

# Babin WRDA Amendments

**Amendment #73:** Defines parameters and sets guidelines for the scope of "work" under Section 408 review processes.

Under **Section 408**, permission of the Corps is required for a proposed activity that would modify, among other things, “any sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States.” This language was originally enacted in the Rivers and Harbors Act of 1899 to protect engineered structures built by the Corps that serve particular functions, such as erosion control (sea walls), water retention (dikes, levees), and vessel access (piers).

Over time, however, the Corps has expanded its regulatory authority beyond the limits of the statute. Specifically, the Corps now requires a review of any proposal for a physical modification or structure touching a Corps project, even if it has no bearing at all on navigation or flood control. In other words, the Corps does not limit the application of Section 408 to “works,” but rather requires a Section 408 review for any proposal for a physical structure or modification within the boundary of a Corps project. That has resulted in an overlay of additional administrative procedure, unnecessary cost, and regulatory uncertainty.

This amendment reinforces the original intent of the Rivers and Harbors Act by focusing the Corps on actual navigation and flood control assets, allowing them to devote their full attention and resources to important safety evaluations and the expedited review and execution of project modification requests.

**Amendment #90:** Allows for channels which have been "assumed for maintenance" to be considered the same as "authorized" projects.

Numerous channels in the U.S. constructed or modified by non-federal entities have been **assumed for maintenance** by the Corps of Engineers. Each of these projects has to meet the requirements of being environmentally acceptable, economically justified, and constructed in accordance with federal permits and appropriate engineering and design standards. In many cases, the construction or modification of the channels by non-federal users reduces federal costs and provides for national economic benefits well before a federal project can be accomplished.

However, channels which have been assumed for maintenance are not considered “authorized” projects. As a result, while those channels may be indistinguishable from a federally-constructed project, the channel which had been assumed for maintenance may not be eligible or qualify for repairs, follow-on planning activities, and may be administered differently than an “authorized” channel.

Amendment #90 corrects this by putting channels which have been **assumed for maintenance** on equal footing with those that have been **authorized**, eliminating the 'distinction without a difference' that currently exists and allowing local officials and the Corps of Engineers to provide solutions and improvements for the entire project site through a more streamlined process.