



# Core Element Framework Revisions

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## **REGULATORY CORE ELEMENT**

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# Regulatory Core Element

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## The revisions include:

- Recognition of approaches that States and Tribes have taken to build their programs and fill “federal” gaps
- Use of more concise language and phrases
- Include more activities
- Incorporating references and examples to provide better guidance and direction

# Regulatory CE- Proposed Changes

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Lacks sufficient Activities to cover some regulatory actions (ex. Compensatory mitigation)

Doesn't address Tribal programs very well

Insure equal consideration of the different regulatory approaches (it's not about getting to 404 assumption)

Change "steps" to "activities"-this is a different approach than what the other Core Elements are proposing.

Redo the format and substance for the Regulatory table to look more like the WQS table.

Propose revisions to the 401 certification objectives



# Regulatory

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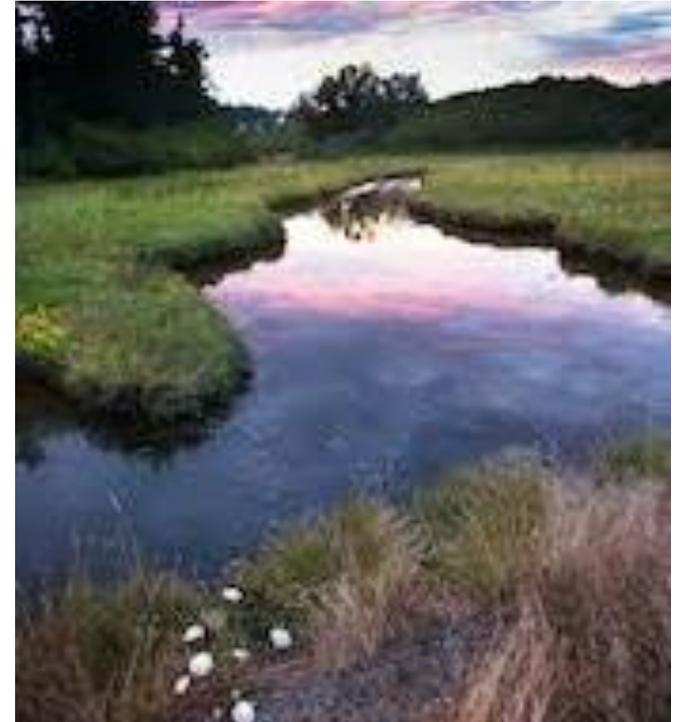
## 1. Definition

## 2. Goals & Benefits

- 3 Objectives
- 3 Stages

## 3. Program Building Activities Menu

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# Definition

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Wetlands regulatory and permit programs in general consist of a few basic elements: a jurisdictional scope, a method to authorize impacts to aquatic resources and assess proposed authorizations, and a method of assuring compliance.

State and tribal wetland and aquatic resource regulatory programs are defined by the authority under which they operate (i.e., Clean Water Act (CWA) §404, CWA §401, State or Tribal law) and how the program is implemented.

Footnote: <https://www.epa.gov/wetlands/wetlands-regulatory>

# Assumptions about the Regulatory CE

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State and tribal programs regulating aquatic resources fall into four main categories:

- 1) Implementation of a CWA §401 certification program that requires federal permits and licenses to receive certification from the state or tribe in order to be valid;
- 2) Implementation of a State Programmatic General Permit (SPGP) or a Regional General Permit (RGP). SPGPs and RGPs are general permits issued by the Army Corps of Engineers (Corps) that authorize activities regulated by another entity such as a state or tribe;
- 3) Assumption of the CWA §404 permitting authority, so that the state or tribe issues all CWA §404 permits for the discharge of dredge or fill of material into waters of the U.S. within the state's/tribe's jurisdiction; and
- 4) Implementation of a state or tribal permitting program under state or tribal laws and regulations independent of EPA or Corps review.

Footnote: <https://www.epa.gov/wetlands/wetlands-regulatory>

# Regulatory – Steps to program development

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Elements of a Regulatory Program no matter which category or combination of categories of regulatory program(s) a state or tribe pursues, the effectiveness of that program will largely depend on how well the following three basic program elements are addressed:

1. Definition of the jurisdictional scope of the program to clarify what activities and aquatic resources are regulated. Jurisdiction may be tied to the CWA and /or independently defined by the state or tribal government;
2. Administration of regulatory activities, including a method of authorization and set of standards for assessing proposals that defines what will be accepted, how impacts will be accounted for, and how impacts will be mitigated; and
3. Evaluation, inspection, and enforcement of regulatory activities to ensure environmental results.

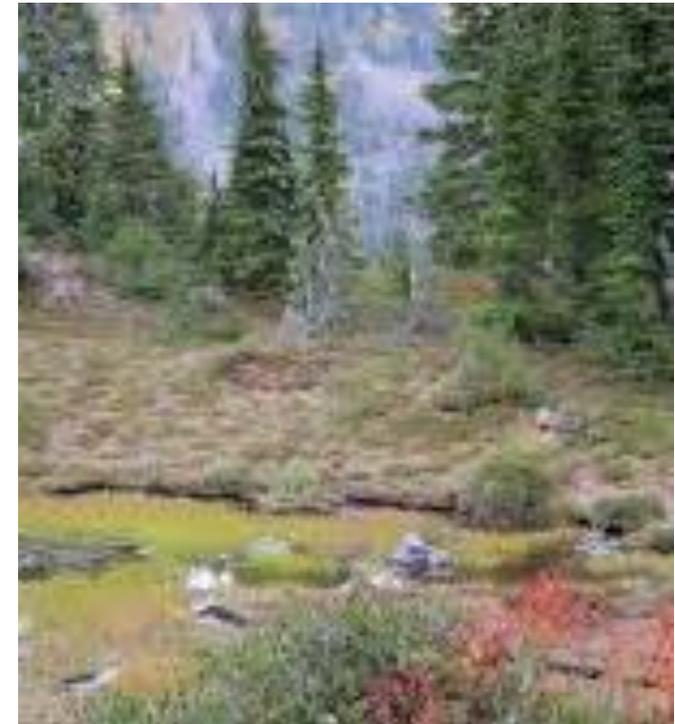
# Program Building Activities Menu

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Change table format by taking out the columns that are labeled as “Program Categories”. Or we could combine 404 Assumption and S/T permits (as one category), separate out 401 Cert (as another category) and separate out SPGP/RGPs.

Or combine 404 Assumption and S/T permits (as one category), separate out 401 Cert (as another category) and separate out SPGP/RGPs.

Or alternatively combine 404 Assumption & S/T regulatory programs (as one category), separate out 401 Cert (as another category) and separate out SPGP/RGPs.



# Change table format by taking out the columns that are labeled as “Program Categories

**KEY:**  
 X – These steps form the basics of a successful program.  
 O – Steps are suggested because they are often found in a successful program, but may not be necessary.  
 N/A – Step not applicable to this program category.

## Objective 1: Clearly Define the Jurisdictional Scope of the Program

Actions	Steps	Program Categories			
		401 Certification	SPGP\RGP Permits	404 Assumption*	S\T Permit
<b>a. Provide clear and comprehensive jurisdictional coverage of aquatic resources</b>	Adopt definition of waters of the state or tribe at least as inclusive as CWA (S/T permit program does not need to be as comprehensive as CWA)	X	X	X	X
	Delineate wetlands in a manner that is at least equivalent with the federal program (S/T permit program does not need to be as comprehensive as CWA)	N/A	X	X	X
	Extend state/tribal jurisdiction to aquatic resources that are not “waters of the US” (e.g., isolated wetlands)	N/A	O	O	O
	Base all water related regulatory programs within state/tribe on the same definition of waters of the State	O	O	O	O

# Program Building Activities Menu

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Place more emphasis on development of independent S/T/Local regulatory programs-

- Make it clear that CEF and our grant program supports development of a comprehensive S/T Wetland Program. Regulatory program is just one component.
- Regulatory table should not be mistaken for a complete wetland program nor should it project that 404 Assumption is the end goal.
- Reflect activities related to Tribal programs (use of ordinances, cultural resource protection, etc), and role of local governments to implement state regulatory and protection policies.



# Program Building Activities Menu

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## Revisit use of 401 certification -

- Verify & establish scope of S/T 401 cert programs.
- Identify activities that improve S/T 401 cert processes and decisions:
  - Include more water body types, link to WQS specifically for wetlands and streams, systems to track decisions/decision-making
  - Establishment of an enforcement component, & implementation enforcement program



## Example Changes - Objective 1: Clearly Define the Jurisdictional Scope of the Program



### a. **Provide clear and comprehensive jurisdictional coverage of aquatic resources**

Define waters of the State/Tribe (proposing to make this a new step)

Make the definition of S/T waters at least as inclusive as CWA (S/T permit program does not need to be as comprehensive as CWA, or they can be more expansive)

Delineate wetlands in a manner that is at least equivalent with the federal program (S/T permit program does not need to be as comprehensive as CWA)

Extend state/tribal jurisdiction to aquatic resources that are not “waters of the US” (e.g., isolated wetlands)

Base all water related regulatory programs within state/tribe on the same definition of waters of the State (or perhaps even more expansive?)

Questions? Comments...

<https://www.epa.gov/wetlands/wetlands-regulatory>



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