



National Association of Flood & Stormwater Management Agencies  
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## **NAFSMA Levee Subcommittee Position Paper**

(Approved October 20, 2021)

### **I. Introduction**

The National Association of Flood and Stormwater Management Agencies (NAFSMA), since its founding in 1978, has represented local, regional and state public agencies nationwide. It is an association committed to improving and ensuring the continuation of water resource projects and programs of interest to flood and stormwater management agencies.

Many NAFSMA members are owner/operators of flood risk reduction structures, including levees, either federally or locally constructed. These owner/operators are responsible for maintaining and operating local flood protection projects that protect lives, property, and the environment from floods. NAFSMA has been a strong voice regarding levee issues for more than 40 years and has actively participated in multiple committees, including the National Committee on Levee Safety. NAFSMA members also provide local agency input on legislation as it relates to levees, most recently WRDA 2020.

The NAFSMA Levee Subcommittee was formed to focus on current and pressing issues specifically related to these important flood risk reduction structures. The subcommittee has identified the following areas of focus for attention.

### **II. Reauthorization of the National Flood Insurance Program (NFIP) and Risk Rating 2.0**

NAFSMA fully supports a long-term reauthorization (at least 5 years) of the NFIP and the founding mission of this public flood insurance program. NAFSMA generally supports the effort of the Federal Emergency Management Agency (FEMA) to close the insurance gap by making flood insurance more equitable and accessible. Risk Rating 2.0 was developed, in part, -to improve how flood risk is quantified, communicated, and ultimately priced at a structure specific scale. NAFSMA members have the following concerns related to Risk Rating 2.0:

More information is needed to explain how areas protected by levees, regardless of accreditation status, will be analyzed in terms of risk with the new rating system. Local flood risk and flood plain management agencies are typically the first contacted with questions regarding flood insurance rates. Consequently, they need to be well informed as to the methodologies used to calculate rates to provide the best service to the public. Additionally, flood risk managers are better equipped to provide advice to homeowners wishing to make improvements to their property to increase the resiliency to flooding and perhaps receive a reduction in flood insurance premiums. **NAFSMA urges FEMA to prepare and present training to flood risk management agencies, flood plain managers and other local government officials regarding the methodologies related to the calculation of flood insurance rates.**

It is unclear how or if an appeal of flood insurance pricing or the underlying risk upon which it is based can be achieved in Risk Rating 2.0. Although appeals can be onerous and expensive, a process currently exists to challenge the mapped flood zone – currently a major factor in computing an insurance rate. This is an important consumer protection, and one that should be preserved. Without an effective administrative process, property owners or communities will be left to rely on judicial action to resolve disagreements. **Due process demands that Risk Rating 2.0 include a workable appeals process, FEMA must promptly put in place a workable process for appeals.**

NAFSMA supports legislation or regulatory changes that would allow people living behind non-accredited levees to pay actuarial rates that consider the extent to which the levees do provide some mitigation from the risk of flooding. Such an area could be referred to as a levee protected zone. It is important to distinguish between levees that do not provide protection against the base flood, from those that do and are accredited as providing 100-year level of protection. **Where levees do not provide protection against the base flood but do provide some level of risk reduction, the NFIP must recognize that level of risk reduction in setting of rates. Where levees are accredited, it must be clear that areas protected by those levees are not in a special flood hazard area, mandatory flood insurance is not required, and building limitations do not apply.**

### **III. Section 408 Permissions and Regulations**

NAFSMA understands that USACE intends to move forward with rulemaking for Section 408 permissions and views this as an opportunity to further improve the process so to avoid unnecessary delay of important work by levee owner/operators. While the September 10, 2018, engineering circular (EC) addressed various concerns of NAFSMA members related to the maintenance and operation of levees, it does not deliver a regulatory program fairly or efficiently. We ask USACE not advance the current EC to rulemaking, but instead move forward with an Advance Notice of Public Rulemaking (ANPR) to first gather input on what in the current guidance is working, and what it is not. Already NAFSMA members have identified several areas where there is room or need for improvement. **NAFSMA recommends that categorical permissions (CPs) be available at a nation-wide and regional (i.e., Division or District) level, and USACE should support development and implementation of CPs through the issuance of guidance and provision of dedicated funding.**

Many NAFSMA members are sponsors of local flood control projects that provided USACE with assurances prior to receiving federal investment in local flood protection. Per the Federal flood control regulations, normal and regular operation and maintenance requirements do not require Section 408 permission. This is an important aspect of the partnering arrangement between USACE and the local sponsor, and one that must continue to be observed. **Under Section 408 rulemaking, NAFSMA urges USACE to make clear that maintenance activities by non-federal sponsors of local flood control projects do not require 408 permission.** This approach will allow for local owner/operators to not be unduly burdened by the time and cost of unwarranted application of Section 408. **NAFSMA strongly urges USACE to work with the association as it develops national categorical permissions and observe the long-standing terms of local sponsor partnership, and not overreach with application of Section 408.**

NAFSMA members are experiencing problems related to workload, budget, and timely issuance of permissions, resulting in unnecessary delays to locally funded levee work needed to better manage flood risk. The practice of at least some USACE Districts to prioritize civil works over review and issuance of Section 408 permissions should no longer be allowed—project work undertaken by USACE, or a non-Federal partner should be of equal priority. **NAFSMA urges USACE to properly prioritize review of Section 408 requests to avoid unnecessary delay of non-Federal partner**

improvements to local flood control works.

#### IV. Levee Safety and Levee Risk Assessments

USACE has been conducting varying levels of risk assessments under the levee safety program for both federally authorized levees as well as locally funded levees. Some assessments are considered screening level and others are more quantitative assessments. It is unclear to owner/operators of these systems the purpose and use of these different assessments. For example, it is NAFSMA's understanding that these assessments will be used for levee accreditation by FEMA and a risk assessment as criteria for calculating insurance rates in levee protected areas in the new Risk Rating 2.0 system. NAFMA members are very concerned with the application of USACE assessments in FEMA's programs since procedures used by USACE to evaluate the risk are very conservative (e.g., requiring the levee to be loaded to top of the structure prior to failure). Moreover, those risk assessments figure in the potential consequences in the entire leveed area—not for a particular property—making them ill-suited for use in determining a property's risk under Risk Rating 2.0. **NAFSMA requests that USACE clarify the different levels of risk assessments and identify how those can be used by local sponsors or other agencies for flood risk determinations, levee accreditation, PL 84-99, etc.**

WRDA 2020 Section 131. Levee Safety—seeks to redirect the focus of the levee safety program to provide information that the local owner/operator can use to improve the levee to further reduce risk by having USACE identify maintenance and structural deficiencies, develop a viable solution, and estimate the cost of repair. **NAFSMA urges USACE to prepare implementation guidance for Section 131 so that local sponsors and owner/operators can undertake the work necessary to reduce their levee related flood risk as expeditiously as possible, and in a manner that is informed by USACE levee knowledge and expertise.**

Due to the unclear nature of when and how USACE's risk assessments are applied and the potential impacts from use of these assessments in different manner than their original intent, **NAFSMA urges Congress to direct FEMA, USACE and the US Department of Agriculture to go through joint rulemaking to identify how level of protection and residual risk are determined.** Rulemaking will provide an opportunity for local sponsors and communities to adequately articulate the potential consequences of using these assessments inappropriately and identify better assessment methodology for FEMA's programs and policies.

#### V. USACE PL 84-99 Rehabilitation and Inspection Program and FEMA Public Assistance

Owner/operators of flood control infrastructure work with both USACE and FEMA and rely on those agency programs to help recover from flood events. As rulemaking for PL 84-99 advances, we are encouraged by the opportunity to improve this much needed rehabilitation assistance program to help further the efforts of levee owner/operators to reduce flood risk. Specifically, there are two areas NAFSMA members have identified as appropriate to address during rulemaking. First, it has been taking too long to get levee damage repaired, sometimes leaving the levee system and what it protects vulnerable to damage from future flooding for several seasons. As many regions are seeing increased frequency of flood events, we ask for timely repair to be made a priority. Second, potential overlap of PL 84-99 and FEMA Public Assistance has resulted in those programs not being able to meet the needs of levee owner/operators or communities with levees. For projects deemed "eligible" under PL 84-99, FEMA public assistance (PA) is unavailable for permanent repair work, even if the portion of the project damaged is not, per se, eligible for repair under PL 84-99. There is a present need

to clarify that PL 84-99 levee system eligibility is not determinative over project component eligibility so to ensure project components not eligible under PL 84-99 are not deemed ineligible for other federal programs. **NAFSMA urges USACE to deliver a PL 84-99 program that can expeditiously accomplish levee repairs and for which levee system eligibility is not a bar to receiving assistance from other federal programs.**

#### VI. People Experiencing homelessness Issues

People experiencing homelessness (PEH) in the United States continues to grow and the impact on life safety and flood risk reduction infrastructure performance is a significant concern among local agencies, including levee owners and operators. PEH continue to camp and congregate on and near levees and other flood damage reduction works and damage the structures through excavations into the embankments. This creates a dangerous situation not only for the houseless population in the area, but for those residents and businesses relying on the levees and other flood damage reduction works for protection. In addition, operation and maintenance staff are not able to perform routine maintenance and repairs to the system because of staff safety concerns. Levee owners and operators are struggling to provide appropriate flood risk reduction to their communities because funds are now being diverted to debris cleanup, repairs to damaged structures, and increased training and safety measures for their staff.

**FEMA and USACE must coordinate with other agencies including the US Interagency Council on Homelessness to identify solutions to the underlying problems of homelessness and to develop best management practices to help local agencies deal with the ongoing difficulties of maintaining and operating levee systems. Furthermore, NAFSMA requests congress to authorize a study on these impacts and develop resources for levee owner and operators.**

#### VII. Federal Flood Plain Management in Levee Protected Areas

As FEMA and USACE carry out federal flood risk and flood plain management (e.g., EO 11988, FFRMS, etc.), NAFSMA urges the agencies to strive for consistent application across and within the agencies about the regulatory footprint. NAFSMA members are frustrated by USACE Districts applying different meaning to the flood plain for purposes of implementing EO 11988, and similar issues are anticipated with FFRMS. **NAFSMA recommends that the Federal government standardize its consideration across the Federal agencies by using FEMA's regulatory floodplain as the only available and standardized resource available across the United States.**

#### VIII. National Committee on Levee Safety

NAFSMA supports the establishment of a Committee on Levee Safety as first outlined in the Water Resources Development Act of 2007 and amended under the Water Resources Reform and Development Act of 2014. NAFSMA members and staff participated in the original National Committee on Levee Safety that worked from October 2008 through January 2009 and provided recommendations to Congress on authorization of a National Levee Safety Program. **NAFSMA urges USACE to stand up this Committee as soon as possible with a broad range of levee sponsors to ensure that local expertise from federal and non-federal levee owners and operators state, tribal and regional entities be included in developing this national program.** Public outreach to gather meaningful stakeholder input must be prioritized in this committee's work to be able develop a national levee safety program that is poised for successful implementation.