regulated impact. Those agencies would not necessarily be authorized to "approve" or "disapprove" a Corps project. However, they may be required under federal law to specify conditions under which a project may proceed (e.g., in the form of a permit or certification) or methods to mitigate impacts to a protected resource.

<sup>11</sup> See CEQ requirements applicable to time limits, at 40 C.F.R. 1501.8.

<sup>12</sup> Many provisions in the conference report (§1005) would codify requirements largely similar to requirements established by CEQ in its regulations implementing NEPA (see "NEPA and Agency Planning" requirements in 40 C.F.R. Part 1501, "Elimination of duplication with state and local procedures" at 40 C.F.R. 1506.2, and "Agency procedures" at 40 C.F.R. 1507.3). These include provisions in §1005 pertaining to the project review process, lead agency responsibilities, participation of the lead and cooperating agencies, programmatic compliance, memoranda of agreement for early coordination, and development of categorical exclusions. That is, the conference report would codify requirements similar to those currently implemented by the Corps, in accordance with previous directives from CEQ.

required to set deadlines for outside agencies to complete the environmental review process—something the Corps can do currently on a project-by-project basis. Those deadlines may be extended for “good cause.” Other than requiring the Corps to prepare an additional planning document, this provision may not substantially alter the Corps’ existing procedures to coordinate outside agency actions.

The conference report (§1005(a)) would also establish unique requirements applicable to the NEPA compliance process, in general, but may have limited impact on the Corps’ NEPA process, in particular. Specifically, financial penalty provisions would create a unique system of reprogramming a federal agency’s funding if that agency did not reach a decision on a permit, license, or other approval by a certain deadline (the later of 180 days after an application for the approval is complete; *and* the Corps completes the NEPA process). As discussed above, the Corps generally does not complete the NEPA process until permits and other required approvals are in place. Also, approvals required for Corps projects, including those required under federal environmental laws, are most often issued by state, tribal or local agencies, not federal agencies. Given the timing in which the Corps generally has such approvals in place and the role that *federal* agencies generally have in issuing such approvals for Corps projects, there may be limited circumstances in which the financial penalty provisions may be invoked.

The conference report also includes a provision (§1005(b)) that would apply to actions associated with the repair, reconstruction or rehabilitation of a project that is in operation or under construction when damaged in an event associated with a major disaster or emergency declared by the President pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 et seq.). Such actions would be processed as a categorical exclusion (CE), pursuant to CEQ regulations (40 CFR 1508.4). According to those CEQ regulations, projects known by an agency to have no significant impact on the environment may be categorically excluded from the requirement to prepare an environmental assessment or EIS, under NEPA. Those regulations also provide for conditions under which an agency may be required to determine whether a given project involves “extraordinary circumstances” that may result in significant impacts (e.g., circumstances that may require additional review under NEPA).

The conference report (§1005(b)) may not substantially change existing Corps practices. In its procedures implementing NEPA, the Corps explicitly identifies “activities at completed Corps projects” as actions processed as CEs, regardless of whether those activities are undertaken in response to an emergency.<sup>13</sup> If the action is to address a project “under construction,” any additional NEPA compliance may not be required, since the impacts of that project would presumably be evaluated in an existing NEPA document. Also, the Stafford Act statutorily exempts certain disaster-related activities from NEPA, including the repair, restoration, reconstruction, or replacement of a damaged public facility.<sup>14</sup> As a result, some disaster-related repairs undertaken by the Corps could potentially be waived from NEPA. Designating a project as a CE is not a waiver from NEPA. Until the Corps interprets this directive, it is not clear whether it could result in a project being subject to some, albeit limited, level of NEPA review when it otherwise may have been subject to no review, pursuant to the Stafford Act.

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<sup>13</sup> See 33 C.F.R. § 230.9(b).

<sup>14</sup> The NEPA exclusion is specified at 42 U.S.C. 5159; the actions potentially subject to that waiver involving the repair, restoration, and replacement of existing facilities are specified at 42 U.S.C. 5172.



## Corps Permitting

In addition to undertaking water resources projects, the Corps also has regulatory responsibilities related to activities that may affect navigable waters and wetlands. H.R. 3080 and S. 601 each included provisions that could be identified as accelerating or streamlining the Corps' regulatory program as shown in **Table 2**. Both bills proposed eliminating the expiration of a Corps authority that allows the agency to accept funds from nonfederal public entities to expedite the processing of Corps permits for projects serving a public purpose. The authority was originally set to expire in 2003, but has been extended multiple times. Under current law the authority is set to expire December 31, 2016. Additionally, H.R. 3080 would have expanded the eligibility of entities that can provide funds to the Corps to expedite its processing of permits. The current authority is limited to nonfederal public entities. H.R. 3080 would have added public-utility companies and natural gas companies. In December 2010, Congress clarified in P.L. 111-315 that private entities were not eligible entities under this authority after concerns that a Corps district was allowing limited use of the authority by private entities at the request of public entities.<sup>15</sup> S. 601 would not expand the eligible entities for this authority; instead, S. 601 would have required the Corps take steps to improve the transparency, reporting, and consistency of how this authority is implemented.<sup>16</sup> The conference report (§1006) would expand the existing authority to allow public-utility companies and natural gas companies to provide funds to the Corps to expedite the agency's processing of permits related to a project or activity for a public purpose; the conference report also would extend the existing authority indefinitely by eliminating its expiration, with the limitation that the authority for public utility companies and natural gas companies expires seven years after enactment.

### *For Further Reading*

CRS Report R43209, *Environmental Requirements Addressed During Corps Civil Works Project Planning: Background and Issues for Congress*, by Linda Luther.

CRS Report R41243, *Army Corps of Engineers: Water Resource Authorizations, Appropriations, and Activities*, by Nicole T. Carter and Charles V. Stern.

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<sup>15</sup> Although there were no congressional reports that accompanied the enacted bill, the text of the bill had been included in a larger bill (H.R. 5892, Water Resources Development Act of 2010) and discussed in the accompanying report, H.Rept. 111-654; the report stated: "the Committee has expressed concern that allowing a regulated entity to contribute to the cost of its regulator has the potential to affect the objectivity of that regulatory."

<sup>16</sup> In a 2010 letter to the then-Chairman of House T&I, the Government Accountability Office (GAO) concluded that the Corps had made some progress on GAO's 2007 recommendations to improve implementation of the authority, but that it had not fully developed an oversight effort for district implementation of this authority (GAO, *Status of U.S. Army Corps of Engineers Effort to Implement GAO's 2007 Recommendations Regarding Its Section 214 Authority*, GA-10-385R, February 19, 2010, <http://www.gao.gov/assets/100/96553.pdf>).

**Table 2. Select Expediting Study and Permit Provisions**

Topic	H.R. 3080	S. 601	Conference
Feasibility Study Limits and Termination	<p>§101 would require feasibility studies be completed within 3 years of initiation, have a maximum federal cost of \$3 million, and be concurrently reviewed within the Corps. The Corps may extend the study period to up to one year, but if not complete after that extension, the Assistant Secretary of the Army (Civil Works) (ASA) shall notify nonfederal partner and Congress that authorization for the feasibility study will be terminated.</p>	<p>§2032 would require that a feasibility study be completed within 3 years of initiation and at a maximum federal cost of \$3 million. If the ASA determines the study cannot be conducted accordingly due to its complexity, nonfederal entities shall be notified and a new project and cost timeline provided. No change to existing study deauthorization process (33 U.S.C. 2264).</p>	<p>§1001 would require feasibility studies be completed within 3 years of initiation (unless the ASA determines a study is too complex to comply with this requirement), have a maximum federal cost of \$3 million, and be concurrently reviewed within the Corps. §1001 would deauthorize any feasibility study that is not completed 7 years after initiation. §1001 would require that the ASA, within 90 days of initiating a feasibility study, begin the processes for federally mandated reviews; convene a meeting of all federal, tribal, and state agencies that may be required to conduct a reviews and analyses for the study; and provide the information for such reviews and analyses in a thorough and timely manner. The ASA is to report on implementation 18 months and again four years after enactment. The conference report makes no changes to the existing study deauthorization process in 33 U.S.C. 2264.</p>
Expediting Corps Permit Processing	<p>§102 would expand an existing authority (33 U.S. 2201 note, which currently is limited to nonfederal public entities) to allow public-utility companies and natural gas companies (as defined in 42 U.S.C. 16451) to provide funds to the Corps to expedite the agency’s processing of permits related to a project or activity for a public purpose. §102 also would extend the authority indefinitely by eliminating its expiration.</p>	<p>§2042 would extend the authority indefinitely by eliminating its expiration. It would clarify the Corps requirements for public availability and consistency of information regarding the use of this authority and require the agency to produce an annual report on its use.</p>	<p>§1006 would expand an existing authority (33 U.S.C. 2201 note) which currently is limited to nonfederal public entities to allow public-utility companies (as defined in 42 U.S.C. 16451) and natural gas companies (as defined in 42 U.S.C. 16451 and including a person engaged in the transportation of natural gas in intrastate commerce) to provide funds to the Corps to expedite the agency’s processing of permits related to a project or activity for a public purpose. §1006 also would extend indefinitely the existing authority by eliminating its current expiration, with the limitation that the authority for public utility companies and natural gas companies expires 7 years after enactment. §1006 would require that GAO, within 4 years, study implementation of this authority for these two types of companies. §1006 would clarify the Corps requirements for public availability and consistency of information regarding the use of this authority and require the agency to produce an annual report on its use.</p>



Topic	H.R. 3080	S. 601	Conference
Feasibility Report Schedule	No comparable provision.	§2034 would amend requirements applicable to the preparation of Corps reports (33 U.S.C. 2282) to require the preparation of a “Detailed Project Schedule” that identifies milestones needed to complete a feasibility report and establishes deadlines to reach those milestones. For any missed deadline, the Corps would be required to submit a report to the nonfederal partner detailing why it was missed.	§1002, among other things, would amend requirements applicable to the preparation of Corps reports (33 U.S.C. 2282) to require the preparation of a “Detailed Project Schedule” identify milestones for study completion and establish deadlines to reach those milestones. For any missed deadline, the Corps would be required to submit a report to the nonfederal partner detailing why it was missed.
Consolidated Reconnaissance and Feasibility Studies	§104 would repeal existing directive (33 U.S.C. 2282(b))to the ASA to prepare reconnaissance study before preparing a feasibility study; and amend requirements applicable to the contents of feasibility reports to require the inclusion of preliminary analysis previously required for reconnaissance studies.	No comparable provision.	§1002, among other things, would repeal existing directive to the ASA to prepare reconnaissance studies, like H.R. 3080.
Independent Peer Review Changes	No comparable provision.	§2007 would amend the independent peer review requirements for feasibility studies from applying to studies initiated between 2007 and 2014 to those initiated between 2007 and 2019. It also would provide amended direction on reporting on reasons for not initiating a peer review and distribution of the results of the peer review and the agency’s responses.	§1044 would raise the standard trigger for independent peer review of feasibility studies from projects estimated to cost \$45 million to \$200 million, while extending the requirement for such review for 12 years from 2007 (i.e., through 2019). §1044 would also alter the peer review requirements for reporting and distribution similar to S. 601.

Source: CRS.

**Table 3. Select Provisions Intended to Expedite Environmental Reviews**

Topics	H.R.3080	S.601	Conference <sup>a</sup>
Project Acceleration	<p>§103(b) would amend and replace Section 2045 of WRDA 2007 (33 U.S.C. 2348, Project Streamlining ) to create Streamlined Project Delivery procedures that would apply project studies, initiated after enactment, that require the preparation of an EIS under NEPA.</p>	<p>§2033 would also amend Section 2045 of WRDA 2007 to establish new Project Acceleration procedures. In addition to project studies that require an EIS, the Secretary would be authorized to apply the procedures to other projects, as the Secretary deems appropriate.</p>	<p>§1005(a) would amend and replace Project Streamlining provisions in Section 2045 of WRDA 2007 (33 U.S.C. 2348) with new Project Acceleration procedures intended to expedite compliance with NEPA and other environmental requirements. Similar to S. 601, the procedures would apply to project studies (i.e., projects that require the preparation of a feasibility study) that require the preparation of an EIS, but also may be applied to other projects as the ASA deems appropriate. (Selected amendments to Section 2045 are discussed below.)</p>
Coordination Plan and Deadlines	<p>§103(b) includes “Coordinated Reviews” provisions, proposed under Section 2045(f), that would require the Corps to consult with relevant outside agencies to establish a “Coordination Plan” and “Schedule” to coordinate the timing of public and agency participation in the environmental review process.</p> <p>Apart from potential timeframes established in the schedule, the Corps would be required to establish “comment deadlines” for outside agencies to comment on a draft EIS and “other comment periods” that may be associated with the environmental review process. Also, proposed Section 2045(f)(4) proposed “deadlines for decisions under other laws.” The provision includes deadlines for outside federal or nonfederal agencies to make a determination regarding or to approve or disapprove a project study. Separate statutory deadlines would be set for decisions required either before or after the NEPA process is complete. If no action is taken by the agency</p>	<p>§2033 includes “Coordinated Reviews” provisions, proposed under Section 2045(j), that would require the development of a Coordination Plan for purposes similar the plan required in H.R. 3080, but with no separate provisions applicable to a required schedule. Instead, the Corps would be required to incorporate the plan into the project schedule milestones established in the Detailed Project Schedule, proposed in §2034 (see above).</p> <p>Like H.R. 3080, deadlines would be established for comments on a draft EIS or “other comments,” but would also specify conditions under which those deadlines could be extended. Provisions applicable to “deadlines for decisions under other laws” would be included, but would use deadlines established as part of a Coordination Plan for an individual project, not a statutory deadline applicable to all projects. In contrast to H.R. 3080, if an agency missed a deadline, the Corps would be required to report that missed deadline to Congress, not close the record on the</p>	<p>§1005(a) includes “Coordinated Reviews” provisions, proposed under Section 2045(g), that would require the Corps to consult with and with the concurrence of the project sponsor and each cooperating agency to establish a Coordination Plan to coordinate public and agency participation in the environmental review process. Similar to provisions in S. 601, the Corps would be required to incorporate the plan into the Detailed Project Schedule. The Conference report would specify factors to be considered when establishing a schedule for completion of the environmental review process, largely similar to the proposed factors to be considered in H.R. 3080, with the exception that the schedule must be completed as practicable, but not later than 45 days after the close of the public comment period for a draft EIS (this directive is largely similar to a requirement proposed in S. 601 that was included among the Issue Identification and Resolution provisions in proposed Section</p>

Topics	H.R.3080	S.601	Conference <sup>a</sup>
	within the require timeframe, the Corps would be authorized to close the record for the project as it relates to that decision.	decision.	2045(k), discussed below).  Provisions applicable to the establishment of deadlines for comments on a draft EIS, “other comments,” and decisions under other laws would be largely similar to those in the S. 601.
Dispute Resolution Procedures	§103(b) includes “Issue Identification and Resolution” provisions,” proposed under Section 2045(g), that would that would establish procedures intended to identify and resolve potential disputes that may arise between the Corps and outside federal and nonfederal agencies involved in the project.	§2033 includes “Issue Identification and Resolution” provisions, proposed under Section 2045(k), that would establish procedures to resolve disputes between the Corps and outside federal and nonfederal agencies involved in the project. Unique to the Senate proposal, S. 601 would allow the Secretary, not later than 45 days after the close of the public comment period for a draft EIS, to convene a meeting with the project sponsor and relevant outside agencies (federal and nonfederal) to establish a schedule to complete decisions on the project. Unlike H.R. 3080, S. 601 includes requirements applicable to a multi-tiered dispute resolution process, that could be initiated by the Secretary, and that could potentially reach the Council of Environmental Quality or the President.	§1005(a) includes “Issue Identification and Resolution” provisions, proposed under Section 2045(h), that are, with a few exceptions, largely similar to those proposed in S. 601. One exception is that there would be no multi-tiered dispute resolution process. Instead, the Secretary may resolve an issue with the heads of other relevant federal agencies.
Financial Penalty Provisions	No comparable provisions.	§2033 includes “Financial Penalty Provisions,” in the “Issue Identification and Resolution” provisions proposed under Section 2045(k)(5), that would specify conditions under which a federal agency may be fined if it failed to render a decision, required under any federal law, within the later of 180 days after—the Corps completes the NEPA process; and an application for a required permit, license, or approval is complete. Among other provisions, S. 601 specifies the dollar amount of potential fines and the limit on such fines that could be imposed on a single agency office for a given project, the total amount assessed in a single	§1005(a) includes “Financial Penalty Provisions,” in the “Issue Identification and Resolution” provisions proposed under Section 2045(h)(5), that are largely similar to those proposed in S. 601.

Topics	H.R.3080	S.601	Conference <sup>a</sup>
Statute of Limitations	§103(b) includes “Timing of Claims” provisions, proposed under Section 2045(j), that would that would bar judicial review of a permit, license, or other approval issued by a federal agency for a project study unless it is filed within 150 days publication of a notice in the <i>Federal Register</i> announcing that the permit, license, or other approval is final pursuant to the law under which the agency action is taken, unless a shorter time is specified in the Federal law which allows judicial review.	years on a single agency office, and conditions under which an agency may not be fined.  No comparable provision.	§1005(a) includes “Timing of Claims” provisions, proposed under Section 2045(k), that are largely similar to those in H.R. 3080, with the exception that judicial review of a permit, license, or other approval issued by a federal agency for a project study would be barred unless it is filed within three years after the publication of a notice in the <i>Federal Register</i> announcing that approval. The conference report specifies that this provision would create no new right to judicial review or limit a right of review if someone was found to have violated a permit, license, or other approval. A new statute of limitations would apply if a supplemental EIS was prepared.
Categorical Exclusions in Emergencies	§103(c) would specify that the repair, reconstruction, or rehabilitation of a water resources project, operating or under construction when damaged by an event related to a major disaster or emergency, as declared by the President pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, would be categorically excluded from the requirement to prepare an environmental assessment or EIS under NEPA, pursuant to 40 C.F.R. 1508.4.	No comparable provision.	§1005(b) includes provisions largely similar to those proposed in H.R. 3080, with the exception that the categorical exclusion would apply to such projects if commenced within two years of the date of the disaster/emergency declaration.

**Source:** CRS.

**a.** The provisions in §1005(a) are presented as amendments to Section 2045 of WRDA 2007 (i.e., not to 33 U.S.C. 2348). To more easily identify provisions being discussed in this table, many of those provisions are additionally identified by their respective subsection in Section 2045.

## Expanding Project Delivery and Finance Opportunities

Frustrations with the pace of Corps studies and construction, in part shaped by the pace of congressional authorization and limitations on available federal appropriations, has fostered interest in nonfederal entities, including private interests, having greater roles in project development, construction, and financing. The challenge is whether nonfederal resources can be leveraged while focusing current and future federal funds on those activities most in the national interest.

### Nonfederal Work and Leadership on Studies and Projects

Like H.R. 3080 and S. 601, the conference report includes multiple provisions to encourage and manage nonfederal participation in project delivery. **Table 4** identifies provisions for permitting, crediting, and reimbursing for nonfederal work, and provisions that establish pilot programs for nonfederal management and financing. The conference report consolidates most of the authorities for nonfederal leadership for water resources studies and construction under two authorities, 33 U.S.C. 2231 and 33 U.S.C. 2232.<sup>17</sup> The conference report (§1014), like H.R. 3080, may provide a mechanism for nonfederal entities to initiate work on a project which has a completed feasibility study, the milestone prior to a Chief's Report. A Chief's Report consists of the approval and recommendations for a project by the Corps' Chief of Engineers. The nonfederal entity would be eligible to receive credit or reimbursement if Congress subsequently authorizes the project. The conference report also would require the ASA to establish a 5-year pilot program for nonfederal management of studies and a 5-year pilot program of 15 projects for nonfederal management of project construction.

### Water Infrastructure Finance and Innovation Act (WIFIA)

Like S. 601, the conference report includes the Water Infrastructure Finance and Innovation Act (WIFIA), which would authorize a five-year pilot program for loans and loan guarantees for flood damage reduction projects assisted by the Corps and public water supply and wastewater projects assisted by the Environmental Protection Agency (EPA). The WIFIA concept is modeled after a similar program that assists transportation projects, the Transportation Infrastructure Finance and Innovation Act, or TIFIA, program. H.R. 3080 did not include comparable provisions. In a letter to the conferee managers, the Administration had expressed concerns with the WIFIA proposal in S. 601, "which would expand the Environmental Protection Agency's and the Corps' role in local water infrastructure projects and not provide Federal assistance in the most efficient manner."<sup>18</sup>

The conference report adopts the Senate's WIFIA provisions with some additions and modifications, as shown in **Table 5**. Notably, the conference report would expand the types of

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<sup>17</sup>The extent to which the annual use of these authorities may be limited is not addressed by the conference report; that is, no changes are made to 33 U.S.C. 2221 which states that agreements proposed for execution by the ASA or the Corps under various authorities, including 33 U.S.C. 2231 and 33 U.S.C. 2232, shall be limited to total credits and reimbursements for all applicable projects not to exceed \$100,000,000 in each fiscal year.

<sup>18</sup> See footnote 2.

projects that the Secretary of the Army may support with WIFIA assistance to include projects for flood damage reduction, hurricane and storm damage reduction, environmental restoration, coastal or inland harbor navigation improvement, or inland and intracoastal waterways navigation improvement. Responding to concerns raised by some groups that WIFIA could impair and diminish support for wastewater and drinking water State Revolving Fund (SRF) programs, the conference report includes language requiring EPA, when the agency receives applications for WIFIA assistance, to give state infrastructure financing authorities a right of “first refusal” to finance the project. Finally, the conference report would reduce the authorized funding for the pilot program from \$250 million total for each agency (\$50 million per year) to \$175 million total for each agency (beginning with \$20 million for FY2015 and increasing to \$50 million for FY2019).

### ***For Further Reading***

Congressional Distribution Memorandum, available from author: “Credit for Nonfederal Work on Army Corps Projects” by Nicole T. Carter, April 12, 2013.

CRS Report R43315, *Water Infrastructure Financing: Proposals to Create a Water Infrastructure Finance and Innovation Act (WIFIA) Program*, by Claudia Copeland.

**Table 4. Select Provisions to Expand Project Delivery and Financing Opportunities**

Topic	H.R. 3080	S. 601	Conference
Permits for Nonfederal Work at Existing Corps Projects	§107 would establish benchmarks (e.g., approval of complete applications in 45 days) and processes to expedite permits that would approve nonfederal modifications to Corps projects, known as §14 applications.	No comparable provision.	§1007 includes a provision similar to H.R. 3080.
Nonfederal Study of Projects	No comparable provision.	No comparable provision.	§1014 would replace an existing authority (33 U.S.C. 2231) for nonfederal studies of harbor projects with a similarly structured authority that applies to all water resources development projects.
Nonfederal Construction of Authorized Projects	§108 would expand an existing authority (33 U.S.C. 701b-13) for nonfederal construction of authorized projects to all type of Corps projects and would require that work be performed consistent with the laws and regulations that apply to Corps construction (e.g., Davis-Bacon Act wage requirements would apply).	No comparable provision.	§1014 would replace an existing authority for nonfederal construction of harbor projects (33 U.S.C. 2232) with a similarly structured authority that applies to all water resources development projects. In addition to the existing limits in 33 U.S.C. 2232, §1014 would allow the ASA to establish conditions on the project. Unlike the existing language in 33 U.S.C. 2232 which requires that the ASA determine the project is “economically justified and environmentally acceptable,” §1014 would require the ASA to make a determination on whether the “project is feasible.” Unlike the existing language in 33 U.S.C. 2232 which only allows for reimbursement for the federal share incurred by the nonfederal entity without interest, §1014 would allow for reimbursement, credit, and transfer of credit to a different project; however, it does not specify whether this is with or without interest. §1014 would add a requirement that the ASA notify House T&I and Senate Environment and Public Works (EPW) Committees when a nonfederal entity notifies the ASA of its intent to construct a project using this authority. §1014 would condition any credit or reimbursement for the federal share of costs on the ASA determining that all “Federal laws and regulations applicable to the construction of a water resources development project, and any conditions identified” by the ASA were complied with during construction.

Topic	H.R. 3080	S. 601	Conference
Credit in Lieu of Reimbursement	§108 would allow the nonfederal entity undertaking work under 33 U.S.C. 701b-13 to receive credit or be reimbursed for the federal share of costs. The credit could be transferred to any other authorized study or project of the nonfederal entity.	§2013 would allow nonfederal entities that construct authorized flood damage reduction projects to receive credit (in lieu of the federal reimbursement) for the federal share of project costs and to transfer that credit to other flood damage reduction projects or studies.	§1022 would allow a nonfederal entity undertaking construction under 33 U.S.C. 701b-13 before the date of enactment (§1014 would repeal 33 U.S.C. 701b-13) to receive credit or be reimbursed for the federal share of costs. The credit could be transferred to other flood damage reduction studies or projects of the nonfederal entity.
Repeal of Nonfederal Study and Construction Authorities – Consolidation of Authorities	§108 would repeal provisions of existing law authorizing the ASA to review nonfederal studies and construction of specific types of shore protection and harbor projects (33 U.S.C. 2232, 33 U.S.C. 426i-1, 33 U.S.C. 2232 note)	No comparable provision.	§1014 would repeal provisions of existing law authorizing the ASA to review nonfederal studies and construction of specific types of shore protection and flood protection projects (33 U.S.C. 426i-1, 33 U.S.C. 2232 note, 33 U.S.C. 701b-13. These project types (along with ecosystem restoration and other Corps project purposes) appear to be encompassed within the definition of a water resources development project used in §1014 for eligibility under the new 33 U.S.C. 2232 that would be authorized. §1014 includes a savings provision stating that §1014 would not affect existing agreements under these authorities or the existing authority in 33 U.S.C. 2232.
Maintenance of Navigation Projects Constructed by Nonfederal Entity	§108 would require that the ASA be responsible for operation and maintenance (consistent with standard cost-sharing requirements) of an authorized harbor or inland harbor project constructed by a nonfederal entity if certain criteria are met prior to construction, including that the project is economically justified and environmentally acceptable.	§2032 would allow the ASA to assume operation and maintenance responsibilities of a navigation channel deepened by a nonfederal entity prior to Dec. 31, 2012, if certain criteria are met (e.g., project has been authorized by Congress and the project is economically justified and environmental acceptable).	§1014, largely similar to the existing authority in 33 U.S.C. 2232, would require that the ASA be responsible for operation and maintenance (consistent with standard cost-sharing requirements) of a federally authorized harbor or inland harbor constructed by a nonfederal entity if prior to construction certain criteria are met, including that the project is feasible, and after construction that the ASA finds that the project remains feasible and was constructed in accordance with applicable permits and standards. §1014 would add the condition that the ASA would be responsible for this operation and maintenance only if prior to construction there is a written operation and maintenance agreement between the ASA and the nonfederal entity.  §1016 would allow the ASA to assume operation and maintenance responsibilities of a federally authorized harbor or inland harbor constructed by a nonfederal entity prior to Dec. 31, 2014, without requiring that the ASA after construction find that the project remains economically justified and environmentally acceptable (which is a requirement in 33 U.S.C. 2232).



Topic	H.R. 3080	S. 601	Conference
Nonfederal Monetary Contributions (no credit or reimbursement allowed)	§109 would expand the authority for the ASA to accept nonfederal monetary contributions; allow any eligible nonfederal entity to contribute (not only states and political subdivisions); and allow contributions for inland waterways and for post-disaster project repair and restoration.	§11005 would allow the ASA to accept and expend funds contributed by nonfederal entities for repairing, restoring, or replacing water resources projects damaged or destroyed by a major disaster or other emergency if the ASA determines it is in the public interest.	§1015 would expand the authority (33 U.S.C. 701h) for the ASA to accept nonfederal monetary contributions; allow any eligible nonfederal entity to contribute (not only states and political subdivisions); and allow contributions for inland waterways and for operations of hurricane barriers to support recreation consistent with the authorized project purpose. §1015 would require written notice to House T&I, Senate EPW, and both Appropriations Committees before accepting funds under this authority.  §1017 would authorize a 5-year pilot program for the ASA to accept nonfederal monetary contributions to increase the hours of operation of waterway locks.
Authority for Nonfederal Construction of Projects Prior to Congressional Authorization	§112 would create a new authority for nonfederal entities to initiate construction after a completed feasibility report. §112 would allow for credit or reimbursement if Congress subsequently authorizes the project and if the construction is consistent with the laws and regulations that apply to Corps construction.	No comparable provision.	§1014 would subject to the specified conditions, allow for nonfederal construction of water resources development projects which is defined as including those projects with “a project recommendation that results from” a Corps produced feasibility report, a feasibility study completed by a nonfederal entity consistent with 33 U.S.C. 2231, and a feasibility study authorized by Congress. §1014 does not explicitly state whether a favorable recommendation by the ASA (or the Chief of Engineers) is required for the Corps produced feasibility report or the feasibility study completed by a nonfederal entity. §1014 would allow for reimbursement, credit, and transfer of credit to a different project, and does not specify whether this is with or without interest. §1014 would condition any credit or reimbursement on the ASA determining that all “Federal laws and regulations applicable to the construction of a water resources development project, and any conditions identified” by the ASA were complied with during construction.
Projects Eligible for Work-in-Kind Credit	§116 defines “water resources project.” Environmental infrastructure activities (which typically are municipal water supply and wastewater projects) are included.	§2012 would expand crediting to include environmental infrastructure assistance activities.	§1018 would expand crediting under (42 U.S.C. 1962d-5b) to include environmental infrastructure assistance activities.
In-Kind Credit for Design Work	§116 would provide credit for design work performed prior to a crediting Memorandum of Understanding.	§2012 would authorize a provision similar to H.R. 3080.	§1018 would authorize a provision similar to H.R. 3080 and S. 601.

Topic	H.R. 3080	S. 601	Conference
Excess In-Kind Contributions and Their Reimbursement	No comparable provision; that is, as specified in 42 U.S.C. 1962d-5b, work-in-kind credit is limited to the nonfederal cost-shares unless otherwise specified.	§2012 would require the ASA to reimburse excess in-kind contributions (i.e., any excess above the nonfederal cost-share resulting from work-in-kind credit and the value of contributions of lands, easements, rights-of-way, relocation, or improvements to enable disposal of dredged materials (LERRDs)), except for navigation projects.	§1018 would authorize a provision similar to S. 601.
Transfer of Excess In-Kind Credit Across Studies and Projects	No comparable provision; 42 U.S.C. 1962d-5b does not allow excess credit or its transfer. See §108 for authority to transfer credit under that authority.	§2011 would allow, for 10 years, the ASA to apply excess credit from one project to another study or project if the nonfederal entity submits a comprehensive crediting plan.	§1020 would authorize a provision similar to S. 601.
Crediting Guidance Update	No comparable provision.	§2012 would require an update of the crediting guidance and regulations and specifies an update process and required elements.	§1018 would require an update of the crediting guidance and regulations similar to S.601.
Pilot of Nonfederal Construction	§117 would require the ASA to establish a pilot program for nonfederal project management and delivery of financing, design, or construction of no more than 15 authorized navigation or flood damage reduction projects. Nonfederal government entities or private entities could participate. Payment for work upon completion could be made from unobligated federal balance for the project or other amounts appropriated to the Corps not to exceed the federal share of design and construction.	§2025 would require the ASA to establish a pilot program for nonfederal construction management of no more than 15 previously authorized projects. Unobligated federal balance for the project would be transferred to the nonfederal entity after execution of a project partnership agreement; additional amounts could be transferred from the pilot program's appropriations. The program would be authorized at \$25 million for each year from FY2014 to FY018. No definition of eligible nonfederal entity was provided.	§1043 would require the ASA to establish a 5-year pilot program for nonfederal construction management of not more than 15 qualifying projects authorized prior to enactment. Hurricane, coastal and inland navigation, and ecosystem restoration projects would be eligible for participation in this pilot. §1043 would allow the ASA to transfer unobligated federal monies for the project to the nonfederal entity after execution of a project partnership agreement; additional amounts could be transferred from the pilot program's appropriations. The program would be authorized at \$25 million for each year from FY2015 to FY019. No definition of eligible nonfederal entity is provided. §1043 would require that work be performed consistent with the laws and regulations that apply to Corps construction (e.g., Davis-Bacon Act wage requirements would apply). §1043 would allow the Corps to provide technical assistance, including assistance with processing permits, to the nonfederal entity on a reimbursable basis. §1043 states that nothing in this subsection affects the cost-sharing requirements; it does not explicitly mention credit or reimbursement for the federal construction share.

Topic	H.R. 3080	S. 601	Conference
Pilot of Nonfederal Studies	No comparable provision.	No comparable provision.	<p>§1043 would require the ASA to establish a 5-year pilot program for nonfederal entities to perform feasibility studies for flood, hurricane, coastal and inland navigation, and ecosystem restoration projects; the program's authorization of appropriations would be \$25 million for each year from 2015 to 2019. §1043 would allow the ASA to transfer any unobligated federal monies to the nonfederal entity and to provide funds appropriated under this authority to nonfederal entities to carry out the feasibility study (but not to exceed the federal share of the feasibility study costs). If the ASA determines the study complies with federal law once project construction is authorized, §1043 would allow the ASA to credit the portion of study costs that would have been the federal responsibility toward the nonfederal construction cost of the project. §1043 would require that work be performed consistent with the laws and regulations that apply to Corps construction (e.g., Davis-Bacon Act wage requirements would apply). §1043 would allow the Corps to provide technical assistance to the nonfederal entity on a reimbursable basis.</p>

Source: CRS.

**Table 5. Select WIFIA Provisions**

<b>Topic</b>	<b>H.R.3080</b>	<b>S. 601</b>	<b>Conference</b>
Pilot of Innovative Financing (Loans and Loan Guarantees) for Flood Control, Public Water Supply, and Wastewater Projects (WIFIA)	No comparable provision	Title X would authorize a pilot program for the Corps and the EPA to provide direct loans and loan guarantees to nonfederal entities for certain flood control, public water supply, and wastewater treatment projects through a Water Infrastructure Finance and Innovation Act (WIFIA) program.	Title V, Subtitle C (Sections 5021-5035) includes provisions similar to provisions in Title X of S. 601.
WIFIA short title and definitions	No comparable provision	Short title (§10001). Purposes (§10002). Definitions of terms (§10003).	Short title, the Water Infrastructure Finance and Innovation Act of 2014 (§5021). Conference report omits “Purposes.” §5022 would define terms same as S. 601, but omits “rural water infrastructure” definition.
WIFIA Authority to Provide Assistance	No comparable provisions	§10006 would authorize the Secretary of the Army and EPA Administrator to provide financial assistance to carry out water infrastructure pilot projects.	§5023 would authorize a provision similar to S. 601.
WIFIA Eligible Entities	No comparable provision	§10004 would include corporations, partnerships, joint ventures, trusts, federal, state or local governments, tribal governments or consortia, and state infrastructure financing authorities as eligible.	§5025 would authorize a provision similar to S. 601.
WIFIA Projects Eligible for Assistance	No comparable provision	§10007 would include flood control or hurricane and storm damage reduction projects as eligible for WIFIA assistance, plus activities eligible for assistance under the Clean Water Act or Safe Drinking Water Act State Revolving Fund (SRF) programs, energy efficiency projects at public water supply or wastewater plants, repair or replacement of public water supply or wastewater plants, desalination or water recycling project, acquisition of real property, or a combination of projects.	§5026 is same as S. 601, but would add the following as eligible for Corps assistance: environmental restoration, coastal or inland harbor navigation improvement, and inland and intracoastal waterways navigation improvement.

Topic	H.R.3080	S. 601	Conference
WIFIA Activities Eligible for Assistance	No comparable provision	§10008 would include development-phase activities; construction; acquisition of real property; capitalized interest and reserve funds; and refinancing of interim funding, long-term project obligations, or WIFIA assistance as eligible.	§5027 would authorize a provision similar to S. 601, but would omit refinancing.
WIFIA Project Selection	No comparable provision	Under §10009, to be eligible for assistance, a project must be creditworthy. Eligible project costs shall be not less than \$20 million, except rural water infrastructure projects serving up to 25,000 persons shall be not less than \$5 million. Projects must be publicly sponsored. WIFIA projects may not also use financing with tax-exempt municipal bonds. §10009 details selection criteria, such as a project’s regional or national significance and multiple others.	§5028 is generally the same as S. 601. Regarding public sponsorship requirement, it would allow the obligor to demonstrate to the Corps or EPA that the affected state, local, or tribal government has been consulted and supports the proposed project. For projects seeking assistance from EPA, the Administrator would be required to give state infrastructure financing authorities a right of “first refusal” to finance the project.
WIFIA Secured Loans	No comparable provision	§10010 would authorize the Corps or EPA may make secured loans or loan guarantees to finance or refinance eligible project costs. Project assistance requires an investment-grade rating. A secured loan shall not exceed the lesser of 49% of eligible project costs and, if the secured loan does not receive investment-grade rating, the amount of the senior obligations of the project. Maturity date shall be not more than 35 years. Total amount of federal assistance from all sources shall be not more than 80% of total costs, except for rural water projects.	§5029 is generally the same as S. 601, but would provide that the maturity date of a secured loan shall be the earlier of 35 years or the useful life of a project. Secured and guaranteed loans may not be used for refinancing. Retains 49% limit, but see §5033 below.
WIFIA State, Tribal, and Local Permits	No comparable provision	Under §10012, recipients of WIFIA assistance would be required to obtain any required state, local, or tribal permit or approval.	§5031 would authorize a provision similar to S. 601.

Topic	H.R.3080	S. 601	Conference
WIFIA Funding	No comparable provision	§10014 would authorize \$50 million annually to each the Corps and EPA for FY2014-FY2018 (\$250 million total for each agency).	§5033 would authorize to each the Corps and EPA \$20 million for FY2015, \$25 million for FY2016, \$35 million for FY2017, \$45 million for FY2018, \$50 million for FY2019 (\$175 million total for each agency). §5033 would require the Corps and EPA to set aside not less than 15% of amounts available for each fiscal year for small community water infrastructure projects, but unused setaside funds may be used for other projects if unobligated on June 1 of the fiscal year. §5033 would authorize the Corps and EPA to make available up to 25% of available funds each year for loans in excess of 49% of total project costs [see §5029].
WIFIA Reports	No comparable provision	§10015 would require the Corps and EPA to report to Congress 2 years after enactment and every 2 years thereafter on projects receiving WIFIA assistance	§5034 would require the Corps and EPA to provide information on a public Internet site on applications for WIFIA assistance and projects selected. Also would require the GAO to report to Congress in 4 years on the WIFIA pilot programs, including recommendations for continuing, changing, or terminating the WIFIA program. (§5034)
WIFIA “Buy American”	No comparable provision	§10016 would require projects receiving WIFIA assistance use American-made iron and steel. A project may obtain a waiver if this requirement would be inconsistent with the public interest, increase project costs by more than 25%, or if U.S.-made products are not produced in sufficient quantity or of sufficient quality.	§5035 would authorize a provision similar to S. 601. The provision would codify similar statutory provision in the Consolidated Appropriations Act, 2014, that applies to wastewater and drinking water SRF capitalization grants (P.L. 113-76).

Source: CRS.

# Authorizing Projects and Managing Subsequent Authorizations

## Project Authorizations and Authorized Project Purposes

Congressional authorization is required for most Corps new construction projects, and significant post-authorization modifications to a project's scope or cost. For new construction authorizations, the conference report would authorize a fixed set of 34 new construction projects totaling \$25.65 billion (\$15.64 billion in federal costs and \$10.01 billion in nonfederal costs), as shown in **Table 6**. All of the projects have completed Chief's Reports; however, only 25 have been formally submitted by the ASA to Congress. The other nine projects, which represent \$3.73 billion in projects, are awaiting a recommendation by the ASA and its transmittal to Congress.<sup>19</sup> For project modifications, the conference report would authorize eight project cost modifications.<sup>20</sup> When the Senate passed S. 601 in May 2013, there were an estimated 19 construction projects representing approximately \$10.8 billion (\$6.3 billion federal and \$4.5 billion nonfederal) in construction costs that appeared to meet the criteria in §1002 of the S. 601. When H.R. 3080 was passed by the House in October 2013, it would have authorized a fixed set of 23 new construction projects and project scope modifications at a total cost of \$13.0 billion (\$7.7 billion in federal costs and \$5.3 billion in nonfederal costs), and two project cost modifications. CRS identified one project with a completed Chief's Report that is not included in the conference report.<sup>21</sup>

H.R. 3080 as passed by the House included no construction authorization for projects that had their Chief's Reports completed after the House T&I Subcommittee on Water Resources and the Environment hearing on Chief's Reports held on June 5, 2013. On April 29, 2014, the House Transportation and Infrastructure Subcommittee on Water Resources and the Environment held a hearing on the Chief's Reports completed subsequent to the June 2013 hearing. All of the 34 projects in the conference report have Chief's Reports and were the subject of a hearing.

Regarding existing project authorizations, H.R. 3080 included a provision to clarify that the act would not have expanded the authorized purposes of a dam or reservoir. S. 601 would have allowed the ASA to carry out activities to improve efficiency of dam operations and meet other related benefits as practicable, including environment protection and restoration, water supply storage, hydropower generations, and flood risk reduction. The ASA's December 2013 letter to conference managers indicated the Administration's view that the provisions in both of the bills (§143 in H.R. 3080, §2014 in S. 601) would hamper needed reform, giving current uses of Corps

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<sup>19</sup> These projects would not have qualified for authorization under S. 601 unless the ASA had transmitted the project's recommendation prior to enactment. One of the projects, the Mid-Chesapeake Bay Island, MD project had its Chief's Report in August 2009; however, it has not been transmitted by the ASA. The project is on hold pending an update of the Dredge Material Management Plan anticipated in 2015.

<sup>20</sup> Insufficient information is publicly available to determine the difference between total project construction cost and current value of previous authorization of appropriations, which would represent the amount of the authorized increase.

<sup>21</sup> The Mississippi River Gulf Outlet (MRGO) ecosystem restoration project has had difficulty securing a nonfederal sponsor. The restoration's report was transmitted to Congress in September 2013; that transmittal supported \$1.3 billion (\$0.86 billion federal/\$0.46 billion nonfederal) of the project's total cost of \$3 billion, and deferred the ASA's determination on the remainder. As of December 2013, the project had no nonfederal cost-sharing sponsor; the Chief's Report from September 2012, stated "Because a non-federal sponsor willing to cost share in implementation of the ecosystem restoration plan has not been identified, this report recommend no further action under Section 7013."

projects priority over new uses.<sup>22</sup> The Administration instead supported legislation to add fish and wildlife protection as an authorized purpose for all Corps dams and provide administrative flexibility to revise project operating guidelines. The conference report (§1045) would require the ASA to assess the management practice, priorities, and authorized purposes of Corps reservoirs in arid regions to evaluate their impacts on water supply during drought, and to identify actions to be carried out within existing authorities to increase project flexibility for mitigating drought impacts. The conference report states that nothing in the section changes the authorized purpose of a Corps dam or reservoir, and that the Secretary may carry out any recommendations and activities under this subsection pursuant to existing law. The conference report also would require the ASA to update a report on authorized purposes of Corps reservoirs, and include information on the most recent review of reservoir operations and a plan for future reviews.

The conference report, like both H.R. 3080 and S. 601, would also expand many of the Corps existing programmatic authorities known as Continuing Authorities Programs (CAPs). Under the CAPs, the Corps studies and constructs projects of limited purpose and size without project specific congressional authorization.

## **Subsequent Authorization Processes**

### **New Studies**

The conference report, like H.R. 3080 as shown in **Table 7**, would require the Corps to solicit proposals from nonfederal entities for new studies and transmit qualifying studies to Congress in the Annual Report. Congressional authorization would be needed for the agency to proceed with the study. S. 601 (§4002) would have established a process for initiating new studies.

### **New Project Authorizations and Modifications of Project Scope**

During House and Senate consideration, an ongoing topic of discussion was how to address projects anticipated to have completed study milestones (e.g., a Chief's Reports, ASA transmission to Congress) in the next year or two. Both H.R. 3080 and S. 601 addressed these projects but neither bill would have authorized them directly. The conference report also would not authorize projects that do not already have completed Chief's Reports. Like H.R. 3080, the conference report would require the ASA to submit completed feasibility reports and reports for project modifications to Congress in the Annual Report. Congressional authorization would be needed for the agency to proceed with construction, as shown in **Table 7**. As described in **Table 4**, the conference report (§1014), like H.R. 3080, may provide a mechanism for nonfederal entities to initiate work on a project with a completed feasibility study prior to a Chief's Report.

The conference report (§7004) would establish expedited House procedures for the 113<sup>th</sup> Congress and expedited Senate procedures through 2018 for bills authorizing construction projects that meet specified criteria. A qualifying requirement for the expedited House procedure would be a completed Chief's Report. The qualifying requirements for the expedited Senate procedure would include a completed Chief's Report, the project to be carried out substantially in accordance with the plan identified in the Chief's Report and subject to conditions in that report, and an ASA recommendation to authorize construction transmitted to Congress.

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<sup>22</sup> See footnote 2.



## Project Cost Modifications and Project Modifications

The conference report would authorize eight project cost modifications that had ASA recommendation letters transmitted to Congress. The conference report would require that subsequent proposed cost modifications be submitted for congressional consideration through the Annual Report. The proposed cost increases would require congressional authorization. This is similar to how H.R. 3080 would have addressed cost modifications; S. 601 would have established a process to allow, for three years, the ASA to proceed with projects requiring cost modifications if a submission certifying the need for the increase is submitted to Congress and if “amounts are appropriated to initiate or continue construction of the project in an appropriation or other Act.” Whether the expedited House and Senate procedures provided in the conference report (§7004) could be used for project cost modifications is unclear; traditionally project cost modifications are documented in reports of the Director of Civil Works, not Chief’s Reports. The reports of the Director of Civil Works are then transmitted by an ASA letter to Congress. The conference report included no comparable title to Title III of S. 601, Project Modifications.

### Additional Corps Project Costs May Require Cost Modifications

The number of projects potentially requiring project cost modifications in the near future is unknown. No recent list of projects nearing their cost limits is available. The most recent publicly available list of potential project cost issues is from a Corps April 2012 memorandum which identified 32 projects with potential cost modifications that may or may not entail project scope modifications. According to a May 29, 2013, Corps memo, “at least one quarter of USACE Civil Works construction projects are not compliant with cost limits and schedule completions.” A May 30, 2013, Corps memo stated that “forty-four construction projects in the current Civil Works portfolio have compliance issues with Section 902 cost limit requirements.” Section 902 refers to §902 of WRDA 1986, as amended (33 U.S.C. 2280), which limits Corps project authorization of appropriations to the amount authorized in law (adjusted for inflation in construction and real estate costs) plus 20% of the original authorization of appropriations. Under current authorizations, the ASA must seek a congressional modification in a project’s authorization of appropriations for projects anticipated to exceed the adjusted 120% authorization of appropriations. Many of the factors contributing to project cost increases are persistent and apply broadly to many Corps projects. In May 2013, the Engineer Inspector General completed a report on an inspection of Corps §902 compliance actions; it stated:

In some cases, poor decision, incomplete analysis or post authorization revisions to engineering standards affected the project delivery and led to larger than expected cost projections. In other instances, external pressures or influences forced changes to project scope. The cumulative effect of these internal and external factors was to increase project costs significantly and often led to projects having insufficient authority under 902. However, the factor with the greatest impact was the persistent funding shortfalls in the Civil Works budget. Funding shortfalls have extended the project delivery process and increased costs beyond anticipated levels for many USACE Civil Works projects

**Sources:** U.S. Army Corps of Engineers, *Memorandum for Record: Corps Section 902 Cost Limit Policy Clarification and Applicability procedures - Notable Deficiency*, Washington, DC, April 6, 2012, [http://planning.usace.army.mil/toolbox/library.cfm?Option=Listing&Type=Memo&Search=Policy&Sort=Default](http://planning.usace.army.mil/toolbox/library.cfm?Option=Listing&Type=Memo&Search=Policy&Sort=Default;); U.S. Army Corps of Engineers, *Memorandum for MSC Commanders: Civil Works Delegated Authority for Project Cost Management*, Washington, DC, May 29, 2013, <http://planning.usace.army.mil/toolbox/library.cfm?Option=Listing&Type=Memo&Search=Policy&Sort=Default>; Army Corps of Engineers, *Memorandum for SEE Distribution: Engineer Inspector General (EIG) Section 902 Inspection Report Recommendations and Command Implementing Instructions*, Washington, DC, May 30, 2013, <http://planning.usace.army.mil/toolbox/library.cfm?Option=Listing&Type=Memo&Search=Policy&Sort=Default>; U.S. Army Corps of Engineers, Engineer Inspector General, *U.S. Army Corps of Engineers Engineer Inspector General Inspection Report: Inspection of Section 902 Cost Limit Requirements for Civil Works Projects*, Washington, DC, May 2013, p. ii.

### For Further Reading

CRS Report R41961, *Army Corps Fiscal Challenges: Frequently Asked Questions*, by Nicole T. Carter and Charles V. Stern.

**Table 6. Select Project Authorization Provisions**

Topic	H.R. 3080	S. 601	Conference
Authorization of New Construction or Project Scope Modification with Chief's Reports	§401 would authorize 23 specifically listed projects with a total authorization of appropriations of \$13.0 billion (\$7.7 billion federal/\$5.3 billion nonfederal).	§1002 would authorize the ASA to carry out any project with a Chief's Report transmitted by the ASA after WRDA 2007 with a recommendation to construct. §1002 would require projects be carried out in accordance with the project plan and subject to conditions described in its report.	§7002 would authorize 34 specifically listed projects with a total authorization of appropriations of \$25.65 billion (\$15.64 billion in federal costs and \$10.01 billion in nonfederal costs).
Authorization of Project Cost Modifications	§402 would authorize cost modifications to two previously authorized projects: Miami Harbor, FL navigation; and Little Calumet River, IN flood control.	No comparable provision. §1003, which is discussed in <b>Table 7</b> , would allow the ASA to proceed with projects requiring cost modifications.	§7003 would authorize cost modifications to eight previously authorized projects.
Existing Corps Reservoir Operations	§133 would require the ASA, within a year of enactment, assess the management practice, priorities, and authorized purposes of Corps reservoirs in arid regions to evaluate their effects on water supply during drought. §143 would clarify that nothing in this act would allow the ASA to carry out any project for a purpose at a dam or reservoir not otherwise authorized as of the act's date of enactment.	§2014 would authorize, with limitations, the ASA to improve the efficiency of dam operations and to maximize to the extent practicable both the authorized project purposes and other related benefits, including environmental protection and restoration, most water supply storage, hydropower generation, and flood risk reduction. §2014 would restrict the activities to those that do not adversely impact any authorized purpose.	§1045 would require the ASA, within a year of enactment, to assess the management practice, priorities, and authorized purposes of Corps reservoirs in arid regions to evaluate their impacts on water supply during drought, and identify actions to be carried out within existing authorities to increase project flexibility for mitigating drought impacts. §1045 would require that within 2 years, the ASA update a report on authorized purpose of Corps reservoirs, and include information on the most recent review of reservoir operations and a plan for future reviews. §1045 would require GAO to audit previous Corps operations reviews, evaluate the plan for future operations reviews, and make recommendations for improving operations reviews. §1045 states that nothing in the section changes the authorized purpose of a Corps dam or reservoir, and that the Secretary may carry out any recommendations and activities under this subsection pursuant to existing law.
Continuing Authorities Program (CAPs)	No comparable provision. H.R. 3080 has no provision focused on changing the CAPs; however, other provisions of the bill may apply policy changes to the CAPs.	§2003 would increase project cost and program cost limits for certain CAPs. §2004 would require the ASA publish prioritization criteria for CAPs and an annual CAP report.	§1030 would increase the project cost and/or program cost limits for the CAPs identified in §2003 of S. 601 and the Emergency Streambank and Shoreline Protection CAP (known as Section 14). §1030 would require the prioritization criteria and reporting similar to §2004 of S. 601.

Source: CRS.

**Table 7. Select Provisions on Subsequent Authorizations of Studies, Projects, and Project Modifications**

Topic	H.R. 3080	S. 601	Conference
Waiving Need for Project Cost Modification	§111 would allow for the ASA to complete a construction project using funds contributed by a nonfederal entity (without opportunity for reimbursement) for projects that have exceeded 120% of their congressional authorized costs.	§2059 would authorize a provision similar to H.R. 3080.	§1023 would authorize a provision similar to H.R. 3080 and S. 601.
New Project Construction	§118 would require that the Annual Report include completed feasibility reports (with the Chief’s Report if appropriate) for new Corps construction projects requiring congressional authorization.	§1004 would authorize procedures for expedited Senate consideration of bills authorizing projects that have been transmitted by the ASA to Congress through 2018. Senate EPW would be required to report all such bills by January 31 <sup>st</sup> of the second session of each Congress. If Senate EPW failed to act, the bills would be discharged from the Committee and placed on the calendar of the Senate, with some exceptions.	§7001 would require an Annual Report similar to H.R. 3080. §7004 would establish expedited House procedures for the 113 <sup>th</sup> Congress and expedited Senate procedures through 2018 for bills authorizing construction projects that meet specified criteria. A qualifying requirement for the expedited House procedure would be a completed Chief’s Report. The qualifying requirements for the expedited Senate procedure would include: a completed Chief’s Report, the project to be carried out substantially in accordance with the plan identified in the Chief’s Report and subject to conditions in that report, and an ASA recommendation to authorize construction transmitted to Congress after enactment.
Project Cost Modifications	§118 would require that the Annual Report include proposed cost modifications to authorized Corps projects that have been identified by the ASA for congressional authorization.	§1003 would allow the ASA for three years after enactment to modify the authorized project costs if (1) the ASA certifies the necessity for exceeding the current authorization and submits the certification to Congress and (2) if, subsequent to the submission, “amounts are appropriated to initiate or continue construction of the project in an appropriations or other Act.”	§7001 would authorize a provision similar to H.R. 3080.

Topic	H.R. 3080	S. 601	Conference
Project Scope Modifications	§118 would require that the Annual Report include scope modification studies identified by the ASA for congressional authorization.	§1004 would provide for expedited Senate consideration through 2018 of a bill authorizing projects transmitted by the ASA to Congress.	§7001 would authorize a provision similar to H.R. 3080. §7004 would establish expedited House procedures for the 113 <sup>th</sup> Congress and expedited Senate procedures through 2018 for bills authorizing construction projects that meet specified criteria.
Study Authorizations	§118 would require that the Annual Report include any new Corps feasibility study proposed by a nonfederal entity that would require congressional authorization.	§4002 would allow the ASA to initiate annually a limited number of new studies (of the ASA's choosing consistent with criteria in §4002) for 3 years after enactment with an authorization of appropriations of \$25 million annually. §4002 would prohibit funding a new study unless "amounts are appropriated to initiate a study in an appropriations or other Act."	§7001 would authorize a provision similar to H.R. 3080.
Cost Share for Locally Preferred Flood Risk Management Projects	§121 would require the ASA to build the locally preferred plan (LPP) if requested by the nonfederal entity if the LPP provides a higher level of protection than the project alternative authorized under this act, and the ASA determines that the LPP is technically feasible, environmentally acceptable, and benefits exceed the cost. §121 would require the additional cost attributable to the higher protection be paid by the nonfederal entity.	§2055 would authorize a provision similar to H.R.3080, with the exception that §2055 would require that the federal share of the LPP be not less than the share of the national economic development plan.	§1036 would authorize a provision similar to S. 601.

Source: CRS.

# Investing in Navigation

## Harbors

The Harbor Maintenance Trust Fund (HMTF) is used to cover most Corps' costs of operating and maintaining the navigation infrastructure of U.S. harbors, principally the dredging of channels. The HMTF is supported by a tax on cargo moving through ports and cruise ship passengers (the Harbor Maintenance Tax, HMT). In recent years, annual HMTF expenditures (which require congressional appropriations typically as part of an Energy and Water Development Appropriations Act) have amounted to a little more than half of annual HMT collections and interest. Like H.R. 3080 and S. 601, the conference report seeks to increase HMTF spending, but not at the expense of available funding for other Corps activities. Thus, increased HMTF spending is predicated on the condition that the Corps total budget increases by at least the same amount.

The conference report would expand the eligible uses of HMTF monies to dredging activity that is now paid by nonfederal sponsors (e.g., the dredging of berths by port authorities), but only at ports that generate more HMT revenue than they have received from the HMTF. The conference report adopts the provision in S. 601 that would eliminate the 50% nonfederal cost share for the incremental cost of maintaining harbors at depths between 45 and 50 feet.<sup>23</sup> Thus, the conference report could increase HMTF spending on harbors handling large volumes of cargo that in the past have made relatively little use of HMTF funds. The Administration objects to expanding the federal role in harbor maintenance to include activities that historically have not been a federal responsibility.<sup>24</sup>

An issue reflected in the legislation is how to prioritize harbor maintenance among ports that handle large amounts of cargo and those that do not. The conference report reserves specified portions of HMTF funding for harbors with less cargo or that have not been fully maintained in prior years. The conference report modifies a provision in H.R. 3080 to require that the Corps provide a written response to a nonfederal interest seeking federal maintenance of a harbor.

In addition to the dredging of berths and certain legacy-contaminated sediments, the conference report adopts language from S. 601 that would allow “donor ports” and “energy transfer ports” to use appropriated funds for rebating HMT payments to shippers or for other dredging-related activity that otherwise is not a federal responsibility (see **Table 8** for definitions). This could be especially appealing to U.S. ports that contend shippers favor nearby foreign ports to avoid payment of HMT. It appears that Seattle and Tacoma, WA, would qualify as “donor ports.”<sup>25</sup> It

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<sup>23</sup> For a listing of harbor depths, useful in identifying which ports would benefit from this provision, see the following Army Corps report, [http://www.iwr.usace.army.mil/Portals/70/docs/portswaterways/rpt/June\\_20\\_U.S.\\_Port\\_and\\_Inland\\_Waterways\\_Preparing\\_for\\_Post\\_Panamax\\_Vessels.pdf](http://www.iwr.usace.army.mil/Portals/70/docs/portswaterways/rpt/June_20_U.S._Port_and_Inland_Waterways_Preparing_for_Post_Panamax_Vessels.pdf).

<sup>24</sup> Statement of Administration Policy, S. 601 – Water Resources Development Act of 2013, May 6, 2013; Statement of Administration Policy, H.R. 3080 – Water Resources Reform and Development Act of 2013, October 23, 2013. See also ASA's December 2013 letter to conference managers (footnote 2).

<sup>25</sup> Other ports that may qualify are certain ports in California, New York/New Jersey, Georgia, and Florida. These are additional states with at least two million twenty-foot equivalent unit (TEUs), which is a standard unit for cargo carrying capacity, of containerized cargo in 2011. The Army Corps has not published annual HMTF expenditure reports since FY2006, so the ratio of HMTF funding to HMT collections, a criterion for determining which ports are “donor ports,” is not known.

appears that fourteen ports may qualify as “energy transfer ports” (five ports in Louisiana; four ports in Texas; plus Mobile, AL; New York/New Jersey; Baltimore, MD; Norfolk, VA; and Long Beach, CA).<sup>26</sup> To qualify as a donor port, a port must generate substantially more HMT than it receives, but this is not the case for an energy transfer port. An energy transfer port is defined as a harbor handling more than 40 million tons of cargo of any type and at which energy products comprised more than 25% of this tonnage (the HMT is not assessed on export cargo).

## **Inland Waterways**

Some waterways stakeholders have been frustrated with the pace of construction on inland navigation infrastructure and cost overruns at key projects. The Inland Waterways Trust Fund (IWTF), which is funded by user fees, pays for 50% of most of these activities (to match 50% of costs provided from the General Fund of the Treasury). The IWTF has a declining balance that appears to have limited waterway construction projects in recent years. One inland waterway construction project, the Olmsted Locks and Dam project, has received the majority of the inland waterways construction monies in recent years, while construction on other inland waterway projects has been postponed. The Olmsted project was originally authorized at a cost of \$775 million (plus inflationary increases) but recently required an increase to its authorization (i.e., an increase to its appropriations ceiling). The FY2014 Continuing Appropriations Act, P.L. 113-46, increased the project’s authorization from \$775 million to \$2.92 billion.

To expedite work on the Olmsted project and facilitate work on other inland waterways projects funded by the IWTF, the conference report would alter the IWTF cost-share requirement for the Olmsted project. Like S. 601 and H.R. 3080 the conference report would decrease the required IWTF share of project costs compared to current law. The conference report would decrease the IWTF required portion of project costs from 50% to 15%. S. 601 would eliminate the IWTF required cost-share and would fund the Olmsted project entirely from the General Fund of the Treasury. H.R. 3080 would reduce the IWTF cost-sharing requirement from 50% to 25%, as shown in **Table 9**. In a December 2013 ASA letter to the conferee managers, the Administration objected to proposed alterations to the Olmsted project’s cost sharing formula and stated that the project should continue to be cost shared equally between the general fund and the IWTF.<sup>27</sup>

Some have argued that water resources development legislation should also decrease IWTF cost-share requirements for major rehabilitation investments.<sup>28</sup> Like S. 601, the conference report would raise the threshold for cost sharing for major rehabilitation investments on inland waterways from \$8 million to \$20 million, thereby making the General Fund responsible for a larger share of the expenditures. H.R. 3080 includes no such change.

Like S. 601 and H.R. 3080, the conference report would authorize changes to the inland waterways project delivery. These changes are generally consistent with an April 2010 report published and endorsed by the Inland Waterways User Board (a federal advisory committee).<sup>29</sup>

<sup>26</sup> For port cargo statistics, see <http://www.navigationdatacenter.us/wcsc/wcsc.htm>. Note that this data set does not include foreign trade empty containers loaded or unloaded.

<sup>27</sup> See footnote 2.

<sup>28</sup> In addition to all construction projects on inland waterways, the IWTF must fund half of the costs for major rehabilitation investments, currently defined as any inland waterways rehabilitation project costing more than \$8 million.

<sup>29</sup> The report is available at [http://waterwayscouncil.org/wp-content/uploads/2013/01/IMTS\\_IWUB\\_Report.pdf](http://waterwayscouncil.org/wp-content/uploads/2013/01/IMTS_IWUB_Report.pdf).

Like the House and Senate Bills, the conference report would also authorize several studies on inland waterways project revenues. This includes a study by the Government Accountability Office (GAO) on inland waterways revenue collection that would be authorized in S. 601 and H.R. 3080, and two reports on revenue alternatives by the Assistant Secretary of the Army that would be authorized in H.R. 3080.

***For Further Reading***

CRS Report R43222, *Harbor Maintenance Finance and Funding*, by John Frittelli.

CRS Report R41430, *Inland Waterways: Recent Proposals and Issues for Congress*, by Charles V. Stern.

**Table 8. Select HMTF Provisions**

<b>Topic</b>	<b>H.R. 3080</b>	<b>S. 601</b>	<b>Conference</b>
HMTF Spending Level	§201 would set targeted annual spending levels from the HMTF beginning with 65% of HMT received the previous year in FY2014 to 80% in FY2020 and thereafter.	§8003 would set minimum annual spending levels at the lesser of \$1 billion in FY2014 to \$1.5 billion in FY2019, or total annual HMTF receipts and interest. Beginning FY2020, annual spending would be set to equate to the level of receipts and interest.	§2101 is similar to H.R. 3080 but modifies the targeted annual spending levels from the HMTF beginning with 67% of the HMT received the previous year in FY2015 to 100% in FY2025 and thereafter. If these targeted spending levels are realized, specified percentages of these additional funds are directed to certain harbor projects as described below.
Pre-condition for Increased HMTF Spending	§201 would establish a Sense of Congress that increases in harbor maintenance spending should not result in decreases in spending for other Corps activities.	§8003 would not apply the specified HMTF spending amounts discussed above if providing the amounts would reduce funding available for other Corps activities below amounts available for the previous fiscal year.	§2101 essentially combines the language in H.R. 3080 and S. 601, thus in order for harbor maintenance spending to increase to targeted levels, Congress must increase the Corps budget by that amount so as not to decrease spending on other Corps activities.
Expanded Eligible Uses of HMTF Funds	§201 would allow up to 5% of HMTF annual spending to be used for dredging berths and legacy-contaminated sediment, at harbors that generate more HMT than they receive, if HMTF targeted spending levels are met.	§8004 would allow that at harbors in states that generate at least 2.5% of total annual HMT collections and received less than 50% of the HMT revenue they generated, HMTF monies may be used for dredging berths and legacy-contaminated sediments, provided that all high-use deep draft harbors are maintained to their constructed dimensions. Funds for this purpose would be limited to specified shares of the HMTF. Funds could also be used for dredging berths and legacy-contaminated sediments at “donor ports” and “energy transfer ports” (see below).	§2102 defines expanded uses the same as H.R. 3080 and S. 601 – that is, dredging berths and legacy-contaminated sediments. Harbors eligible to spend HMT funds on these purposes is based on the level of HMT collections and expenditures at these harbors over the previous three fiscal years, similar to H.R. 3080. At least 10% of additional funds from the increased targeting levels mentioned above would be spent on expanded uses, with priority of harbor projects based on the greatest difference between collections and expenditures among the eligible harbors.
Corps reporting requirement	§202 would require the ASA biennially to identify, for each harbor, funding needed to restore full authorized dimensions for each channel including expanded uses, amount requested in annual budget request, the difference between the two, and a five year budget outlook.	§8004 would require annual reports from the Corps on amount and share of funds spent on high, moderate, and low use ports and any additional amount needed to maintain these harbors at their constructed dimensions.	§2102 requires biennial report with similar content as in H.R. 3080, but assessment based on constructed dimensions as in S. 601.



Topic	H.R. 3080	S. 601	Conference
Prioritization of funding	§202 seeks an equitable allocation of HMTF funds among harbors regardless of size or tonnage handled. For determining the equitable allocation of funds, §202 would direct the ASA to consider funding needs, national and regional significance, and national security and military readiness, and not to base allocations solely on tonnage handled.	§8004 states that the primary use of HMTF is maintaining constructed dimensions of commercial harbors. §8004 would require the ASA to prioritize funding made available that are in excess of FY2012 spending levels for high-use, deep draft harbors and Great Lakes harbors that are not maintained at their constructed dimensions.	§2102 would authorize a provision similar to H.R. 3080 but also specifies that 90% of the additional funds from targeted spending levels (if available) be directed to high and moderate use ports. Reserves 5% of these additional funds for underserved harbors which are defined as moderate-use or emerging harbors that have been maintained at less than their constructed dimensions during each of the prior six fiscal years. In prioritizing underserved harbors, ASA is directed to consider the quantity of commerce at the harbors. §2102 adopts S. 601 definitions of high-use harbors (handling 10 million tons or more of cargo annually) and moderate-use harbors (handling more than one million but less than 10 million annually).
Set Aside for Lower Use Harbors	§202 would require the ASA to allocate at least 10% of HMTF expenditures to harbors handling less than one million tons for FY2015 and FY2016.	§8004 would direct the ASA to prioritize that 10% of remaining funds from above prioritization, if available, be used for moderate- and low-use harbors not receiving sufficient funding in six prior fiscal years. If this funding is available, §8004 would direct the ASA to equally divide it among Corps districts with eligible projects.	§2102 would require that the equivalent of at least 10% of HMTF funds spent in FY2012 be spent on emerging harbors each fiscal year 2015 through 2022. Also requires that 10% of the additional funds from targeted spending levels be spent on emerging harbors. Emerging harbors are defined as transiting less than one million tons of cargo annually.
Great Lakes Navigation Funding	§202 would direct the ASA to fund the Great Lakes as an interdependent navigation system.	§8004, as noted above, would identify Great Lakes harbors as a priority for HMTF monies.	§2102 is essentially the same as H.R. 3080. Also, at least 10% of additional funds from targeted funding levels are reserved for Great Lakes projects.
Nonfederal Cost Share for O&M	No comparable provision.	§8004 would eliminate the 50% nonfederal cost sharing requirement for harbor maintenance between 45 and 50 feet deep.	§2102 would authorize a provision similar to S. 601.
Donor and Energy Transfer Ports	No comparable provision.	§8004 would define a donor port as generating at least \$15 million in annual HMT collections but receiving less than 25% of that in HMTF spending, and located in a state that handled at least two million cargo containers at ports in 2011. §8004 would define an energy transfer port as a port at which energy commodities comprised more than 25% of its tonnage in 2011 and total tonnage handled exceeded 40 million tons. At these two port types, it would allow the ASA subject to appropriations, to provide HMTF funds to qualifying ports for payments to shippers using the port or for dredging berths and legacy-	§2106 defines donor and energy transfer ports the same as S. 601 (but port data based on calendar year 2012 instead of 2011), and allows these ports to use the funds for the same purposes as specified in S. 601. Unlike S. 601, §2106 would require the Corps to report, within 18 months of enactment, its assessment of the impact of this provision, including any recommendations for amending or reauthorizing this provision. §2106 authorizes \$50 million per year for FY2015 - FY2018 to carry out this provision and another \$50 million per year for FY2019 - FY2022 if the targeted funding levels referenced above in §2101 are achieved for years FY2015-FY2018.

Topic	H.R. 3080	S. 601	Conference
Nonfederal Justification for Corps Investment	§203, under the heading “preserving United States harbors,” would allow a nonfederal interest to submit justification to the Corps for maintaining a harbor.	contaminated sediments. §8004 would establish criteria for determining the related authorization of appropriations for FY2014 through FY2024.  No comparable provision.	§2107 is similar to H.R. 3080 but requires the Corps to respond to the justification submitted by the nonfederal interest including an assessment of the information submitted.
HMTF Study	§206 would direct GAO to study HMTF expenditures on low- and moderate-use ports, and HMTF expenditures related to competitiveness of U.S. ports with respect to Canadian and Mexican ports.	§8005 would include the same provision as H.R. 3080.	No comparable provision.
Remote and Subsistence Harbors	No comparable provision.	§5017 adds Alaska to an existing provision specific to Hawaii and U.S. territories concerning remote and subsistence harbors and the Corps consideration of such harbor projects.	§2104 would authorize a provision similar to S. 601.
Arctic Deep Draft Port Partnerships	No comparable provision.	§5022 outlines criteria for the Corps to provide technical expertise to nonfederal public entities for Arctic Coast deep draft port development.	§2105 would authorize a provision similar to S. 601.

**Source:** CRS.

**Table 9. Select Inland Waterways Provisions**

<b>Topic</b>	<b>H.R. 3080</b>	<b>S. 601</b>	<b>Conference</b>
Inland Waterways Project Delivery	§212 would authorize changes to the inland waterways project delivery process.	§7003 would authorize largely similar changes to project delivery as H.R. 3080.	§2002 would authorize changes that are largely similar to H.R. 3080 and S. 601.
Inland Waterways GAO Study	§213 would direct GAO to report within two years, on the efficiency of waterways revenue collections.	§7006 would authorize a provision similar to H.R. 3080.	§2003 would authorize a provision similar to H.R. 3080 and S. 601.
Inland Waterways Revenue Alternatives	§214 would direct the ASA to undertake certain revenue studies, including 1) a study of feasibility of construction bonds and 2) a study on potential new user fees that could be incorporated to achieve expenditure levels of one-half of annual construction expenditures of \$380 million per year (\$190 million per year from the IWTF). §215 would direct the Corps to convene a stakeholder roundtable to evaluate alternative policy approaches for inland waterways.	No comparable provision. §7005 would include a Sense of Congress that existing revenues are insufficient for waterway construction and rehabilitation and that the issue should be addressed.	§2004 would authorize provisions that are similar to the revenue studies and stakeholder roundtable that would be authorized in H.R. 3080.
Olmsted Locks and Dam Project	§216 would reduce the IWTF cost share for the Olmsted from 50% to 25%, and increase monies from the General Fund of the Treasury to 75%. §216 would require an ASA report on lessons learned from the project, and establish a Sense of Congress that appropriations for the Olmsted project should not be less than \$150 million until project construction is completed.	§7008 would make the Olmsted project fully funded by the general fund of the Treasury and eliminate the IWTF cost-share requirement. §7007 would direct GAO to conduct a study on cost overruns at the Olmsted project.	§2006 would reduce the IWTF cost share for the Olmsted project from 50% to 15%, thereby increasing monies required from the General Fund of the Treasury from 50% to 85%. §2006 would establish a Sense of Congress similar to H.R. 3080. §2007 would direct a GAO study similar to S. 601 and direct an ASA report similar to H.R. 3080.
Inland Waterways Rehabilitation Cost Sharing	No comparable provision.	§7004 would require all inland waterways major rehabilitation costs less than \$20 million (instead of \$8 million) to be from the general fund.	Similar to S. 601, §2006 would require that all inland waterways major rehabilitation costs less than \$20 million (instead of \$8 million) be funded by the general fund.

**Source:** CRS.

## Reducing Flood Risks

H.R. 3080 and S. 601 had taken significantly different approaches to the Corps' flood risk management activities; the House approach had been limited, while the Senate approach had been more expansive. While the conference report includes many levee safety provisions similar to S. 601, the conference report is scaled back from S. 601 in terms of both scope of new authorities and programs and the level of annual authorization of appropriations, as shown in **Table 10**.

The conference report would establish a levee safety initiative (§3016) that would authorize:

- Corps technical assistance and training to promote levee safety,
- Corps levee rehabilitation assistance at 65% federal cost share and maximum federal project cost of \$10 million per project (activities under the authority would have an authorization of appropriations of \$30 million for FY2015 through 2019), and
- FEMA to assist in establishing or improving state and tribal levee safety programs.

Elements of the initiative are similar to many provisions in S. 601, but with either no or lower levels of authorizations of appropriations. Like both H.R. 3080 and S. 601, the conference report would have the Corps develop national levee safety guidelines.

The conference report provides a more limited extension of federally cost-shared beach nourishment (i.e., 3 years for certain projects) than the 15 years that S. 601 would have authorized. The ASA's December 2013 letter to conference managers included an objection to this nourishment provision and recommended that projects be reevaluated rather than simply extended.<sup>30</sup> The conference report also provides for the ASA to review a 15-year extension request and make a recommendation to Congress regarding authorization.

The ASA's letter to conference managers also identified specific sections of S. 601 (§2022 and §2040) related to the repair and rehabilitation of levees that the Administration did not support. The conference report includes various related but altered authorizations for levee repair and rehabilitation; it would:

- allow Corps levee repair to be completed to the design level of protection (rather than to pre-storm conditions) or if needed modify the project to address major deficiencies or implement nonstructural measures; and require reporting every two years on repair spending and a review the Corps emergency response authorities to be completed within eighteen months of enactment. (§3029)
- authorize Corps rehabilitation of existing hurricane and storm damage levees that meet specific criteria if they are providing reduced protection due to consolidation, settlement, subsidence, sea level rise, or new datum; the ASA is limited to using this authority for projects with project partnerships agreements that state that the nonfederal entity is not required to perform restoration for

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<sup>30</sup> See footnote 2.

subsidence and sea level rise as part of its operation and maintenance responsibilities. (§3017)

The conference report (§3014) would direct the ASA to ensure that an activity under the Corps inspection of completed works program provides adequate information to reach a levee accreditation decision for purposes of floodplain mapping related to FEMA's National Flood Insurance Program (NFIP) mapping.

***For Further Reading***

CRS Report R41752, *Locally Operated Levees: Issues and Federal Programs* , by Natalie Keegan et al.

**Table 10. Select Flood Safety Provisions**

<b>Topic</b>	<b>H.R. 3080</b>	<b>S. 601</b>	<b>Conference</b>
Post-Damage Repair of Storm and Flood Control Projects	§122 would require the ASA to review its emergency response authorities to evaluate repairing to pre-flood conditions or to project design, using nonstructural measures, and incorporating sea-level rise and extreme weather event risks, and report on the results to House T&I and Senate EPW within a year of enactment.	§2040 would expand the authority to allow the ASA to repair to the design level of protection (rather than to pre-storm conditions) or if needed modify the project to address major deficiencies or implement nonstructural measures. §2040 would require the ASA to report every five years on repair spending.	§3029, similar to S. 601, would expand the authority to allow the ASA to repair to the design level of protection (rather than to pre-storm conditions) or if needed modify the project to address major deficiencies or implement nonstructural measures. §3029 would require the ASA to report every two years on repair spending. §3029, similar to H.R. 3080, would require the ASA to review the Corps emergency response authorities to evaluate repairing to pre-flood conditions or to project design, using nonstructural measures, and incorporating sea-level rise and extreme weather event risks, and report on the results to House T&I and Senate EPW Committees within 18 months of enactment.
Post-Disaster Watershed Assessments and Activities	No comparable provision.	§11004 would authorize watershed assessments of areas with federally declared disasters, and carrying out of identified projects under the Corps flood control and ecosystem restoration Continuing Authorities Programs (CAPs). §11004 would limit the federal share of an assessment to \$1 million and provide an authorization of appropriation of \$25 million for each of FY2014 through FY2018.	§3025, like S. 601 would authorize watershed assessments of areas with federally declared disasters, and carrying out of identified projects under the Corps flood control and ecosystem restoration CAPs; §3025 would include no authorization of appropriation and no per project federal limit. The underlying CAP authorities have federal per project cost limitations.
Floodplain Management Services	No comparable provision.	§2003 would increase annual authorization of appropriations from \$15 million to \$50 million.	§1030 includes a provision similar to S.601.
National Dam Safety Program Re-authorization	§124 would authorize technical and clarifying changes to Federal Emergency Management Agency's (FEMA) National Dam Safety Program (e.g., adding a public awareness initiative); no change made to the most recent authorization of appropriations of \$9.2 million for FY2011.	Title IX would authorize technical and clarifying changes to the National Dam Safety Program (similar to §124 of H.R. 3080), and would provide for an annual authorization of appropriations of \$9.2 million for FY2014 through FY2018.	§3001 would authorize technical and clarifying changes to the National Dam Safety Program similar to H.R. 3080 and S. 601, and would provide for an annual authorization of appropriations of \$9.2 million for FY2015 through FY2019.

Topic	H.R. 3080	S. 601	Conference
Federal Levee Safety Guidelines	§126 would require the ASA to establish federal levee safety guidelines.	§6004 would require the ASA to establish federal levee safety guidelines.	§3016 would require the ASA to establish federal levee safety guidelines with many elements similar to H.R. 3080 and S. 601, and direct that all federal agencies consider the guidelines in carry out their levee maintenance activities to the maximum extent practicable.
Federal Support for State Levee Safety Programs	§126 would amend the Corps Planning Assistance to States program to allow the ASA to provide technical assistance to promote state and local levee safety programs. To be eligible, a state would need to have or be establishing a state funded levee safety program to carry out the federal guidelines. No authorization of appropriations is specified.	§6004 would authorize a national program to promote state levee safety programs and would require multiple components (e.g., levee inventory hazard potential classification system, national levee safety technical assistance and training program). §6004 would establish a grant program to assist eligible states and Indian tribes with state levee safety programs. §6009 would include annual authorization of appropriations of \$300 million for FY2014 through FY2023.	§3016 would establish a levee safety initiative. §3016 would authorize the Federal Emergency Management Agency (FEMA) Administrator to provide assistance to state and tribes in establishing or improving levee safety programs and conducting levee inventories; this assistance would be subject to funding specified in appropriations act for FEMA. §provide an authorization of appropriations for this FEMA technical assistance of \$25 million for each of FY2015 through FY2019. §3016 would authorize the ASA to provide technical assistance and training to promote levee safety and assist levee owners in reducing flood risks associated with levees and developing levee safety programs.
Vegetation on Levees	§127 would require the ASA to review Corps national guidelines for vegetation on levees and consider amendments that would allow for local variances; within a year of enactment, the ASA would be required to revise the current guidelines.	§2020 would require the ASA to review the Corps 2009 and 2012 levee vegetation guidelines and consider amendments that would allow for local variances and solicit input from the National Academies. Within two years, the ASA would be required to revise current guidelines.	§3013 would require the ASA to review the Corps 2009 and 2012 levee vegetation guidelines, similar to S. 601, and consider amendments that would allow for local variances and solicit input from independent experts and consider recommendations submitted by Corps region teams and state, tribal, regional, and local entities. §3013 would require that the ASA within 18 months of enactment revise current levee vegetation guidelines. §3013 includes no reference to Corps 2014 levee vegetation guidance, which replaced the 2009 guidance.
Economic Analysis of Flood Damage Reduction Projects	§147 would require economic analysis for feasibility studies to consider: reduction in damage to infrastructure and public and private property; direct and indirect economic benefits including national and regional economic volatility, disruption, and losses; and public safety benefits.	No comparable provision.	No comparable provision.

Topic	H.R. 3080	S. 601	Conference
NFIP Levee Certification/Accreditation	No comparable provision.	§2021 would authorize the ASA to carry out levee system evaluations for FEMA Levee Accreditation for the National Flood Insurance Program (NFIP) for federally authorized projects at a 65% federal/ 35% nonfederal cost-share (subject to nonfederal ability-to-pay). No authorization of appropriation is specified.	§3014 would direct the ASA to ensure that an activity under the Corps' inspection of completed works program provide adequate information to reach a levee accreditation decision under FEMA's regulation for the mapping of areas protected by levees, and to better align the timing of Corps inspections with National Flood Insurance Program (NFIP) schedules. §3014 also would authorize the ASA to carry out certain levee system evaluations of federally authorized levees for NFIP levee accreditation purposes at a 50% federal/ 50% nonfederal cost-share and using amounts made available through the Corps' Planning Assistance to States authority (which is modified by §3015 of the conference report).
Repair and Restoration of Federally Authorized Flood Damage Reduction Projects	No comparable provision	§2022 would authorize the ASA to repair or restore federally authorized flood damage reduction projects to authorized levels including for reasons of settlement, subsidence, sea level rise, or new datum at a 100% federal expense. The authorization would sunset after 10 years, with a total authorization of appropriations of \$250 million.	§3017 would authorize the ASA for 10 years after enactment to perform cost-shared restoration of already constructed, federally authorized hurricane and storm damage reduction projects to authorized levels of protection resulting from consolidation, settlement, subsidence, sea level rise, and new datum if the ASA determines the work is technically feasible, environmentally acceptable, and economically justified; the ASA is limited to using this authorization on projects with project partnerships agreements that state that the nonfederal entity is in not required to perform restoration for subsidence and sea level rise as part of its operation and maintenance responsibilities.
Extension of Periodic Beach Nourishment	No comparable provision.	§2030 would create a process by which the ASA can determine whether to extend for 15 years federal participation in periodic beach nourishment for projects that have reached their 50 year construction authorizations.	§1037 would authorize that nourishment could continue for three years beyond the maximum period of nourishment (set at 50 years in 42 U.S.C. 1962d-5f) for projects that have their federally cost-shared nourishment expiring within 5 years of enactment. §1037 would allow the ASA, at the request of the nonfederal entity, to review the feasibility of extending nourishment for fifteen years and would make a recommendation on an extension of nourishment extension. The 15-year extension review would require congressional authorization.
Levee Rehabilitation	No comparable provision.	§6004 would authorize a program for levee rehabilitation activities at 65% federal/35% nonfederal cost-share and a maximum federal share per project of \$10 million. §6009 would provide annual authorization of appropriations of \$300 million for FY2014 through 2023.	§3016 would authorize the ASA to establish a program for levee rehabilitation assistance activities at 65% federal/35% nonfederal cost-share and a maximum federal share per project of \$10 million. §3016 would provide annual authorization of appropriations of \$30 million for FY2015 through 2019.



Topic	H.R. 3080	S. 601	Conference
Levee Safety Board/Committee	No comparable provision.	§6005 would establish a National Levee Safety Advisory Board to provide advice on levee safety and to monitor the effectiveness of the national levee safety program created in §6004.	§3016 would amend an existing authority (33 U.S.C. 3302) for the national committee on levee safety, including adding the ASA and FEMA Administrator as nonvoting members and direction on committee duties and roles; the committee is to report to the ASA and Congress on the effectiveness of the levee safety initiative.
Levee Safety Status and Levee Liability Reports	No comparable provision.	§6007 would require the ASA to report every two years on the nation's levees, and once on levee liability issues.	§3016 includes a provision similar to S. 601.

**Source:** CRS.

## Restoring and Protecting Aquatic Ecosystems

As part of its mission, the Corps undertakes projects and activities intended to restore the structures, function and natural processes of aquatic ecosystems to a more natural condition. It also has authorities related to control of invasive species at its projects. Congress directs and facilitates these actions through project-specific provisions and programmatic provisions that direct broader Corps authorities and efforts, among other things.

### Ecosystem Restoration<sup>31</sup>

The conference report contains provisions that would authorize new construction projects that aim to restore aquatic resources. Project-specific authorizations (discussed in an earlier section, “Authorizing Projects and Managing Subsequent Authorizations”) include projects that are part of comprehensive efforts to restore the Everglades and Coastal Louisiana. For the Everglades, the conference report would authorize four projects at a total cost of approximately \$1.9 billion.<sup>32</sup> For Coastal Louisiana, the conference report would authorize seven projects under the Louisiana Coastal Area (LCA) restoration program at a total cost of \$2.1 billion. Overall, the conference report would authorize new restoration projects at a total cost of \$6.05 billion (\$3.62 billion in federal costs and \$2.43 billion in nonfederal costs). It would also authorize other multi-purpose projects with environmental restoration elements.

The conference report (see **Table 11**) would direct new studies in specific geographic locations which may result in new major ecosystem restoration construction efforts, including efforts in Coastal Louisiana, the North Atlantic coast, and Chesapeake Bay, among other places. In most cases, additional actions by Congress would be required to authorize new physical construction in these areas. Similar to S. 601, the conference report (§4011) would authorize ten feasibility studies to be drawn from a 2012 Louisiana state plan (i.e., Louisiana Comprehensive Master Plan) and incorporated into the existing Corps LCA program and reporting requirements. These studies would be in addition to the LCA projects authorized for construction referenced above.

Similar to S. 601, the conference report (§4009) would authorize a new feasibility study for coastal ecosystem restoration projects in a large region of the Northeast. This North Atlantic coastal study could result in a recommendation for authorization of new restoration efforts in coastal areas from Virginia to Maine. The conference report also would allow the Corps to carry out projects identified by the North Atlantic coastal study using existing relevant authorizations for smaller projects (i.e., projects under the Corps Continuing Authorities Programs). Construction of new projects that are not already authorized would require additional authorization by Congress. The conference report also would authorize an ocean and coastal ecosystem resiliency program, which is discussed in the “Addressing Other Issues” section below.

The conference report would also authorize additional restoration studies and work in the Chesapeake Bay. Similar to H.R. 3080, the conference report (§4010) would convert an existing Corps Chesapeake Bay watershed assistance authority from a pilot program to a “program.”

<sup>31</sup> This section was written by Charles V. Stern, Specialist in Natural Resources Policy, 7-7786, and Pervaze A. Sheikh, Specialist in Natural Resources Policy, 7-6070.

<sup>32</sup> For more information on progress toward Everglades restoration, see CRS Report R42007, *Everglades Restoration: Federal Funding and Implementation Progress*, by Charles V. Stern.

Assistance would be provided for a variety of projects and activities, ranging from sediment and erosion control to ecosystem restoration. The projects and activities would have to follow a comprehensive restoration plan, which the ASA would be directed to complete within two years of enactment in cooperation with other federal agencies, state and local government officials and affected stakeholders. The program's authorization of appropriations would remain unchanged at \$10 million. The conference report would also change the authorization for appropriations from \$50 million to \$60 million for carrying out oyster restoration activities in the Chesapeake Bay.

Provisions in the conference report propose to provide direction for environmental restoration work by the Corps. Similar to S. 601, the conference report (§1011(b)) would establish general criteria for prioritizing funding for environmental restoration projects. It would specify that those projects which address threats to public safety, restore ecosystems of national significance, and which are of significance for federally protected species (including migratory birds) should be prioritized for funding. It also specifies that projects that contribute to other ongoing restoration efforts should receive priority. It is unknown to what extent this would alter the Administration's Corps budget development process, which recently has reflected other priorities and criteria.

## **Invasive Species**

The conference report would also incorporate elements that propose to address invasive species.<sup>33</sup> Similar to S. 601, the conference report (§1039(b)) would require an interagency review of federal invasive species authorities.<sup>34</sup> Similar to H.R. 3080, the conference report would also require a GAO report on the adequacy of federal invasive species activities, among other things.

The conference report (§1039(c)) would alter existing Corps invasive species authorities (33 U.S.C. 610). It would add to the current Corps authority to control noxious aquatic plant growths at navigable waters, tributary streams, connecting channels, and other waters of the United States. In addition to the current Corps authority, it would authorize the Corps to conduct efforts to control "aquatic invasive species" in these areas and add "prevention" to the current authorized activities of control and eradication. It would also increase Corps authorized appropriations for these activities from \$15 million to \$20 million annually for aquatic plant control, \$20 million annually for the new authority for aquatic invasive species.

The conference report also would direct invasive species work in specific basins and water bodies. The conference report (§1039(b)) would authorize an interagency effort to combat the spread of Asian carp in the Upper Mississippi and Ohio River basins. This would include authority for the federal government to provide aid, including technical assistance, to state and local governments.<sup>35</sup> In addition to this effort, it would also expand reporting requirements associated with Asian carp. The approach in the conference report in this respect is similar to both S. 601 and H.R. 3080. In addition to these activities, the conference report (§1039(c)), similar to S. 601, would authorize the establishment of watercraft inspection stations in the Columbia River Basin, to prevent the spread of aquatic nuisance species at Corps reservoirs in this region.

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<sup>33</sup> For more information on federal invasive species activities, see CRS Report R43258, *Invasive Species: Major Laws and the Role of Selected Federal Agencies*, by M. Lynne Corn and Renée Johnson.

<sup>34</sup> The review would be carried out by the Corps, the Fish and Wildlife Service, and the Tennessee Valley Authority.

<sup>35</sup> To date, the federal government has been involved in significant efforts to control Asian carp that have focused on the connection between the Great Lakes and the Mississippi River in the Chicago area, as well as control efforts and study of other areas. For more information on Asian carp, see CRS Report R41082, *Asian Carp and the Great Lakes Region*, by Charles V. Stern, Harold F. Upton, and Cynthia Brougher.

**Table 11. Select Ecosystem Restoration and Invasive Species Provisions**

<b>Topic</b>	<b>H.R. 3080</b>	<b>S. 601</b>	<b>Conference</b>
Invasive Species Control	§137 would amend 33 U.S.C. 610(a) to expand Corps authorities to control invasive species beyond aquatic plants to include aquatic invasive species on all waters of the United States.	No comparable provision.	§1039(c) is similar to the provision in H.R. 3080, but would add additional authority for the Corps to conduct “prevention” efforts related to invasive species and would increase the authorization of appropriations for Corps invasive species activities.
Asian Carp Control	§144 would authorize an interagency effort to combat the spread of Asian carp in the Upper Mississippi and Ohio River basins, and require related reports.	§2052 contains a similar provision to H.R. 3080.	§1039(b) would authorize a provision similar to H.R. 3080 and S. 601.
Invasive Species Studies	§145 would require GAO to report on the adequacy of the federal government’s investment in invasive species activities, among other things.	§2052 would require an interagency review of federal invasive species authorities by the Corps, the Fish and Wildlife Service, and the Tennessee Valley Authority.	§1039(b) would require the studies included in both the H.R. 3080 and S. 601.
Ecosystem Restoration Funding Prioritization	No comparable provision.	§2045 would direct that funding be prioritized for ecosystem restoration projects that address threats to public safety, restore ecosystems of national significance, and are significant for federally protected species (e.g., migratory birds). It also would prioritize projects that contribute to other ongoing Federal, state, or local restoration efforts.	§1011 would authorize a provision similar to S. 601

Topic	H.R. 3080	S. 601	Conference
Louisiana Coastal Area: New Feasibility Studies	No comparable provision.	§3018 would authorize 10 feasibility studies to be drawn from a 2012 Louisiana state plan (i.e., Louisiana Comprehensive Master Plan) and incorporated into the existing Corps LCA program and reporting requirements.	§4011 would authorize a provision similar to S. 601.
North Atlantic Coastal Restoration	No comparable provision.	§5002 would authorize a new feasibility study for coastal ecosystem restoration projects in the Northeast, from Virginia to Maine, and would require recommendations to Congress.	§4009 would authorize a provision similar to S. 601.
Chesapeake Bay: Restoration Assistance and Oyster Restoration	No comparable provision.	§5003 would change an existing authority for Corps financial assistance for restoration in the Chesapeake Bay watershed from a pilot program to a “program.” Assistance would be authorized for a range of activities, from sediment and erosion control to ecosystem restoration. Activities would have to follow a comprehensive restoration plan, which the ASA is to develop within two years in cooperation with other agencies and stakeholders. The existing authorization of appropriations of \$10 million is unchanged. §5014 would change the authorization of appropriations from \$50 million to \$60 million for Corps Chesapeake Bay oyster restoration activities.	§4010 would authorize a provision similar to both provisions in S. 601
Columbia River Invasive Species Control	No comparable provision.	§5007 would authorize invasive species control activities on the Columbia River, to include watercraft inspection stations.	§1039(c) would authorize a provision similar to S. 601.

Source: CRS.

## Deauthorizing Projects and Managing the Backlog

The Corps has a “backlog” of \$62 billion in authorized construction on more than 1,000 projects; its annual construction appropriations, however, have been less than \$2 billion in recent years and have been declining as more resources shift to operations and maintenance and as supplemental appropriations are used for construction in disaster affected areas. No publicly available list or database of these project authorizations, their status, and their cost to complete is available. There is a current process in place to deauthorize Corps projects; in the recent past, the process has not resulted in significant deauthorizations or in reducing the size and growth of the backlog.

Under 33 U.S.C. 579a(b)(2), the ASA is directed to annually transmit to Congress a list of authorized projects and project elements with no obligations of funding during the last full five fiscal years. This list is published in the *Federal Register*. Without an ASA transmittal of a list, the deauthorization process is not initiated. If funds are not obligated for a project’s planning, design, or construction during the fiscal year following publication in the *Federal Register*, the project or element is deauthorized. The Secretary last transmitted a new list in 2007; those deauthorizations became final in 2009.

The conference report, as shown in **Table 12**, would require that the ASA: (1) develop an interim deauthorization list of projects authorized prior to WRDA 2007(including environmental infrastructure projects) that have either not initiated construction or not received funding for six fiscal years, (2) provide opportunity for public comment on this list, and (3) develop a final deauthorization list, within 120 days after the public comment period, representing at least a federal cost to complete equal of \$18 billion. The projects on the final list would be automatically deauthorized after 180 days unless Congress passes a joint resolution disapproving the final deauthorization list. The conference report does not alter the existing requirement under 33 U.S.C. 579a for the ASA to annually transmit to Congress a list of authorized projects and project elements with no obligations of funding during the last full five fiscal years, thus maintaining this annual deauthorization process after enactment. The ASA letter to the conference managers stated the Administration’s support creating an annual process for identifying projects for deauthorization.<sup>36</sup>

### *For Further Reading*

CRS Report R41243, *Army Corps of Engineers: Water Resource Authorizations, Appropriations, and Activities*, by Nicole T. Carter and Charles V. Stern.

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<sup>36</sup> See footnote 2.

**Table 12. Select Provisions on Deauthorization and Managing the Backlog**

Topic	H.R. 3080	S. 601	Conference
Construction Projects in the President's Budget Request for Construction Projects	§119 would require the President's annual budget submission to identify the Corps construction projects recommended to receive full funding in the fiscal year and the four succeeding fiscal years. The recommendations are to be based on the assumption of \$2 billion for the construction account annually.	No comparable provision.	No comparable provision.
One-Time Construction Deauthorization Process	§301 would require the ASA within 90 days of enactment to identify and publish in the <i>Federal Register</i> a list of \$12 billion in federal authorizations for pre-WRDA 2007 projects (or project elements) to deauthorize; eligible projects must have never initiated construction or had no federal or nonfederal funds obligated for the last five years. The list would be constructed starting with the oldest project authorizations; the identified projects would be deauthorized 180 days later unless the nonfederal sponsors fund completion.	§2049 would establish an independent infrastructure commission that would be required to within 4 years of enactment identify a list of pre-WRDA 1996 projects for deauthorization. The identified projects would be deauthorized 180 days later unless Congress passes a joint resolution disapproving the entire list. §2049 would identify criteria that would make projects ineligible for the deauthorization list.	§6001 would require that the ASA: (1) develop an interim deauthorization list of projects (and separable elements of projects) authorized prior to WRDA 2007(including environmental infrastructure projects) that have either not initiated construction or not received funding for six fiscal years, (2) provide opportunity for public comment on this list, and (3) develop a final deauthorization project list. The sum of the cost to complete the projects on the final deauthorization list would be required to equal at least \$18.0 billion in federal costs to complete. The ASA would be required to submit the final deauthorization list to the House T&I and Senate EPW Committees and publish the list in the <i>Federal Register</i> no later than 120 days after the close of the public comment period; 180 days after the submission of the final list, unless Congress passes a joint resolution disapproving the list, the listed projects (or separable elements of projects) are deauthorized. This is a one-time requirement.
Property Inventory and Identification of Excess Properties	§302 would require the ASA to report to Congress within a year after enactment an assessment of all Corps properties and to provide an inventory of properties no longer needed for the agency's missions.	No comparable provision.	§6002 would authorize a provision similar to H.R. 3080.

Topic	H.R. 3080	S. 601	Conference
Future Deauthorization Process	§303 would deauthorize any construction project authorized by this act after seven years if no funding had been obligated for construction. H.R. 3080 would make no changes to the current deauthorization process (33 U.S.C. 579a).	§2049 would clarify the deauthorization process in 33 U.S.C. 579a; the ASA would be required to submit a list of projects that have received no obligations for five fiscal years; a listed project would be deauthorized one year later unless it has obligations.	§6003 would authorize a provision similar to H.R. 3080. The conference report would make no changes to the current deauthorization process (33 U.S.C. 579a) beyond the one-time deauthorization process in §6001.
Backlog Tracking	§303 would require 12 years after enactment the ASA to report to House T&I and Senate EPW Committees on any incomplete construction projects authorized by this act, a description of why the project was not completed, a schedule for completion, a 5 to 10 year projection of the construction backlog, and recommendations for how to mitigate the backlog.	No comparable provision.	§6003 would authorize a provision similar to H.R. 3080.
Construction Backlog List	No comparable provision.	§2049 would require the ASA, 180 days after enactment, to publish a list of all uncompleted, authorized construction projects and to provide each project's status and cost of completion. After 30 days of providing Congress the report, the ASA would make the report publically available.	§6001 would require the ASA, within one year of enactment, to publish a list of all uncompleted, authorized construction projects and to provide each project's status and cost of completion. After submitting the list to the House T&I and Senate EPW Committees and the Office of Management and Budget (OMB), the ASA shall make the list publically available.

Source: CRS.



## Addressing Other Issues

### Oil Spill Prevention on Farms<sup>37</sup>

S. 601 included a provision to amend the Environmental Protection Agency’s Oil Spill Prevention, Control and Countermeasure (SPCC) regulations; no comparable provision was included in H.R. 3080. S. 601 would have amended the scope and applicability of the program. One provision stated that certain farms would not require a “certification of a statement of compliance with the rule.” According to communications with EPA, this provision would not eliminate the requirement to create an SPCC plan.<sup>38</sup> In contrast, the conference report, as shown in **Table 13**, would exempt the following farms from the SPCC regulations: (1) farms with no reportable discharge history and an aggregate aboveground storage of less than 6,000 gallons (or a to-be-determined lower threshold) and (2) farms with an aggregate aboveground storage of less than 2,500 gallons.

### Clean Water Act Amendments

The conference report includes amendments to a number of the water infrastructure provisions of the Clean Water Act (CWA). The CWA amendments, which were not included in either S. 601 or H.R. 3080, are drawn from several provisions of H.R. 1877, the Water Quality Protection and Job Creation Act of 2013.<sup>39</sup> Most would address CWA Title VI, which authorizes grants to states to capitalize state loan programs (State Revolving Funds, or SRFs) for wastewater treatment facility projects; the conference report (Section 5006) provides that the effective date of these provisions is October 1, 2014. Some of the provisions included in the conference report have been included in other legislative proposals in recent Congresses that have not advanced (such as extending loan repayment from 20 years to 30 years, including land acquisition in the definition of “treatment works,” and explicitly allowing SRF monies to be used for security projects). Several of them have been included in enacted appropriations bills and would now be codified in the CWA (such as expanding the list of SRF-eligible projects to include energy- and water-efficiency, increasing assistance to Indian tribes, and imposing “Buy American” requirements, which were included in EPA’s FY2014 appropriation, P.L. 113-76). The CWA provisions included in the conference report would be the first amendments to CWA Title VI since 1987. However, the amendments would not address other long-standing or controversial Title VI issues, such as: authorization of appropriations for capitalization grants, which expired in FY1994; state-by-state allocation of capitalization grants; and retaining applicability of prevailing wage requirements under the Davis-Bacon Act.

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<sup>37</sup> This section was written by Jonathan L. Ramseur, Specialist in Environmental Policy, 7-7919.

<sup>38</sup> Personal communication with EPA, June 6, 2013. For more information on SPCC, contact Jonathan L. Ramseur, Specialist in Environmental Policy, 7-7919.

<sup>39</sup> H.R. 1877 had been referred to House T&I and House Ways and Means Committees. No further action had been taken. H.R. 1877 included a number of other CWA provisions that are not included in the conference report.

## Ocean Policy<sup>40</sup>

The conference report includes neither ocean related provisions of H.R. 3080 and S. 601, as shown in **Table 13**. Instead, it (§4014) would authorize the Corps to study projects in coastal zones to enhance ocean and coastal ecosystem resiliency; it would authorize the Corps to perform identified projects consistent with criteria in other related Corps CAP programs, or include a recommendation for congressional authorization of a project in the Annual Report. During House floor consideration of H.R. 3080, a provision (§146) was added prohibiting programs or actions authorized by H.R. 3080 to be used for furthering implementation of Executive Order 13547, related to coastal and marine spatial planning.<sup>41</sup> The House floor debate largely focused on implementation of recommendations from a report by the Interagency Ocean Policy Task Force. The recommendations support a national ocean policy, a coordination framework, and implementation strategy for the stewardship of the ocean, coasts, and the Great Lakes, and a framework for effective coastal and marine spatial planning.<sup>42</sup> The ASA's December 2013 letter to the conference managers states that "the Administration strongly opposes Sec. 146 of H.R. 3080."<sup>43</sup> S. 601 contained a different ocean policy provision. S. 601 would have established a National Endowment for the Oceans. Deposits would include amounts appropriated and dividends and interest accruing from investment of the fund's monies. The endowment would have disbursed funds to coastal states, other coastal authorities, and federal agencies to support ocean and coastal management. The provision was similar to a previous proposal made by the U.S. Commission on Ocean Policy.<sup>44</sup> The Commission recommended establishment of an Ocean Policy Trust Fund in the U.S. Treasury.<sup>45</sup> In contrast to S. 601, the Commission recommended funding from outer continental shelf oil and gas activities and from new activities in federal waters. Since the release of the Commission's final report in 2004 at least 12 bills have been introduced to establish an ocean trust fund or ocean endowment. Concerns related to the endowment include potential reductions in current program appropriations and potential tax increases to raise funds for the endowment.<sup>46</sup>

### *For Further Reading*

CRS Report R43306, *Spill Prevention, Control, and Countermeasure (SPCC) Regulations: Background and Legislation in the 113<sup>th</sup> Congress*, by Jonathan L. Ramseur.

CRS Report R42883, *Water Quality Issues in the 113<sup>th</sup> Congress: An Overview*, by Claudia Copeland.

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<sup>40</sup> This section was written by Harold F. Upton, Analyst in Natural Resources Policy, 7-2264.

<sup>41</sup> Executive Order E.O. 13547, "Stewardship of the Ocean, Our Coasts, and the Great Lakes," 75 *Federal Register* 43023, July 22, 2010.

<sup>42</sup> White House Council on Environmental Quality, *Final Recommendations of the Interagency Ocean Policy Task Force*, July 19, 2010, [http://www.whitehouse.gov/files/documents/OPTF\\_FinalRecs.pdf](http://www.whitehouse.gov/files/documents/OPTF_FinalRecs.pdf). For more information on the report or Executive Order 13547, contact Curry L. Hagerty, Specialist in Energy and Natural Resources Policy.

<sup>43</sup> See footnote 2.

<sup>44</sup> The commission was mandated by the Oceans Act of 2000 (P.L. 106-256). The 16 members were appointed by President Bush on July 3, 2001.

<sup>45</sup> U.S. Commission on Ocean Policy, *An Ocean Blueprint for the 21<sup>st</sup> Century*, Washington DC, 2004, [http://govinfo.library.unt.edu/oceancommission/documents/full\\_color\\_rpt/welcome.html#full](http://govinfo.library.unt.edu/oceancommission/documents/full_color_rpt/welcome.html#full).

<sup>46</sup> For more on the endowment, contact Harold F. Upton, Analyst in Natural Resources Policy, 7-2264.

**Table 13. Select Ocean Policy, Oil Spill Prevention, and Clean Water Act Provisions**

Topic	H.R. 3080	S. 601	Conference
National Ocean Policy Implementation	§146 would prohibit actions authorized in this act to be used to implement coastal and maritime spatial planning under an Obama Executive Order 13547.	No comparable provision.	No comparable provision.
National Endowment for the Oceans	No comparable provision.	Title XII would establish the National Endowment for the Oceans as a permanent Endowment fund to be administered by the National Fish and Wildlife Foundation and the Secretary of Commerce. Deposits would include amounts appropriated and dividends and interest accruing from investment of the fund's monies. The endowment would support activities to restore, protect, maintain, or understand living marine resources and their habitats and ocean, coastal, and Great Lakes resources. Each year at least 59% of grants would be to coastal states and 39% used as national grants.	No comparable provision.
Corps Ocean and Coastal Resiliency Authority	No comparable provision.	No comparable provision.	§4014 would authorize the ASA to undertake studies to determine the feasibility of carrying out Corps projects in coastal zones to enhance ocean and coastal ecosystem resiliency. §4014 would authorize the Corps to perform identified projects consistent with criteria in other related Corps CAP programs, or include a recommendation for the project in the Annual Report (§7001). §4014 would limit the ASA to carrying out projects that have been requested by the Governor or chief executive officer of a coastal state. §4014 does not provide an authorization of appropriations for this authority.

Topic	H.R. 3080	S. 601	Conference
EPA's Oil Spill Prevention, Control and Countermeasure (SPCC) Program	No comparable provision.	§13001 would amend the scope and applicability of the SPCC regulatory program. Among other provisions, §13001 would increase the oil storage threshold at farms requiring a certification from a Professional Engineer and the threshold allowing farms to self-certify their SPCC plans. In addition, farms with an aggregate aboveground storage of 6,000 gallons or less would not require a "certification of a statement of compliance with the rule."	§1049 would amend the scope and applicability of the SPCC regulatory program. Among other provisions, §1049 would increase the oil storage threshold at farms requiring a certification from a Professional Engineer and the threshold allowing farms to self-certify their SPCC plans. In addition, the following farms would not be subject to the SPCC regulations: (1) farms with no reportable discharge history and an aggregate aboveground storage of less than 6,000 gallons (or a to-be-determined lower threshold) and (2) farms with an aggregate aboveground storage of less than 2,500 gallons.
Clean Water Act Infrastructure Assistance	No comparable provision	No comparable provision	§5002 would modify Clean Water Act (CWA) Title VI to add several requirements as conditions for receiving assistance from a State Revolving Fund (SRF), such as requiring recipients to develop and implement a fiscal sustainability plan. §5004 would require SRF recipients to use American-made iron and steel products. §5003 would expand the list of projects and activities eligible for SRF assistance and extends the repayment terms of an SRF loan from 20 years up to 30 years.
Clean Water Act SRF Additional Subsidization	No comparable provision	No comparable provision	§5003 would authorize states to provide additional subsidization through forgiveness of principal and negative interest loans. A state may provide additional subsidization only in years in which total appropriations for clean water SRF capitalization grants exceed \$1 million, but may use not more than 30% of capitalization grants for such purpose.
Clean Water Act SRF Capitalization Grant Allotment	No comparable provision	No comparable provision	§5005 would direct EPA to review and report to Congress on the existing statutory formula that governs state-by-state allocation of SRF capitalization grants, which has been unchanged since 1987.
Clean Water Act Watershed Pilot Projects	No comparable provision	No comparable provision	§5011 would retitle CWA §122 as "Watershed Pilot Projects" and amend it to authorize projects to manage, reduce, treat, recapture or reuse municipal stormwater through watershed partnerships, integrated water resource planning, municipality-wide stormwater management planning, and projects to increase resilience of publicly owned wastewater treatment works.

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<b>Topic</b>	<b>H.R. 3080</b>	<b>S. 601</b>	<b>Conference</b>
Clean Water Act Tribal Assistance	No comparable provision	No comparable provision	§5013 would increase the amount of assistance for Indian tribes under CWA §518 to not less than 0.5% and not more than 2.0% of funds available under CWA Title VI.

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**Source:** CRS.

## Appendix. Crosswalk of Titles and Subtitles of Conference Report, H.R. 3080, and S. 601

**Table A-1. Crosswalk of Conference Report, H.R. 3080, and S. 601 Bill Titles**

Conference	Titles of H.R. 3080	Titles of S. 601
Title I—Program Reforms and Streamlining	Title I—Program Reforms and Streamlining	Title II—Water Resources Policy Reforms
Title II—Navigation Improvements		
Subtitle A—Inland Waterways	Title II Subtitle B—Inland Waterways	Title VII—Inland Waterways
Subtitle B—Port and Harbor Maintenance	Title II Subtitle A—Ports	Title VIII—Harbor Maintenance
Title III—Safety Improvements and Addressing Extreme Weather Events		
Subtitle A—Dam Safety	(some comparable provisions in Title I)	Title IX—Dam Safety
Subtitle B—Levee Safety	(some comparable provisions in Title I)	Title VI—Levee Safety
Subtitle C—Additional Safety Improvements and Risk Reduction Measures	(some comparable provisions in Title I)	Title XI—Extreme Weather
Title IV—River Basins and Coastal Areas	(some comparable provisions in Title I)	Title V—Regional and Nonproject Provisions
Title V—Water Infrastructure Financing		Title X—Innovative Financing Pilot Projects
Title VI—Deauthorization and Backlog Prevention	Title III—Deauthorization and Backlog Prevention	Some comparable provisions in Title II
Title VII—Water Resources Infrastructure	Title IV—Water Resources Infrastructure	Some comparable provisions in Title I
		Title III—Project Modifications
(some comparable provisions in Title VII)	(some comparable provisions in Title I)	Title IV—Water Resources Studies
(comparable provisions on oil spill prevention in Title I)	(ocean policy provision in Title I)	Title XII – Miscellaneous
(ocean-related provision in Title IV)		

**Source:** CRS.

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