

Relationship of the FWCA to Other Legislation



Legislative Information Sources

Table 5.2, Region 4 FWCA Guidance

Laws, Policies and Plans Relevant to Establishing the Institutional Significance of Fish and Wildlife Resources

Table 5.2*

Laws, Policies, and Plans Relevant to Establishing the
Institutional Significance of Fish and Wildlife resources

NOTE: The Internet locations for most of the laws cited below are summaries contained in the Service's Digest of Federal Resource Laws (<http://laws.fws.gov/lawsdigest>) which has been updated through the end of the 106th Congress (2000) for most laws. Also included is the U.S. Code citation for these laws. The United States Code may be accessed on-line at the following URL: <http://uscode.house.gov/uscode.htm>. THOMAS refers to the Library of Congress Legislative Information on the Internet at <http://thomas.loc.gov/cgi-bin/query/z?c104:S.39.ENR>:

Laws and policies delegating specific resources management authorities to the Department of the Interior and/or Fish and Wildlife Service, including the World Wide Web addresses

Anadromous Fish Conservation Act (16 USC 757a-757g)
<http://laws.fws.gov/lawsdigest/anadrom.html>

Federal Aid in Sport Fish Restoration Act (16 USC 777-777k)
<http://laws.fws.gov/lawsdigest/fasport.html>

Fish and Wildlife Coordination Act (16 U.S.C. 661-667e)
<http://laws.fws.gov/lawsdigest/fwcoord.html>
Also in App. B, Water Resources Planning Under the Fish and Wildlife Coordination Act

Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801-1882)
<http://laws.fws.gov/lawsdigest/fishcon.html>

Migratory Bird Conservation Act (16 U.S.C. 715-715d, 715e, 715f-715r)
<http://laws.fws.gov/lawsdigest/migbird.html>

Migratory Bird Hunting and Conservation Stamp Act (16 U.S.C. 718-718j)
<http://laws.fws.gov/lawsdigest/mighunt.html>

Migratory Bird Treaty Act (16 U.S.C. 703-712)
<http://laws.fws.gov/lawsdigest/migtrea.html>

* This table was updated in March 2001 by Dan Smalley, Division of Federal Program Activities. The original table is contained in the document, "Policy and Guidance on Fulfillment of Fish and Wildlife Coordination Act Responsibilities in the Corps of Engineers Water Resources Development Program", U.S. Fish and Wildlife Service, Southeast Region, Division of Ecological Services, Atlanta, Georgia. March 1987.

Wetlands Loan Act (16 USC 715k-3 - 715k-5)



Legislative Information Sources

- **Digest of Federal Resource Laws**
 - ❖ FWS Office of Congressional and Legislative Services – April, 1992
 - ❖ Summaries of legislation updated through 2000
 - ❖ <http://www.fws.gov/laws/digest/digest.html>
- **Federal Wildlife and Related Laws Handbook**
 - ❖ Center for Wildlife Law, Univ. of New Mexico





Federal Water Projects Recreation Act

- Commonly referred to as P.L. 89-72
- Recreation and fish and wildlife enhancement receive full consideration as purposes of Federal water resources development projects
- Project sponsor and Cost-share required:
 - ❖ 50% of cost of recreation;
 - ❖ 25% of cost of fish and wildlife enhancement





Federal Water Projects Recreation Act

- **Provisions for fish and wildlife enhancement essentially modified by Section 906(e) of Water Resources Development Act of 1986**
 - ❖ **Corps not implementing 906(e)**
- **H.R. 1013, 107th Congress**
 - ❖ **National Recreation Lakes Act**
 - ❖ **25 National Recreation Demonstration Lakes**
 - ❖ **Would remove 50% cost share for recreation under PL 89-72**



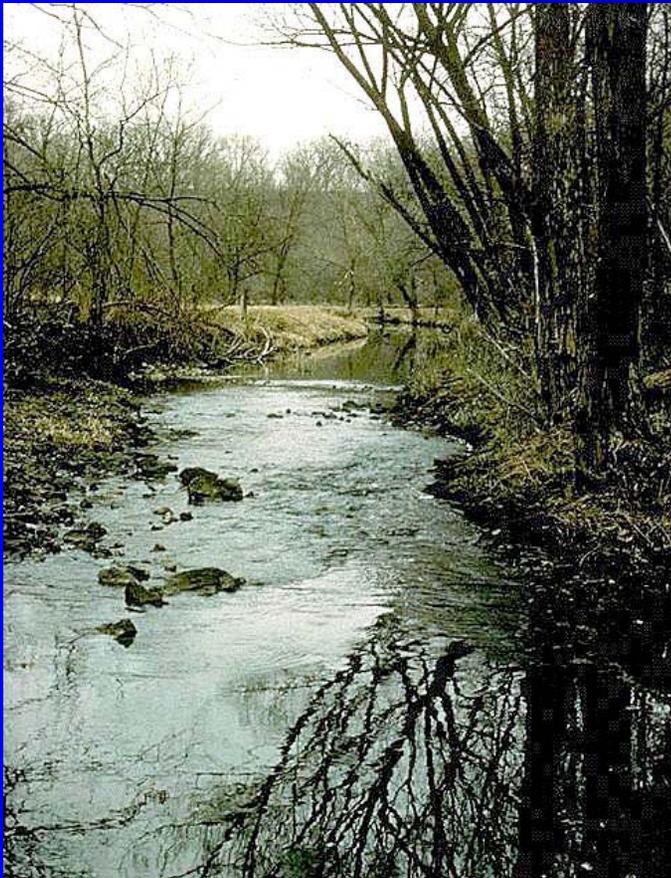
Section 12, Watershed Protection and Flood Prevention Act (P.L. 84-566)

- **Agriculture assists State and local agencies in developing plans for improvement of soil conservation and other purposes.**
- **Technical, financial and credit assistance in small watersheds.**
- **Project purposes: watershed protection; flood prevention; agricultural water management; ground water recharge; water quality management; municipal and industrial water supply.**





Section 12, Watershed Protection and Flood Prevention Act (P.L. 84-566)



In preparing plans, Agriculture must:

- ❖ **Consult regarding conservation and development of wildlife resources**
- ❖ **Afford the FWS the opportunity to participate of project planning**
- ❖ **Give full consideration to recommendations in reports provided by the FWS on the project**



Section 12, Watershed Protection and Flood Prevention Act (P.L. 84-566)

- ❖ **include technically and economically feasible works of improvement for wildlife purposes that are acceptable to Agriculture and local project sponsor**
- ❖ **Include FWS report with project plan when submitted for approval**
- **Funds for FWS are through base funds appropriated to the Department of the Interior**



Water Resources Development Acts

- Authorizing legislation for Corps of Engineers planning, and construction
- Previously (pre-1974):
 - ❖ Flood Control Acts
 - ❖ Rivers and Harbors Acts
- WRDA 1986 was first in 10 years
- Contained significant environmental authorities
- “Authorities” vs “Authorization”

100 STAT. 4082

PUBLIC LAW 99-662—NOV. 17, 1986

Public Law 99-662
99th Congress

An Act

Nov. 17, 1986
[H.R. 6]

To provide for the conservation and development of water and related resources and the improvement and rehabilitation of the Nation's water resources infrastructure.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Water Resources
Development
Act of 1986.
33 USC 2201
note.

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Water Resources Development Act of 1986”.

(b) TABLE OF CONTENTS.—

Title I—Cost Sharing
Title II—Harbor Development
Title III—Inland Waterway Transportation System
Title IV—Flood Control
Title V—Shoreline Protection
Title VI—Water Resources Conservation and Development
Title VII—Water Resources Studies
Title VIII—Project Modifications
Title IX—General Provisions
Title X—Project Deauthorizations
Title XI—Miscellaneous Programs and Projects
Title XII—Dam Safety
Title XIII—Namings
Title XIV—Revenue Provisions

33 USC 2201.

SEC. 2. DEFINITION OF SECRETARY.

For purposes of this Act, the term “Secretary” means the Secretary of the Army.

TITLE I—COST SHARING

33 USC 2211.

SEC. 101. HARBORS.

(a) CONSTRUCTION.—

Contracts.

(1) PAYMENTS DURING CONSTRUCTION.—The non-Federal interests for a navigation project for a harbor or inland harbor, or any separable element thereof, on which a contract for physical construction has not been awarded before the date of enactment of this Act shall pay, during the period of construction of the project, the following costs associated with general navigation features:

(A) 10 percent of the cost of construction of the portion of the project which has a depth not in excess of 20 feet; plus
(B) 25 percent of the cost of construction of the portion of the project which has a depth in excess of 20 feet but not in excess of 45 feet; plus
(C) 50 percent of the cost of construction of the portion of the project which has a depth in excess of 45 feet.

(2) ADDITIONAL 10 PERCENT PAYMENT OVER 30 YEARS.—The non-Federal interests for a project to which paragraph (1) applies shall pay an additional 10 percent of the cost of the general navigation features of the project in cash over a period



Water Resources Development Acts

- **Responsible Committees in Congress:**
 - ❖ **House of Representatives:**
 - **House Committee on Transportation and Infrastructure**
 - Subcommittee on Water Resources and Environment.
 - ❖ **Senate:**
 - **Committee on Environment and Public Works**
 - Subcommittee on Transportation and Infrastructure



WRDA Environmental Authorities



Photo by Joel Trick





Section 704, WRDA 1986

Corps Capability to Conserve Fish and Wildlife



- Study feasibility of using Corps' capabilities to conserve indigenous fish and wildlife, including their habitats
- Report to Congress in 1989; continuing review and revisions

- Authorized Corps to conduct projects of alternative or beneficially modified habitats in consultation with FWS and NOAA.
(under current policy and budget constraints, Corps is not implementing this provisions)





Section 906, WRDA 1986 Fish and Wildlife Mitigation

- **906(a) – Mitigation, including land acquisition, must be implemented before or concurrently with project construction**
- **906(b) – Mitigation, including land acquisition, authorized for Corps projects, whether completed, under construction or yet to be constructed.
(Under current policy and budget constraints, Corps is not currently implementing this provision)**
- **906(c) – Costs of fish and wildlife mitigation are cost-shared at same rate as project purpose(s) causing the impacts**



Section 906, WRDA 1986 Fish and Wildlife Mitigation

- **906(d) – All future Corps projects (post-1986) submitted must have either:**
 - ❖ **A specific mitigation plan or**
 - ❖ **A determination that project will have negligible impacts to fish & wildlife**
 - ❖ **Mitigation plans must mitigate for bottomland hardwoods in-kind, to the extent possible**





Section 906, WRDA 1986 Fish and Wildlife Mitigation

- **906(e) - Cost of fish and wildlife enhancement is 100% federal where benefits:**
 - ❖ **Are determined to be national, including:**
 - Species identified by NMFS as of national economic importance
 - ID's in treaties/Int'l Convention to which U.S. is a party
 - Anadromous fish
 - Listed endangered and threatened species
 - Activities located on a National Wildlife Refuge
 - ❖ **Corps is not implementing this provision**



Section 906, WRDA 1986 Fish and Wildlife Mitigation

- **906(g)**

- ❖ **The provisions of 906(a), (b), and (d) do not supplement the responsibility and authority of the Corps under the Fish and Wildlife Coordination Act**
- ❖ **Nothing in this section [906] is intended to affect that act [FWCA]**



Section 907, WRDA 1986

Benefits and costs attributable to environmental measures

Benefits of measures for environmental quality, including enhancement, are deemed to be at least equal to their costs





Section 908, WRDA 1986 Mitigation Fund

- **Authorized an environmental protection and mitigation fund:**
 - ❖ **\$35 million per fiscal year**
 - ❖ **To implement authorized mitigation, including land acquisition, before project construction**
 - ❖ **Reimburse from project appropriations when received**



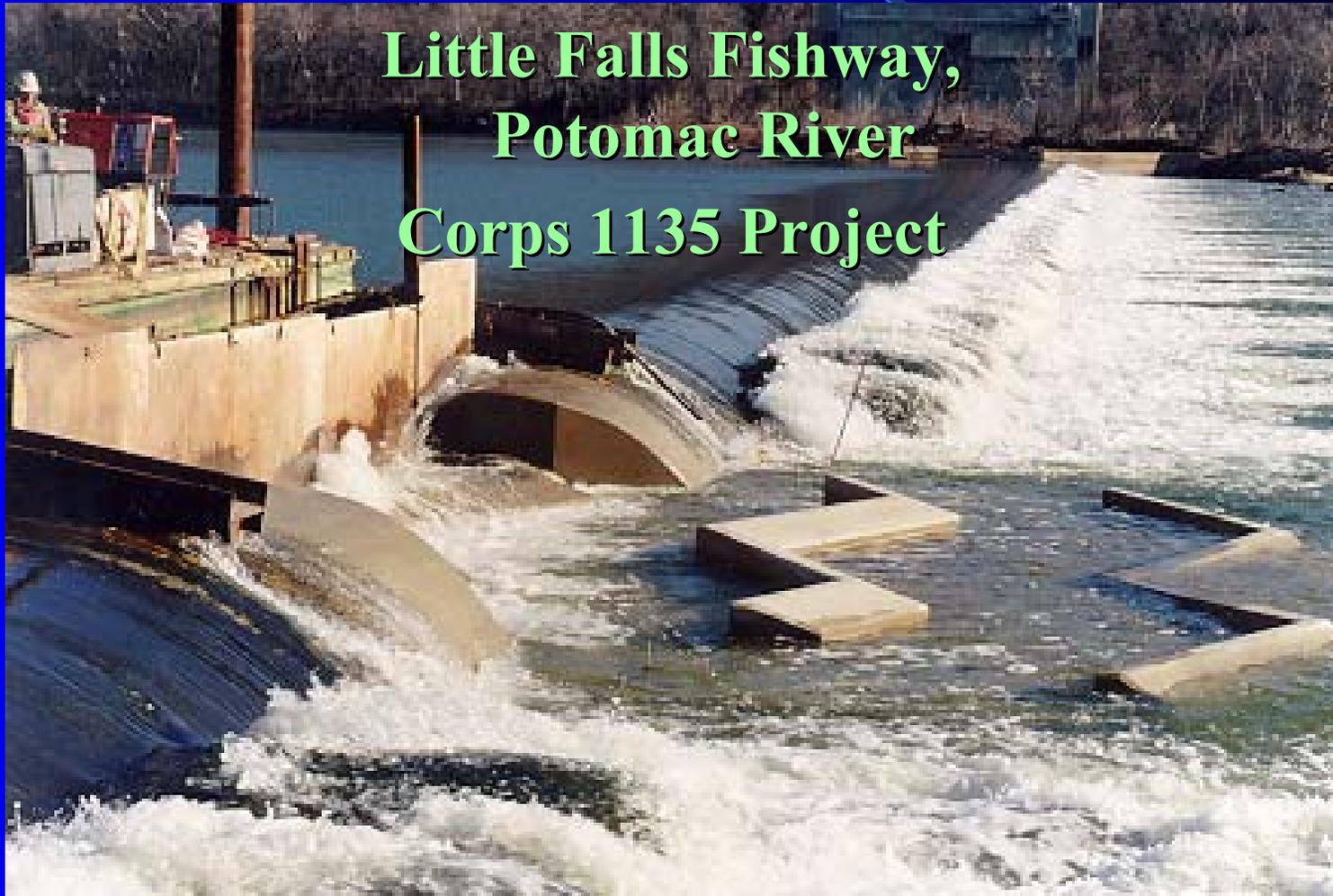
Section 1135, WRDA 1986

Project modifications for improvement of environment

- **Corps project review to determine**
 - ❖ need for modifications in structures or operation to improve the quality of the environment
 - ❖ Whether project operations has contributed to environmental degradation
- **Authorized Corps to modify project structures and operation to restore environmental quality, including enhancement**
- **Modifications at the project site or other locations affected by project construction or operation**
- **Under Continuing Authorities program**



Section 1135, WRDA 1986 Project modifications for improvement of environment



Little Falls Fishway,
Potomac River
Corps 1135 Project



Section 307, WRDA 1990 Wetlands



- Established civil works goals of no net loss of wetlands and increasing the quality and quantity of wetlands
- Develop a wetlands action plan in consultation with EPA and FWS
- Establish a demonstration program on the feasibility of wetland restoration and enhancement with EPA
- Establish a program for the training and certification of individuals as wetland delineators



Section 204, WRDA 1992

Beneficial Uses of Dredged Material

- Authorized projects for protection, restoration and creation of aquatic habitats, including wetlands, in connection with navigation project dredging
- Dredged material disposal method may be other than least-cost option
- Under Continuing Authorities program





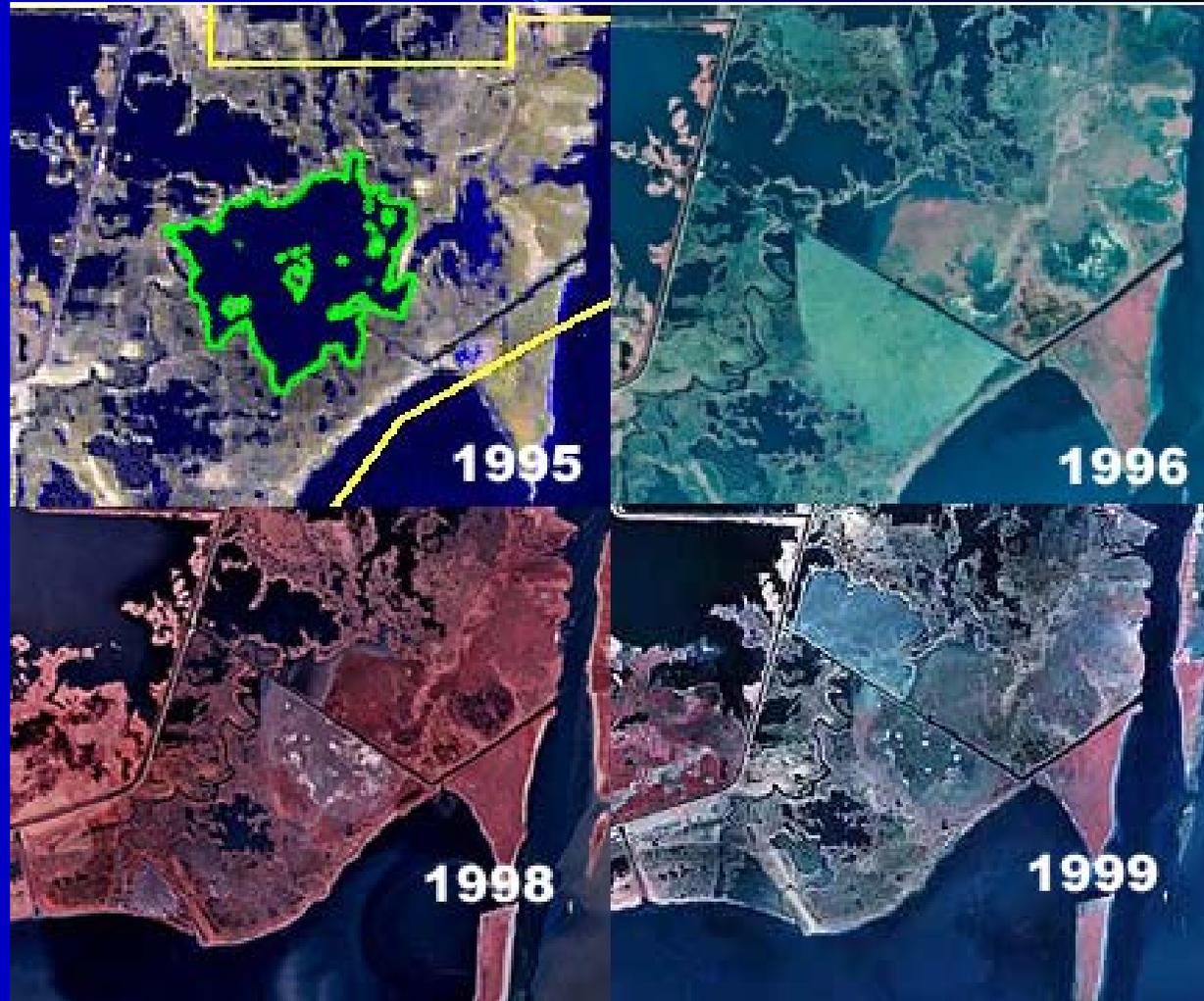
Section 204, WRDA 1992

Beneficial Uses of Dredged Material

Corps restoration projects used in conjunction with National Wildlife Refuges.

204 project at Sabine NWR, LA; dredged material to restore wetlands

Over 525 ac of marsh restored





Section 206, WRDA 1996 Aquatic Ecosystem Restoration

- **Authorized small restoration and protection projects if they:**
 - ❖ will improve environmental quality
 - ❖ are in the public interest
 - ❖ are cost-effective
- **Under Continuing Authorities program**

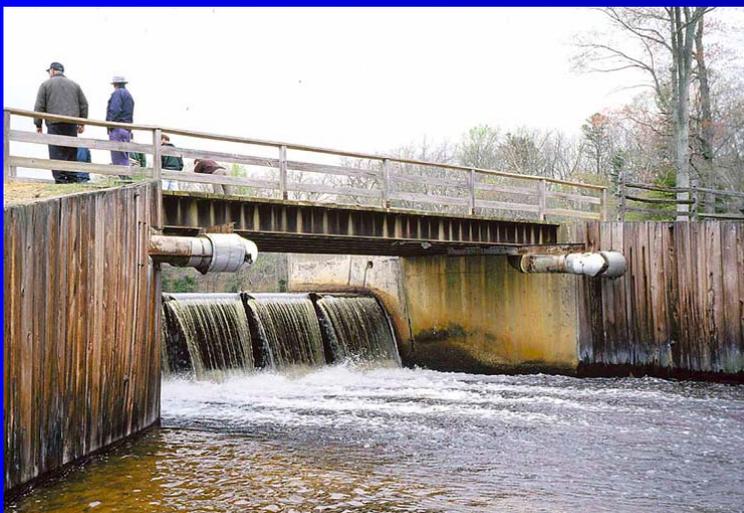


Section 206, WRDA 1996 Aquatic Ecosystem Restoration



Fish passage on New Jersey streams

Corps partners under sections 206 and 1135





Section 212, WRDA 1999 Flood Mitigation and Riverine Restoration Program (Challenge 21)

- **Authorizes projects to reduce flood hazards and restore natural functions and values of rivers**
- **Emphasize on nonstructural approaches to flood loss reduction**
- **27 locations specified for examination**





Section 729, WRDA 1986 Watershed and River Basin Assessments

- **Revisions in section 202 of WRDA 2000**
- **Authorizes assessment of water resources needs of river basins and watersheds of the United States including:**
 - ❖ **Ecosystem protection and restoration**
 - ❖ **Flood damage reduction**
 - ❖ **Navigation and ports**
 - ❖ **Watershed protection**
 - ❖ **Water supply**
 - ❖ **Drought preparedness**
- **5 Priority River Basins/Watersheds for assessment**



Other WRDA Sections

- **WRDA 1986, S. 943 - Historical Properties**
 - ❖ Authorizes Corps to preserve, restore, and maintain historic properties at projects if in National Register of Historic Places
- **WRDA 1988, S. 8 - Innovative Technologies**
 - ❖ Seek to use innovative technology in all phases of water resource development projects and programs
- **WRDA 1990, S. 312 - Environmental Dredging**
 - ❖ To meet Clean Water Act, Corps may remove and remediate contaminated sediments that lie outside the boundaries of and adjacent to navigation channels as part of O&M
- **WRDA 1990, S. 306 – Environmental Protection Mission**
 - ❖ Authorized environmental protection as one of Corps' primary missions in planning, constructing, operating and maintaining projects



Other WRDA Sections

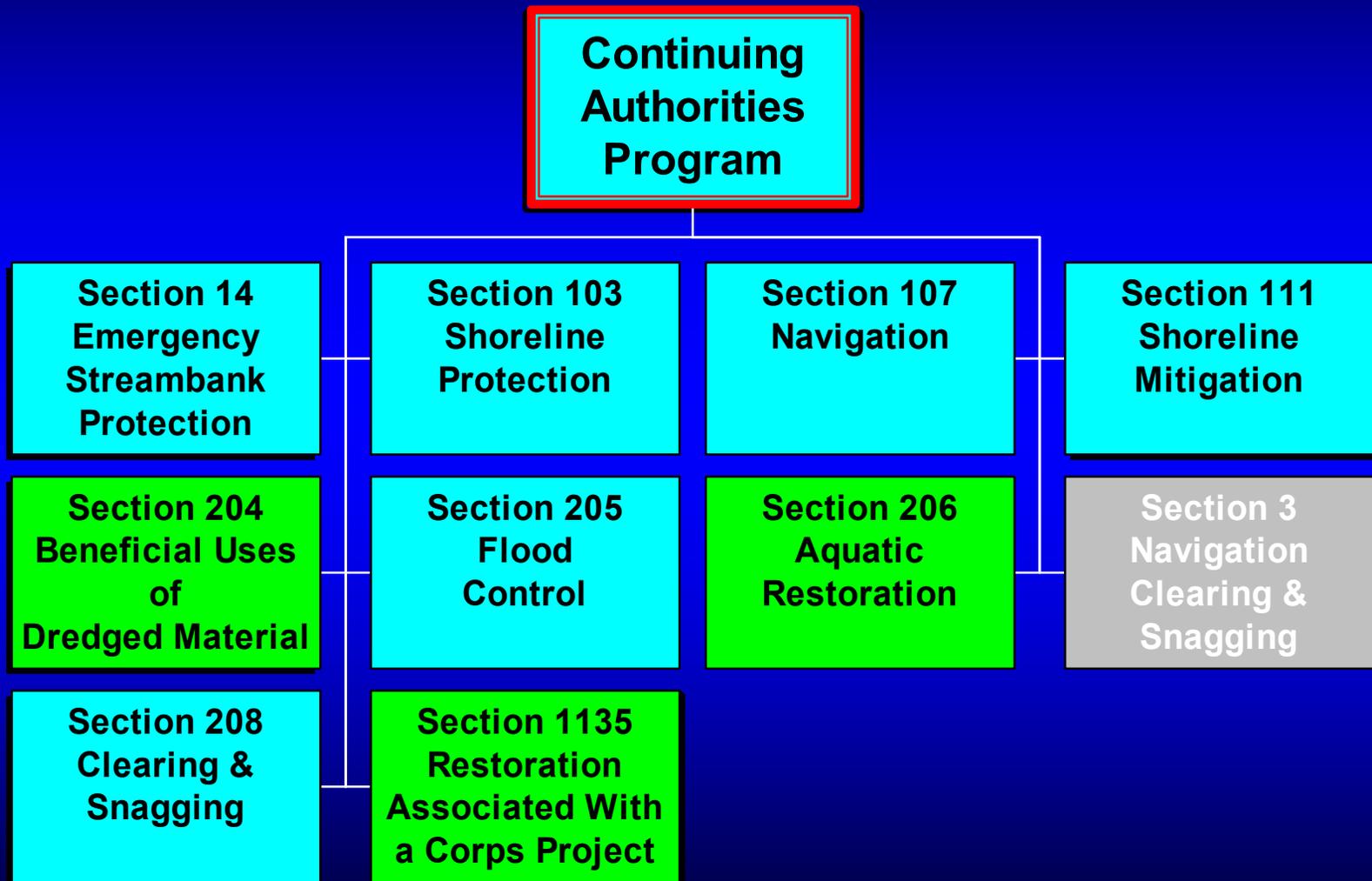
- **WRDA 1992, S. 203 – Voluntary Contributions for Environmental and Recreation Projects**
 - ❖ Corps may accept contributions in carrying out water resources projects for environmental protection and restoration (except from sponsor)
- **WRDA 1992, S. 503 - Sediment Survey and Monitoring**
 - ❖ Required a national survey of aquatic sediment quality throughout U.S. by 1994 and a comprehensive and continuing program to assess aquatic sediment quality.
- **WRDA 1996, S. 212 – Engineering and Environmental Innovations of National Significance**
 - ❖ Authorizes studies, plans, etc. using innovative and environmentally sound engineering solutions and innovative environmental solutions.



Common Provisions

- **Many Environmental Provisions:**
 - ❖ **Require cost-sharing by non-federal Entity**
 - ❖ **Allow Non-Federal entity to be an NGO**
 - ❖ **Contain cost caps per project**
 - ❖ **Contain total annual cost caps**

CAP AUTHORITIES





GAO Review of Corps Mitigation

- **Section 224(b), WRDA 2000:**

Examine the effectiveness of the concurrent mitigation requirements of Section 906 of the Water Resources Development Act of 1986

- **Examine:**

- ❖ **The extent to which mitigation measures are completed before initiating project construction**
- ❖ **The methods used to monitor and evaluate mitigation projects**
- ❖ **The Corp's mitigation project design, construction, monitoring and evaluation practices**



Legislative Initiatives

S. 646 and H.R. 1310 –A Bill to Reform the Army Corps of Engineers

- **Introduced 3/29/2001**
- **Amend Flood Control Act of 1970 to make economic development and environmental protection co-equal goals of water resources planning and development**
- **Require Secretary of Army to revise P&G for water resource projects to reflect these goals**



S. 646/H.R. 1310

- **Require establishment of a stakeholder advisory committee for authorized or modified projects to assist in feasibility studies, general reevaluation studies, and EISs**
- **Require review of specific projects and studies by independent panel of experts where projects:**
 - ❖ **Have estimated cost of more than \$25 million**
 - ❖ **Likely to significantly adversely impact fish or wildlife,**
 - ❖ **Likely to significantly adversely impact local environment, cultural, or other resources**
 - ❖ **Determined to be controversial**



S. 646/H.R. 1310

- **Require information related to project analysis to be made available to the public on the Internet**
- **Prohibit authorization/substantial modification of a project unless minimizes adverse impacts on natural hydrologic patterns, value, or diversity of wildlife**
- **Amend WRDA 86 to require full and concurrent mitigation of authorized projects**
- **Require keeping of records on wetlands and other habitat types impacted by authorized projects, and available to public**



Any
Questions?

