

108TH CONGRESS
2D SESSION

S. 2188

To provide for reform of the Corps of Engineers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 10, 2004

Mr. FEINGOLD (for himself, Mr. MCCAIN and Mr. DASCHLE) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To provide for reform of the Corps of Engineers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Corps of Engineers Modernization and Improvement Act
6 of 2004”.

7 (b) **TABLE OF CONTENTS.**—The table of contents of
8 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Definitions.

Sec. 101. Modern planning principles.
 Sec. 102. Independent review.
 Sec. 103. Benefit-cost analysis.
 Sec. 104. Benefit-cost ratio.
 Sec. 105. Cost sharing.

TITLE II—MITIGATION

Sec. 201. Full mitigation.
 Sec. 202. Concurrent mitigation.
 Sec. 203. Mitigation tracking system.

TITLE III—ADDRESSING THE PROJECT BACKLOG

Sec. 301. Project backlog.
 Sec. 302. Primary mission focus.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress finds that—

3 (1) the Corps of Engineers is the primary Fed-
 4 eral agency responsible for developing and managing
 5 the harbors, waterways, shorelines, and water re-
 6 sources of the United States;

7 (2) the scarcity of Federal resources requires
 8 more efficient use of Corps resources and funding,
 9 and greater oversight of Corps analyses;

10 (3) appropriate cost sharing ensures efficient
 11 measures of project demands and enables the Corps
 12 to meet more national project needs;

13 (4) the significant demand for recreation, clean
 14 water, and healthy wildlife habitat must be fully re-
 15 flected in the project planning and construction
 16 process of the Corps;

17 (5) the human health, environmental, and social
 18 impacts of dams, levees, shoreline stabilization struc-

1 tures, river training structures, river dredging, and
2 other Corps projects and activities must be ade-
3 quately considered and, in any case in which adverse
4 impacts cannot be avoided, fully mitigated;

5 (6) the National Academy of Sciences has con-
6 cluded that the Principles and Guidelines for water
7 resources projects need to be modernized and up-
8 dated to reflect current economic practices and envi-
9 ronmental laws and planning guidelines; and

10 (7) affected interests must have access to infor-
11 mation that will allow those interests to play a larg-
12 er and more effective role in the oversight of Corps
13 project development and mitigation.

14 (b) PURPOSES.—The purposes of this Act are—

15 (1) to ensure that the water resources invest-
16 ments of the United States are economically justified
17 and enhance the environment;

18 (2) to provide independent review of feasibility
19 studies, general reevaluation studies, and environ-
20 mental impact statements of the Corps;

21 (3) to ensure timely, ecologically successful, and
22 cost-effective mitigation for Corps projects;

23 (4) to ensure appropriate local cost sharing to
24 assist in efficient project planning focused on na-
25 tional needs;

1 (5) to enhance the involvement of affected in-
2 terests in feasibility studies, general reevaluation
3 studies, and environmental impact statements of the
4 Corps;

5 (6) to modernize planning principles of the
6 Corps to meet the economic and environmental
7 needs of riverside and coastal communities and the
8 nation;

9 (7) to ensure that environmental protection and
10 restoration, and national economic development, are
11 co-equal goals, and given co-equal emphasis, during
12 the evaluation, planning, and construction of Corps
13 projects;

14 (8) to ensure that project planning, project
15 evaluations, and project recommendations of the
16 Corps are based on sound science and economics and
17 on a full evaluation of the impacts to the health of
18 aquatic ecosystems; and

19 (9) to ensure that the determination of benefits
20 and costs of Corps projects properly reflects current
21 law and Federal policies designed to protect human
22 health and the environment.

23 **SEC. 3. DEFINITIONS.**

24 In this Act:

1 (1) ACADEMY.—The term “Academy” means
2 the National Academy of Sciences.

3 (2) CORPS.—The term “Corps” means the
4 Corps of Engineers.

5 (3) PRINCIPLES AND GUIDELINES.—The term
6 “Principles and Guidelines” means the principles
7 and guidelines of the Corps for water resources
8 projects (consisting of Engineer Regulation 1105–2–
9 100 and Engineer Pamphlet 1165–2–1).

10 (4) SECRETARY.—The term “Secretary” means
11 the Secretary of the Army.

12 **TITLE I—MODERNIZING** 13 **PROJECT PLANNING**

14 **SEC. 101. MODERN PLANNING PRINCIPLES.**

15 (a) PLANNING PRINCIPLES.—Section 209 of the
16 Flood Control Act of 1970 (42 U.S.C. 1962–2) is amend-
17 ed to read as follows:

18 **“SEC. 209. CONGRESSIONAL STATEMENT OF OBJECTIVES.**

19 “(a) IN GENERAL.—It is the intent of Congress
20 that—

21 “(1) national economic development and envi-
22 ronmental protection and restoration are co-equal
23 goals of water resources project planning and man-
24 agement; and

1 “(2) Federal agencies manage and, if clearly
2 justified, construct water resource projects—

3 “(A) to meet national economic needs; and

4 “(B) to protect and restore the environ-
5 ment.

6 “(b) REVISION OF PLANNING GUIDELINES, REGULA-
7 TIONS AND CIRCULARS.—Not later than 18 months after
8 the date of enactment of the Corps of Engineers Mod-
9 ernization and Improvement Act of 2004, the Secretary,
10 in collaboration with the National Academy of Sciences,
11 shall develop proposed revisions of, and revise, the plan-
12 ning guidelines, regulations, and circulars of the Corps.

13 “(c) ADDITIONAL REQUIREMENTS.—Corps planning
14 regulations revised under subsection (b) shall—

15 “(1) incorporate new and existing analytical
16 techniques that reflect the probability of project ben-
17 efits and costs;

18 “(2) apply discount rates provided by the Office
19 of Management and Budget;

20 “(3) eliminate biases and disincentives that dis-
21 courage the use of nonstructural approaches to
22 water resources development and management;

23 “(4) encourage, to the maximum extent prac-
24 ticable, the restoration of ecosystems;

1 “(5) consider the costs and benefits of pro-
2 tecting or degrading natural systems;

3 “(6) ensure that projects are justified by bene-
4 fits that accrue to the public at large;

5 “(7) ensure that benefit-cost calculations reflect
6 a credible schedule for project construction;

7 “(8) ensure that each project increment com-
8 plies with section 104;

9 “(9) include as a cost any increase in direct
10 Federal payments or subsidies and exclude as a ben-
11 efit any increase in direct Federal payments or sub-
12 sidies; and

13 “(10) provide a mechanism by which, at least
14 once every 5 years, the Secretary shall collaborate
15 with the National Academy of Sciences to review,
16 and if necessary, revise all planning regulations,
17 guidelines, and circulars.

18 “(d) NATIONAL NAVIGATION AND PORT PLAN.—

19 “(1) IN GENERAL.—Not later than 18 months
20 after the date of enactment of the Corps of Engi-
21 neers Modernization and Improvement Act of 2004,
22 the Corps shall develop and annually update an inte-
23 grated, national plan to manage, rehabilitate and, if
24 justified, modernize inland waterway and port infra-

1 structure to meet current national economic and en-
2 vironmental needs.

3 “(2) TOOLS.—To develop the plan, the Corps
4 shall employ economic tools that—

5 “(A) recognize the importance of alter-
6 native transportation destinations and modes;
7 and

8 “(B) employ practicable, cost-effective con-
9 gestion management alternatives before con-
10 structing and expanding infrastructure to in-
11 crease waterway and port capacity.

12 “(3) BENEFITS AND PROXIMITY.—The Corps
13 shall give particular consideration to the benefits
14 and proximity of proposed and existing port, harbor,
15 waterway, rail and other transportation infrastruc-
16 ture in determining whether to construct new water
17 resources projects.

18 “(e) NOTICE AND COMMENT.—The Secretary shall
19 comply with the notice and comment provisions of chapter
20 551 of title 5, United States Code, in issuing revised plan-
21 ning regulations, guidelines and circulars.

22 “(f) APPLICABILITY.—On completion of the revisions
23 required under this section, the Secretary shall apply the
24 revised regulations to projects for which a draft feasibility
25 study or draft reevaluation report has not yet been issued.

1 “(g) PROJECT REFORMULATION.—Projects of the
2 Corps, and separable elements of projects of the Corps,
3 that have been authorized for 10 years, but for which less
4 than 15 percent of appropriations specifically identified
5 for construction have been obligated, shall not be con-
6 structed unless a general reevaluation study demonstrates
7 that the project or separable element meets—

8 “(1) all project criteria and requirements appli-
9 cable at the time the study is initiated, including re-
10 quirements under this section; and

11 “(2) cost share and mitigation requirements of
12 this Act.”.

13 (b) CONFORMING AMENDMENTS.—

14 (1) Section 80 of the Water Resources Develop-
15 ment Act of 1974 (42 U.S.C. 1962(d)–17) is re-
16 pealed.

17 (2) Section 7(a) of the Department of Trans-
18 portation Act (Public Law 89–670; 80 Stat. 941) is
19 repealed.

20 **SEC. 102. INDEPENDENT REVIEW.**

21 (a) DEFINITIONS.—In this section:

22 (1) AFFECTED STATE.—The term “affected
23 State”, with respect to a water resources project,
24 means a State or portion of a State that—

1 (A) is located, at least partially, within the
2 drainage basin in which the project is carried
3 out; and

4 (B) would be economically or environ-
5 mentally affected as a result of the project.

6 (2) DIRECTOR.—The term “Director” means
7 the Director of Independent Review appointed under
8 subsection (c)(1).

9 (b) PROJECTS SUBJECT TO INDEPENDENT RE-
10 VIEW.—

11 (1) IN GENERAL.—The Secretary shall ensure
12 that each feasibility report, general reevaluation re-
13 port, and environmental impact statement for each
14 water resources project described in paragraph (2) is
15 subject to review by an independent panel of experts
16 established under this section.

17 (2) PROJECTS SUBJECT TO REVIEW.—A water
18 resources project shall be subject to review under
19 paragraph (1) if—

20 (A) the project has an estimated total cost
21 of more than \$25,000,000, including mitigation
22 costs;

23 (B) the Governor of an affected State re-
24 quests the establishment of an independent
25 panel of experts for the project;

1 (C) the head of a Federal agency charged
 2 with reviewing the project determines that the
 3 project is likely to have a significant adverse
 4 impact on environmental, cultural, or other re-
 5 sources under the jurisdiction of the agency; or

6 (D) the Secretary determines under para-
 7 graph (3) that the project is controversial.

8 (3) CONTROVERSIAL PROJECTS.—

9 (A) IN GENERAL.—The Secretary shall de-
 10 termine that a water resources project is con-
 11 troversial for the purpose of paragraph (2)(D)
 12 if the Secretary finds that—

13 (i) there is a significant dispute as to
 14 the size, nature, or effects of the project;

15 (ii) there is a significant dispute as to
 16 the economic or environmental costs or
 17 benefits of the project; or

18 (iii) there is a significant dispute as to
 19 the benefits to the communities affected by
 20 the project of a project alternative that—

21 (I) was not the focus of the feasi-
 22 bility report, general reevaluation re-
 23 port, or environmental impact state-
 24 ment for the project; or

1 (II) was not considered in the
2 feasibility report, general reevaluation
3 report, or environmental impact state-
4 ment for the project.

5 (B) WRITTEN REQUESTS.—Not later than
6 30 days after the date on which the Secretary
7 receives a written request of any party, or on
8 the initiative of the Secretary, the Secretary
9 shall determine whether a project is controver-
10 sial.

11 (c) DIRECTOR OF INDEPENDENT REVIEW.—

12 (1) APPOINTMENT.—The Inspector General of
13 the Army shall appoint in the Office of the Inspector
14 General of the Army a Director of Independent Re-
15 view.

16 (2) QUALIFICATIONS.—The Inspector General
17 of the Army shall select the Director from among in-
18 dividuals who are distinguished experts in biology,
19 hydrology, engineering, economics, or another dis-
20 cipline relating to water resources management.

21 (3) LIMITATION ON APPOINTMENTS.—The In-
22 spector General of the Army shall not appoint an in-
23 dividual to serve as the Director if the individual has
24 a financial interest in or close professional associa-
25 tion with any entity with a financial interest in a

1 water resources project that, on the date of appoint-
2 ment of the Director, is—

3 (A) under construction;

4 (B) in the preconstruction engineering and
5 design phase; or

6 (C) under feasibility or reconnaissance
7 study by the Corps.

8 (4) TERMS.—

9 (A) IN GENERAL.—The term of a Director
10 appointed under this subsection shall be 6
11 years.

12 (B) TERM LIMIT.—An individual may
13 serve as the Director for not more than 2 non-
14 consecutive terms.

15 (5) DUTIES.—The Director shall establish a
16 panel of experts to review each water resources
17 project that is subject to review under subsection
18 (b).

19 (d) ESTABLISHMENT OF PANELS.—

20 (1) IN GENERAL.—After the Secretary selects a
21 preferred alternative for a water resources project
22 subject to review under subsection (b) in a formal
23 draft feasibility report, draft general reevaluation re-
24 port, or draft environmental impact statement, the

1 Director shall establish a panel of experts to review
2 the project.

3 (2) MEMBERSHIP.—A panel of experts estab-
4 lished by the Director for a project shall be com-
5 posed of not less than 5 nor more than 9 inde-
6 pendent experts (including 1 or more biologists, hy-
7 drologists, engineers, and economists) who represent
8 a range of areas of expertise.

9 (3) LIMITATION ON APPOINTMENTS.—The Di-
10 rector shall not appoint an individual to serve on a
11 panel of experts for a project if the individual has
12 a financial interest in or close professional associa-
13 tion with any entity with a financial interest in the
14 project.

15 (4) CONSULTATION.—The Director shall con-
16 sult with the Academy in developing lists of individ-
17 uals to serve on panels of experts under this section.

18 (5) NOTIFICATION.—

19 (A) IN GENERAL.—To ensure that the Di-
20 rector is able to effectively carry out the duties
21 of the Director under this section, the Secretary
22 shall notify the Director in writing not later
23 than 90 days before the release of a draft feasi-
24 bility report, draft general reevaluation report,

1 or draft environmental impact statement, for
2 every water resources project.

3 (B) CONTENTS.—The notification shall in-
4 clude—

5 (i) the estimated cost of the project;

6 and

7 (ii) a preliminary assessment of
8 whether a panel of experts may be re-
9 quired.

10 (6) COMPENSATION.—An individual serving on
11 a panel of experts under this section shall be com-
12 pensated at a rate of pay to be determined by the
13 Inspector General of the Army.

14 (7) TRAVEL EXPENSES.—A member of a panel
15 of experts under this section shall be allowed travel
16 expenses, including per diem in lieu of subsistence,
17 at rates authorized for an employee of an agency
18 under subchapter I of chapter 57 of title 5, United
19 States Code, while away from the home or regular
20 place of business of the member in the performance
21 of the duties of the panel.

22 (e) DUTIES OF PANELS.—

23 (1) IN GENERAL.—A panel of experts estab-
24 lished for a water resources project under this sec-
25 tion shall—

1 (A) review each draft feasibility report,
2 draft general reevaluation report, and draft en-
3 vironmental impact statement prepared for the
4 project;

5 (B) assess the adequacy of the economic,
6 scientific, and environmental models used by
7 the Secretary in reviewing the project to ensure
8 that—

9 (i) the best available economic and
10 scientific methods of analysis have been
11 used;

12 (ii) the best available economic, sci-
13 entific, and environmental data have been
14 used; and

15 (iii) any regional effects on navigation
16 systems have been examined;

17 (C) receive from the public written and
18 oral comments concerning the project;

19 (D) not later than the deadline established
20 under subsection (f), submit to the Secretary a
21 report concerning the economic, engineering,
22 and environmental analyses of the project, in-
23 cluding the conclusions of the panel, with par-
24 ticular emphasis on areas of public controversy,
25 with respect to the feasibility report, general re-

1 evaluation report, or environmental impact
2 statement; and

3 (E) not later than 30 days after the date
4 of issuance of a final feasibility report, final
5 general reevaluation report, or final environ-
6 mental impact statement, submit to the Sec-
7 retary a brief report stating the views of the
8 panel on the extent to which the final analysis
9 adequately addresses issues or concerns raised
10 by each earlier evaluation by the panel.

11 (2) EXTENSIONS.—

12 (A) IN GENERAL.—The panel may request
13 from the Director a 30-day extension of the
14 deadline established under paragraph (1)(E).

15 (B) RECORD OF DECISION.—The Secretary
16 shall not issue a record of decision until after,
17 at the earliest—

18 (i) the final day of the 30-day period
19 described in paragraph (1)(E); or

20 (ii) if the Director grants an extension
21 under subparagraph (A), the final day of
22 end of the 60-day period beginning on the
23 date of issuance of a final feasibility report
24 described in paragraph (1)(E) and ending

1 on the final day of the extension granted
2 under subparagraph (A).

3 (f) DURATION OF PROJECT REVIEWS.—

4 (1) DEADLINE.—Except as provided in para-
5 graph (2), not later than 180 days after the date of
6 establishment of a panel of experts for a water re-
7 sources project under this section, the panel shall
8 complete—

9 (A) each required review of the project;
10 and

11 (B) all other duties of the panel relating to
12 the project (other than the duties described in
13 subsection (e)(1)(E)).

14 (2) EXTENSION OF DEADLINE FOR REPORT ON
15 PROJECT REVIEWS.—Not later than 240 days after
16 the date of issuance of a draft feasibility report,
17 draft general reevaluation report, or draft environ-
18 mental impact statement for a project, if a panel of
19 experts submits to the Director before the end of the
20 180-day period described in paragraph (1), and the
21 Director approves, a request for a 60-day extension
22 of the deadline established under that paragraph,
23 the panel of experts shall submit to the Secretary a
24 report required under subsection (e)(1)(D).

25 (g) RECOMMENDATIONS OF PANEL.—

1 (1) CONSIDERATION BY SECRETARY.—

2 (A) IN GENERAL.—If the Secretary re-
3 ceives a report on a water resources project
4 from a panel of experts under this section by
5 the applicable deadline under subsection
6 (e)(1)(E) or (f), the Secretary shall, at least 14
7 days before entering a final record of decision
8 for the water resources project—

9 (i) take into consideration any rec-
10 ommendations contained in the report; and

11 (ii) prepare a written explanation for
12 any recommendations not adopted.

13 (B) INCONSISTENT RECOMMENDATIONS
14 AND FINDINGS.—Recommendations and find-
15 ings of the Secretary that are inconsistent with
16 the recommendations and findings of a panel of
17 experts under this section shall not be entitled
18 to deference in a judicial proceeding.

19 (2) PUBLIC REVIEW; SUBMISSION TO CON-
20 GRESS.—After receiving a report on a water re-
21 sources project from a panel of experts under this
22 section (including a report under subsection
23 (e)(1)(E)), the Secretary shall—

24 (A) immediately make a copy of the report
25 (and, in a case in which any written explanation

1 of the Secretary on recommendations contained
2 in the report is completed, shall immediately
3 make a copy of the response) available for pub-
4 lic review; and

5 (B) include a copy of the report (and any
6 written explanation of the Secretary) in any re-
7 port submitted to Congress concerning the
8 project.

9 (h) PUBLIC ACCESS TO INFORMATION.—

10 (1) IN GENERAL.—Except as provided in para-
11 graph (3), the Secretary shall ensure that informa-
12 tion relating to the analysis of any water resources
13 project by the Corps, including all supporting data,
14 analytical documents, and information that the
15 Corps has considered in the analysis, is made avail-
16 able—

17 (A) to any individual upon request;

18 (B) to the public on the Internet; and

19 (C) to an independent review panel, if such
20 a panel is established for the project.

21 (2) TYPES OF INFORMATION.—Information con-
22 cerning a project that is available under paragraph
23 (1) shall include—

1 (A) any information that has been made
2 available to the non-Federal interests with re-
3 spect to the project; and

4 (B) all data and information used by the
5 Corps in the justification and analysis of the
6 project.

7 (3) EXCEPTION FOR TRADE SECRETS.—

8 (A) IN GENERAL.—The Secretary shall not
9 make information available under paragraph
10 (1) that the Secretary determines to be a trade
11 secret of any person that provided the informa-
12 tion to the Corps.

13 (B) CRITERIA FOR TRADE SECRETS.—The
14 Secretary shall consider information to be a
15 trade secret only if—

16 (i) the person that provided the infor-
17 mation to the Corps—

18 (I) has not disclosed the informa-
19 tion to any person other than—

20 (aa) an officer or employee
21 of the United States or a State
22 or local government;

23 (bb) an employee of the per-
24 son that provided the information
25 to the Corps; or

1 (cc) a person that is bound
2 by a confidentiality agreement;
3 and

4 (II) has taken reasonable meas-
5 ures to protect the confidentiality of
6 the information and intends to con-
7 tinue to take the measures;

8 (ii) the information is not required to
9 be disclosed, or otherwise made available,
10 to the public under any other Federal or
11 State law; and

12 (iii) disclosure of the information is
13 likely to cause substantial harm to the
14 competitive position of the person that pro-
15 vided the information to the Corps.

16 (i) COSTS.—

17 (1) LIMITATION ON COST OF REVIEW.—The
18 cost of conducting a review of a water resources
19 project under this section shall not exceed—

20 (A) \$250,000 for a project, if the total cost
21 of the project in current year dollars is less
22 than \$50,000,000; and

23 (B) 0.5 percent of the total cost of the
24 project in current year dollars, if the total cost
25 is \$50,000,000 or more.

1 (2) TREATMENT.—The cost of conducting a re-
2 view of a project under this section shall be consid-
3 ered to be part of the total cost of the project.

4 (3) COST SHARING.—A review of a project
5 under this section shall be subject to section 105(a)
6 of the Water Resources Development Act of 1986
7 (33 U.S.C. 2215(a)).

8 (4) WAIVER OF LIMITATION.—The Secretary
9 may waive a limitation under paragraph (1) if the
10 Secretary determines that the waiver is appropriate.

11 (j) APPLICABILITY OF FEDERAL ADVISORY COM-
12 MITTEE ACT.—The Federal Advisory Committee Act (5
13 U.S.C. App.) shall apply to a panel of experts established
14 under this section.

15 **SEC. 103. BENEFIT-COST ANALYSIS.**

16 Section 308(a) of the Water Resources Development
17 Act of 1990 (33 U.S.C. 2318(a)) is amended—

18 (1) in paragraph (1)(B), by striking “and” at
19 the end;

20 (2) in paragraph (2), by striking the period at
21 the end and inserting “; and”; and

22 (3) by adding at the end the following:

23 “(3) any projected benefit attributable to any
24 change in, or intensification of, land use arising

1 from the draining, reduction, or elimination of wet-
2 lands.”.

3 **SEC. 104. BENEFIT-COST RATIO.**

4 (a) RECOMMENDATION OF PROJECTS.—Beginning in
5 fiscal year 2004, in the case of a water resources project
6 that is subject to a benefit-cost analysis, the Secretary
7 may recommend the project for authorization by Congress,
8 and may choose the project as a recommended alternative
9 in any record of decision or environmental impact state-
10 ment, only if the project, in addition to meeting any other
11 criteria required by law, has projected national benefits
12 that are at least 1.5 times as great as the estimated total
13 costs of the project, based on current discount rates pro-
14 vided by the Office of Management and Budget.

15 (b) REVIEW AND DEAUTHORIZATION OF
16 PROJECTS.—

17 (1) REVIEW.—Not later than 180 days after
18 the date of enactment of this Act, the Secretary
19 shall review each water resources project described
20 in paragraph (2) to determine whether the projected
21 benefits of the project are less than 1.5 times as
22 great as the estimated total costs of the project.

23 (2) PROJECTS SUBJECT TO REVIEW.—A water
24 resources project shall be subject to review under
25 paragraph (1) if—

1 (A) the project was authorized before the
2 date on which the review is commenced;

3 (B) the project is subject to a benefit-cost
4 analysis; and

5 (C) an amount that is less than 33 percent
6 of the estimated total costs of the project (ex-
7 cluding costs of preconstruction engineering
8 and design) has been obligated for the project.

9 (3) DEAUTHORIZATIONS.—

10 (A) IN GENERAL.—On completion of the
11 review under paragraph (1), the Secretary shall
12 submit to Congress a list that describes each
13 water resources project the projected benefits of
14 which are less than 1.5 times as great as the
15 estimated total costs of the project.

16 (B) PROJECTS.—A project included on the
17 list under subparagraph (A) shall be deauthor-
18 ized effective beginning 3 years after the date
19 of submission of the list to Congress unless,
20 during that 3-year period, Congress reauthor-
21 izes the project.

22 (4) DEAUTHORIZED PROJECTS FOR WHICH
23 CONSTRUCTION HAS BEEN COMMENCED.—In the
24 case of a water resources project that is deauthor-
25 ized under paragraph (3) and for which construction

1 (other than preconstruction engineering and design)
2 has been commenced, the Secretary may take such
3 actions as are necessary with respect to the project
4 to protect public health and safety and the environ-
5 ment.

6 **SEC. 105. COST SHARING.**

7 (a) INLAND WATERWAYS.—

8 (1) CONSTRUCTION.—Section 102(a) of the
9 Water Resources Development Act of 1986 (33
10 U.S.C. 2212(a)) is amended—

11 (A) in the first sentence, by striking “One-
12 half of the costs of construction” and inserting
13 “Forty-five percent of the costs of construc-
14 tion”; and

15 (B) by striking the second sentence and in-
16 sserting “Fifty-five percent of those costs shall
17 be paid only from amounts appropriated from
18 the Inland Waterways Trust Fund.”.

19 (2) OPERATIONS AND MAINTENANCE.—Section
20 102 of the Water Resources Development Act of
21 1986 (33 U.S.C. 2212) is amended by striking sub-
22 sections (b) and (c) and inserting the following:

23 “(b) OPERATION AND MAINTENANCE.—

1 “(1) FEDERAL SHARE.—The Federal share of
2 the cost of operation and maintenance shall be 100
3 percent in the case of—

4 “(A) a project described in paragraph (1)
5 or (2) of subsection (a); or

6 “(B) the portion of the project authorized
7 by section 844 that is allocated to inland navi-
8 gation.

9 “(2) SOURCE OF FEDERAL SHARE.—

10 “(A) GENERAL FUND.—In the case of a
11 project described in paragraph (1) or (2) of
12 subsection (a) with respect to which the cost of
13 operation and maintenance is less than or equal
14 to 2 cents per ton mile, or in the case of the
15 portion of the project authorized by section 844
16 that is allocated to inland navigation, the Fed-
17 eral share under paragraph (1) shall be paid
18 only from amounts appropriated from the gen-
19 eral fund of the Treasury.

20 “(B) GENERAL FUND AND INLAND WATER-
21 WAYS TRUST FUND.—In the case of a project
22 described in paragraph (1) or (2) of subsection
23 (a) with respect to which the cost of operation
24 and maintenance is greater than 2 but less than
25 or equal to 10 cents per ton mile—

1 “(i) 75 percent of the Federal share
2 under paragraph (1) shall be paid only
3 from amounts appropriated from the gen-
4 eral fund of the Treasury; and

5 “(ii) 25 percent of the Federal share
6 under paragraph (1) shall be paid only
7 from amounts appropriated from the In-
8 land Waterways Trust Fund.

9 “(C) INLAND WATERWAYS TRUST FUND.—
10 In the case of a project described in paragraph
11 (1) or (2) of subsection (a) with respect to
12 which the cost of operation and maintenance is
13 greater than 10 cents per ton mile but less than
14 30 cents per ton mile, 100 percent of the Fed-
15 eral share under paragraph (1) shall be paid
16 only from amounts appropriated from the In-
17 land Waterways Trust Fund.

18 “(D) NON-FEDERAL RESPONSIBILITY.—

19 “(i) IN GENERAL.—In the case of a
20 project described in paragraph (1) or (2)
21 of subsection (a) with respect to which the
22 cost of operation and maintenance is great-
23 er than 30 cents per ton-mile, the cost of
24 operations and maintenance shall be a non-
25 Federal responsibility.

1 “(ii) DEAUTHORIZATION.—In a case
2 in which the Secretary determines that the
3 non-Federal interests for a project de-
4 scribed in clause (i) are unable to pay for
5 the cost of operations and maintenance of
6 the project, the project is deauthorized as
7 of the date of that determination.”.

8 (b) FLOOD DAMAGE REDUCTION.—Section 103 of
9 the Water Resources Development Act of 1986 (33 U.S.C.
10 2213) is amended—

11 (1) in subsections (a)(2) and (b), by striking
12 “35” each place it appears and inserting “50”;

13 (2) in the paragraph heading of subsection
14 (a)(2), by striking “35 PERCENT MINIMUM” and in-
15 serting “MINIMUM”; and

16 (3) in the paragraph heading of subsection (b),
17 by striking “35” and inserting “50”.

18 (c) BEACH REPLACEMENT.—Section 103(d)(2)(A) of
19 the Water Resources Development Act of 1986 (33 U.S.C.
20 2213(d)(2)) is amended—

21 (1) by redesignating subparagraphs (B) and
22 (C) as subparagraphs (C) and (D), respectively; and

23 (2) by inserting after subparagraph (A) the fol-
24 lowing:

1 “(B) 2004 AND SUBSEQUENT PROJECTS.—
 2 For any project authorized after the date of en-
 3 actment of the Corps of Engineers Moderniza-
 4 tion and Improvement Act of 2004, the non-
 5 Federal cost of the periodic nourishment of the
 6 project, or any measure for shore protection or
 7 beach erosion control for the project, shall be
 8 65 percent.”.

9 **TITLE II—MITIGATION**

10 **SEC. 201. FULL MITIGATION.**

11 Section 906(d) of the Water Resources Development
 12 Act of 1986 (33 U.S.C. 2283(d)) is amended—

13 (1) by striking paragraph (1) and inserting the
 14 following:

15 “(1) PROJECTS.—

16 “(A) IN GENERAL.—After November 17,
 17 1986, the Secretary shall not submit to Con-
 18 gress any proposal for the authorization of any
 19 water resources project, and shall not choose a
 20 project alternative in any final record of deci-
 21 sion, environmental impact statement, or envi-
 22 ronmental assessment, unless the report con-
 23 tains—

24 “(i) a specific plan to fully mitigate
 25 losses of aquatic and terrestrial resources

1 and fish and wildlife created by the
2 project; or

3 “(ii) a determination by the Secretary
4 that the project will have negligible adverse
5 impact on aquatic and terrestrial resources
6 and fish and wildlife.

7 “(B) SPECIFIC REQUIREMENTS.—Specific
8 mitigation plans shall ensure that impacts to
9 bottomland hardwood forests and other habitat
10 types are mitigated in kind.

11 “(C) CONSULTATION.—In carrying out
12 this paragraph, the Secretary shall consult with
13 appropriate Federal and non-Federal agen-
14 cies.”; and

15 (2) by adding at the end the following:

16 “(3) STANDARDS FOR MITIGATION.—

17 “(A) IN GENERAL.—To fully mitigate
18 losses to fish and wildlife resulting from a water
19 resources project, the Secretary shall, at a min-
20 imum—

21 “(i) acquire and restore 1 acre of su-
22 perior or equivalent habitat of the same
23 type to replace each acre of habitat ad-
24 versely affected by the project; and

1 “(ii) replace the hydrologic functions
2 and characteristics, the ecological functions
3 and characteristics, and the spatial dis-
4 tribution of the habitat adversely affected
5 by the project.

6 “(B) DETAILED MITIGATION PLAN.—The
7 specific mitigation plan for a water resources
8 project under paragraph (1) shall include, at a
9 minimum—

10 “(i) a detailed and specific plan to
11 monitor mitigation implementation and ec-
12 ological success, including the designation
13 of the entities that will be responsible for
14 monitoring;

15 “(ii) specific ecological success criteria
16 by which the mitigation will be evaluated
17 and determined to be successful, prepared
18 in consultation with the United States
19 Fish and Wildlife Service;

20 “(iii) a detailed description of the land
21 and interests in land to be acquired for
22 mitigation and the basis for a determina-
23 tion that land and interests are available
24 for acquisition;

1 “(iv) sufficient detail regarding the
2 chosen mitigation sites and type and
3 amount of restoration activities to permit a
4 thorough evaluation of the plan’s likelihood
5 of ecological success and resulting aquatic
6 and terrestrial resource functions and
7 habitat values; and

8 “(v) a contingency plan for taking
9 corrective actions if monitoring dem-
10 onstrates that mitigation efforts are not
11 achieving ecological success as described in
12 the ecological success criteria.

13 “(C) APPLICABLE LAW.—A time period for
14 mitigation monitoring or for the implementation
15 and monitoring of contingency plan actions
16 shall not be subject to the deadlines described
17 in section 202.

18 “(4) DETERMINATION OF MITIGATION SUC-
19 CESS.—

20 “(A) IN GENERAL.—Mitigation shall be
21 considered to be successful at the time at which
22 monitoring demonstrates that the mitigation
23 has met the ecological success criteria estab-
24 lished in the mitigation plan.

1 “(B) REQUIREMENTS FOR SUCCESS.—To
2 ensure the success of any attempted mitigation,
3 the Secretary shall—

4 “(i) consult yearly with the United
5 States Fish and Wildlife Service on each
6 water resources project requiring mitiga-
7 tion to determine whether mitigation moni-
8 toring for that project demonstrates that
9 the project is achieving, or has achieved,
10 ecological success;

11 “(ii) ensure that implementation of
12 the mitigation contingency plan for taking
13 corrective action begins not later than 30
14 days after a finding by the Secretary or
15 the United States Fish and Wildlife Serv-
16 ice that the original mitigation efforts like-
17 ly will not result in, or have not resulted
18 in, ecological success;

19 “(iii) complete implementation of the
20 contingency plan as expeditiously as prac-
21 ticable; and

22 “(iv) ensure that monitoring of miti-
23 gation efforts, including those implemented
24 through a mitigation contingency plan,
25 continues until the monitoring dem-

1 onstrates that the mitigation has met the
2 ecological success criteria.

3 “(5) RECOMMENDATION OF PROJECTS.—The
4 Secretary shall not recommend a water resources
5 project alternative or choose a project alternative in
6 any final record of decision, environmental impact
7 statement, or environmental assessment completed
8 after the date of enactment of this paragraph unless
9 the Secretary determines that the mitigation plan
10 for the alternative will successfully mitigate the ad-
11 verse impacts of the project on aquatic and terres-
12 trial resources, hydrologic functions, and fish and
13 wildlife.

14 “(6) COMPLETION OF MITIGATION BEFORE
15 CONSTRUCTION OF NEW PROJECTS.—The Secretary
16 shall complete all promised mitigation for water re-
17 sources projects in a particular watershed before
18 constructing any new water resources project in that
19 watershed.”.

20 **SEC. 202. CONCURRENT MITIGATION.**

21 Section 906(a) of the Water Resources Development
22 Act of 1986 (33 U.S.C. 2283(a)) is amended—

23 (1) by striking “(a)(1) In the case” and insert-
24 ing the following:

25 “(a) MITIGATION.—

1 “(1) IN GENERAL.—In the case”;

2 (2) in paragraph (1), by striking “interests—”
3 and all that follows through “losses),” and inserting
4 the following: “interests shall be undertaken or ac-
5 quired—

6 “(A) before any construction of the project
7 (other than such acquisition) commences; or

8 “(B) concurrently with the acquisition of
9 land and interests in land for project purposes
10 (other than mitigation of fish and wildlife
11 losses);”;

12 (3) in paragraph (2), by striking “(2) For the
13 purposes” and inserting the following:

14 “(2) COMMENCEMENT OF CONSTRUCTION.—
15 For the purpose”; and

16 (4) by adding at the end the following:

17 “(4) IMPLEMENTATION.—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraph (B), to ensure concurrent mitiga-
20 tion, the Secretary shall implement—

21 “(i) 50 percent of required mitigation
22 before beginning construction of a project;
23 and

24 “(ii) the remainder of required mitiga-
25 tion as expeditiously as practicable, but not

1 later than the last day of construction of
2 the project or separable element of the
3 project.

4 “(B) EXCEPTION FOR PHYSICAL IMPRACTICABILITY.—In a case in which the Secretary
5 determines that it is physically impracticable to
6 complete mitigation by the last day of construction of the project or separable element of the
7 project, the Secretary shall reserve or reprogram sufficient funds to ensure that mitigation
8 implementation is completed as expeditiously as practicable, but in no case later than the end of
9 the next fiscal year immediately following the
10 last day of that construction.

11 “(5) USE OF FUNDS.—Funds made available
12 for preliminary engineering and design, construction,
13 or operations and maintenance shall be available for
14 use in carrying out this section.”.

15 **SEC. 203. MITIGATION TRACKING SYSTEM.**

16 (a) IN GENERAL.—Not later than 180 days after the
17 date of enactment of this Act, the Secretary shall establish
18 a recordkeeping system to track each water resources
19 project constructed, operated, or maintained by the Secretary, and for each permit issued under section 404 of

1 the Federal Water Pollution Control Act (33 U.S.C.
2 1344)—

3 (1) the quantity and type of wetland and other
4 habitat types affected by the project, project oper-
5 ation, or permitted activity;

6 (2) the quantity and type of mitigation required
7 for the project, project operation or permitted activ-
8 ity;

9 (3) the quantity and type of mitigation that has
10 been completed for the project, project operation or
11 permitted activity; and

12 (4) the status of monitoring for the mitigation
13 carried out for the project, project operation or per-
14 mitted activity.

15 (b) REQUIRED INFORMATION AND ORGANIZATION.—

16 The recordkeeping system shall—

17 (1) include information on impacts and mitiga-
18 tion described in subsection (a) that occur after De-
19 cember 31, 1969; and

20 (2) be organized by watershed, project, permit
21 application, and zip code.

22 (c) AVAILABILITY OF INFORMATION.—The Secretary
23 shall make information contained in the recordkeeping
24 system available to the public on the Internet.

1 **TITLE III—ADDRESSING THE**
2 **PROJECT BACKLOG**

3 **SEC. 301. PROJECT BACKLOG.**

4 (a) REVIEW AND REPORT ON WATER RESOURCES
5 CONSTRUCTION BACKLOG.—

6 (1) DEFINITIONS.—In this subsection:

7 (A) ACTIVE.—The term “active”, with re-
8 spect to a project, means that—

9 (i) the project is economically justi-
10 fied;

11 (ii) the project has received funding
12 for—

13 (I) preconstruction engineering
14 and design; or

15 (II) construction; and

16 (iii) the non-Federal interests with re-
17 spect to the project have demonstrated
18 willingness and the ability to provide the
19 required non-Federal share.

20 (B) DEFERRED.—The term “deferred”,
21 with respect to a project, means that the
22 project—

23 (i) has doubtful economic justification;

24 (ii) requires reevaluation to determine
25 the economic feasibility of the project; or

1 (iii) is a project for which the non-
2 Federal interests are unable to provide re-
3 quired cooperation.

4 (C) INACTIVE.—The term “inactive”, with
5 respect to a project, means that—

6 (i) the project is not economically jus-
7 tified;

8 (ii) the project no longer meets cur-
9 rent and prospective needs as described in
10 a feasibility report or general reevaluation
11 report;

12 (iii) the non-Federal interests with re-
13 spect to the project have not demonstrated
14 willingness or the ability to provide the re-
15 quired non-Federal share; or

16 (iv)(I) the project most recently re-
17 ceived, under an Act of Congress, author-
18 ization or reauthorization of construction
19 more than 25 years before the date of en-
20 actment of this Act; and

21 (II) an amount that is less than 33
22 percent of the estimated total costs of the
23 project (excluding costs of preconstruction
24 engineering and design) has been obligated

1 for the project as of the date of enactment
2 of this Act.

3 (D) PROJECT.—The term “project” means
4 a water resources project, or a separable ele-
5 ment of a water resources project, that is au-
6 thorized by law for funding from—

7 (i) the Construction, General, appro-
8 priations account; or

9 (ii) the construction portion of the
10 Flood Control, Mississippi River and Trib-
11 utaries, appropriations account.

12 (2) STUDY.—

13 (A) IN GENERAL.—Not later than 1 year
14 after the date of enactment of this Act, the Sec-
15 retary shall submit to the Committee on Envi-
16 ronment and Public Works of the Senate and
17 the Committee on Transportation and Infra-
18 structure of the House of Representatives a
19 study consisting of—

20 (i) the list described in subparagraph

21 (B); and

22 (ii) the information described in sub-
23 paragraph (C).

1 (B) LIST.—The list referred to in subpara-
2 graph (A) is a list of all authorized water re-
3 sources projects—

4 (i) that have not been commenced; or
5 (ii) the construction of which has not
6 been completed.

7 (C) REQUIRED INFORMATION.—Each
8 project on the list described in subparagraph
9 (B) shall be accompanied by information on—

10 (i) the primary purpose of the project;

11 (ii) the year in which construction of
12 the project was commenced;

13 (iii) the total estimated cost of the
14 project in current year dollars;

15 (iv) the benefit-cost ratio of the
16 project, determined based on current dis-
17 count rates;

18 (v) the estimated annual benefits and
19 annual costs of the project;

20 (vi) the remaining additional benefits
21 and the remaining additional costs to com-
22 plete construction of the project (including
23 the ratio that remaining benefits bear to
24 remaining costs);

1 (vii)(I) the year during which the
2 most recent major studies of the feasibility
3 and design of the project were completed;
4 and

5 (II) the year during which the most
6 recent environmental impact statement or
7 environmental assessment for the project
8 was completed;

9 (viii) the date of the last year for
10 which economic data that was included in
11 the most recent analysis of the feasibility
12 and justification of the project was col-
13 lected;

14 (ix) the status of each project as—

15 (I) reconnaissance,
16 preconstruction engineering and de-
17 sign, or construction; and

18 (II) active, deferred, or inactive;

19 and

20 (x) the information described in para-
21 graph (3) for each particular type of
22 project.

23 (3) INFORMATION FOR PARTICULAR PROJECT
24 TYPE.—The study under paragraph (2) shall in-
25 clude—

1 (A) in the case of a flood damage reduc-
2 tion project—

3 (i) the extent to which the project re-
4 flects national flood damage reduction pri-
5 orities as established by the Federal Emer-
6 gency Management Agency;

7 (ii)(I) the level of flood protection pro-
8 vided; and

9 (II) to the maximum extent prac-
10 ticable, the extent to which the project is
11 based on projected growth and the basis
12 for each projection of growth; and

13 (iii) the extent to which the project—

14 (I) restores natural aquatic eco-
15 system functions; and

16 (II) avoids adverse environmental
17 impacts and risk before implementa-
18 tion of mitigation activities;

19 (B) in the case of a navigation project—

20 (i)(I) the extent to which the economic
21 benefits of the project are based on exist-
22 ing levels of commercial traffic rather than
23 projected growth in commercial traffic; and

24 (II) to the maximum extent prac-
25 ticable, the extent to which the project is

1 based on projected growth and the basis
2 for each projection of growth; and

3 (ii) the extent of the likely environ-
4 mental benefits of the project, including
5 the extent of—

6 (I) remediation of contaminated
7 sediments, or reuse of dredged mate-
8 rial, to restore aquatic habitat; and

9 (II) adverse environmental im-
10 pacts and risks of the project; and

11 (C) in the case of an environmental res-
12 toration project—

13 (i) the extent to which the project—

14 (I) restores natural hydrologic
15 processes and the spatial extent of
16 aquatic habitat; and

17 (II) otherwise produces self-sus-
18 taining environmental benefits; and

19 (ii) the extent to which the project ad-
20 dresses critical national conservation prior-
21 ities, including preservation and protection
22 of endangered and threatened species or
23 habitat of endangered and threatened spe-
24 cies.

25 (4) MEASUREMENT AND REPORTING.—

1 (A) IN GENERAL.—The Secretary shall use
 2 objective and quantifiable standards for meas-
 3 uring and reporting the information required to
 4 be submitted under paragraph (3).

5 (B) ALTERNATIVE METHOD OF REPORT-
 6 ING.—In any case in which the information re-
 7 quired to be submitted under subparagraph
 8 (B)(ii) or (C) of paragraph (3) cannot be quan-
 9 tified, the information shall be reported through
 10 an objective description of the benefits and im-
 11 pacts of the applicable project.

12 (5) AVAILABILITY TO THE PUBLIC.—The study
 13 submitted to Congress under paragraph (2) shall be
 14 made available to—

15 (A) any person on request; and

16 (B) the public on the Internet.

17 (b) PROJECT DEAUTHORIZATIONS.—Section 1001 of
 18 the Water Resources Development Act of 1986 (33 U.S.C.
 19 579a) is amended to read as follows:

20 **“SEC. 1001. PROJECT DEAUTHORIZATIONS.**

21 **“(a) DEFINITIONS.—**In this section:

22 **“(1) CONSTRUCTION OF A PROJECT.—**The term
 23 ‘construction of a project’ means—

24 **“(A) with respect to a flood control**
 25 **project—**

1 “(i) the acquisition of land, an ease-
2 ment, or a right-of-way; or

3 “(ii) the performance of physical work
4 under a construction contract;

5 “(B) with respect to an environmental pro-
6 tection and restoration project—

7 “(i) the acquisition of land, an ease-
8 ment, or a right-of-way primarily to facili-
9 tate the restoration of wetland or similar
10 habitat; or

11 “(ii) the performance of physical work
12 under a construction contract—

13 “(I) to modify an existing project
14 facility; or

15 “(II) to construct a new environ-
16 mental protection or restoration meas-
17 ure;

18 “(C) with respect to a shore protection
19 project—

20 “(i) the acquisition of land, an ease-
21 ment, or a right-of-way; or

22 “(ii) the performance of physical work
23 under a construction contract for a struc-
24 tural or a nonstructural measure; and

1 “(D) with respect to any project that is
2 not described in subparagraph (A), (B), or (C),
3 the performance of physical work under a con-
4 struction contract.

5 “(2) INACTIVE.—The term ‘inactive’, with re-
6 spect to a project, means that—

7 “(A) the project is not economically justi-
8 fied;

9 “(B) the project no longer meets current
10 and prospective needs as described in a feasi-
11 bility report or general reevaluation report;

12 “(C) the non-Federal interests with respect
13 to the project have not demonstrated willing-
14 ness or the ability to provide the required non-
15 Federal share; or

16 “(D)(i) the project most recently received,
17 under an Act of Congress, authorization or re-
18 authorization for construction more than 25
19 years before the date of enactment of this sub-
20 paragraph; and

21 “(ii) an amount that is less than 33 per-
22 cent of the estimated total costs of the project
23 (excluding costs of preconstruction engineering
24 and design) has been obligated for the project

1 as of the date of enactment of this subpara-
2 graph.

3 “(3) PHYSICAL WORK UNDER A CONSTRUCTION
4 CONTRACT.—The term ‘physical work under a con-
5 struction contract’ does not include any activity re-
6 lating to—

7 “(A) project planning;

8 “(B) engineering and design;

9 “(C) relocation; or

10 “(D) the acquisition of land, an easement,
11 or a right-of-way.

12 “(4) PROJECT.—The term ‘project’ means a
13 water resources project, or a separable element of a
14 water resources project, that is authorized by law for
15 funding from—

16 “(A) the Construction, General, appropria-
17 tions account; or

18 “(B) the construction portion of the Flood
19 Control, Mississippi River and Tributaries, ap-
20 propriations account.

21 “(b) INACTIVE PROJECTS.—

22 “(1) LIST.—Not later than December 31, 2004,
23 and biennially thereafter, the Secretary shall submit
24 to Congress a list of inactive projects.

1 “(2) DEAUTHORIZATION.—An inactive project
2 shall be deauthorized effective beginning 1 year after
3 the date of submission of a list under paragraph (1)
4 that includes the project unless, during that 1-year
5 period, Congress reauthorizes the project in accord-
6 ance with the Corps of Engineers Modernization and
7 Improvement Act of 2004 and the amendments
8 made by that Act.

9 “(c) PROJECTS FOR WHICH ACTUAL CONSTRUCTION
10 HAS NOT BEGUN.—

11 “(1) LIST.—The Secretary shall annually sub-
12 mit to Congress a list of projects that have been au-
13 thORIZED for construction, but for which no actual
14 construction has begun and no Federal funds have
15 been obligated for construction during the 3 con-
16 secutive fiscal years preceding the fiscal year in
17 which the list is submitted.

18 “(2) DEAUTHORIZATION.—A project authorized
19 for construction that is not subject to subsection (b)
20 shall be deauthorized effective beginning 5 years
21 after the date of the most recent authorization or re-
22 authorization of the project unless, during that 5-
23 year period, Federal funds are obligated for con-
24 struction of the project.

1 “(d) PROJECTS FOR WHICH CONSTRUCTION HAS
2 BEEN SUSPENDED.—

3 “(1) LIST.—The Secretary shall annually sub-
4 mit to Congress a list of projects—

5 “(A) that have been authorized for con-
6 struction; and

7 “(B) for which no Federal funds have been
8 obligated for construction during the 2 consecu-
9 tive fiscal years preceding the date of submis-
10 sion of the list.

11 “(2) DEAUTHORIZATION.—A project that is not
12 subject to subsection (b) but for which Federal
13 funds have been obligated for construction of the
14 project shall be deauthorized if Federal funds appro-
15 priated specifically for construction of the project, as
16 indicated in an Act of Congress or in accompanying
17 legislative report language, are not obligated for con-
18 struction of the project during the period of 3 fiscal
19 years following the last fiscal year in which Federal
20 funds were obligated for construction of the project.

21 “(e) COMPLETED PROJECTS.—Subsections (b), (c),
22 and (d) shall not apply—

23 “(1) in the case of a beach nourishment project,
24 after initial construction of the project has been
25 completed; or

1 “(2) in the case of any other project, after con-
2 struction of the project has been completed.

3 “(f) CONGRESSIONAL NOTIFICATIONS.—On submis-
4 sion of a list under subsection (b), (c), or (d), the Sec-
5 retary shall notify each Senator in whose State, and each
6 Member of the House of Representatives in whose district,
7 a project on the list is or would be located.

8 “(g) FINAL DEAUTHORIZATION LIST.—The Sec-
9 retary shall annually publish in the Federal Register a list
10 of all projects deauthorized under subsections (b), (c), and
11 (d).”.

12 (c) WATERWAYS.—

13 (1) REPORT BY ACADEMY.—

14 (A) IN GENERAL.—Not later than 1 year
15 after the date of enactment of this Act, the Sec-
16 retary shall enter into a contract with the Acad-
17 emy to prepare a report on waterways in the
18 Inland Waterways System.

19 (B) CONTENTS OF REPORT.—The report
20 shall—

21 (i) review the Inland Waterways Sys-
22 tem;

23 (ii) provide data on the commercial
24 traffic being carried by each waterway in
25 the System as of the date of the report;

1 (iii) provide an analysis of the extent
2 to which prior projections of the commer-
3 cial traffic carried by each waterway in the
4 System were accurate; and

5 (iv) based on the information provided
6 under clauses (ii) and (iii)—

7 (I) identify underused waterways
8 in the System;

9 (II) propose new economic and
10 environmental uses for underused wa-
11 terways;

12 (III) describe statutory and ad-
13 ministrative reforms that are needed
14 to ease the transition from the current
15 authorized uses of the System to new
16 economic and environmental uses of
17 the System; and

18 (IV) recommend which water-
19 ways in the System should be decom-
20 missioned.

21 (2) DECOMMISSIONING MECHANISM FOR
22 UNDERUSED WATERWAYS.—Not later than 1 year
23 after the date of enactment of this Act, the Sec-
24 retary shall by regulation establish a mechanism for
25 the decommissioning of waterways that—

1 (A) are no longer economically justified,
2 based on commercial traffic and current dis-
3 count rates; or

4 (B) are no longer in the national interest.

5 **SEC. 302. PRIMARY MISSION FOCUS.**

6 Any water resources project that does not have as
7 a primary project purpose 1 of the primary Corps missions
8 of environmental protection, flood control, or navigation
9 and that, as of the date of enactment of this section, has
10 no appropriated construction funding, is deauthorized.

○