

Filling the Gaps in the Federal 404 Regulatory program

Association of State Wetland Manager Webinar: Building State/Tribal Program
Capacity

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Why do States/Tribes want or need to fill the federal gap?

- To close holes created in the Federal Clean Water Act from decades of litigation and agency rule-making.
- To address emerging needs and technology related to economic recovery and developing industries/markets.
- To provide greater efficiencies (and less confusion) by integrating state and federal requirements.
- To address regional needs for special and unique wetland/water types that continue to decline/degrade.
- To provide greater knowledge and expertise in managing and protecting local aquatic resources.

Close the holes created in the Clean Water Act from decades of litigation and agency rule-making

- Decades of litigation around the Clean Water Act (and specifically Section 404) has slowly reduced the level of protection at the federal level for many aquatic resources and types.
- The recent changes in the new Navigable Waters Protection Rule, has left ephemeral streams and many wetlands, unprotected.
- Though many state/tribal programs address waters of the state/tribe, they are usually limited at a level that while providing some recognition of the water quality benefits of surface waters and some wetlands, most programs don't provide direct protection for these resources.

Address emerging needs and technology related to economic recovery and developing industries/markets

- Many state/tribes have a need to address emerging markets and challenges in accommodating ever growing development pressures coming from different sectors (housing, transportation, mining, energy {including solar, wind, tidal, etc}, large scale regional distribution centers, etc).
- Pressure for economic recovery and for new development to support the growing needs for running a state/federal programs, is requiring states/tribes to be more creative in funding and staffing programs, as well as developing processes and tools to help potential applicants to design their project to avoid or protect important aquatic systems.

Provide greater efficiencies (& less confusion) by integrating state and federal requirements

- Most state/tribal programs have addressed only limited aspects of the wetlands protection problem and many programs have been adopted in a piecemeal manner.
- The result is a patchwork of federal, state and local government programs, which are often duplicative and confusing, allowing certain wetland conversions to proceed without adequate review, creating significant delays and added costs to achieving legitimate, permitted uses. There are many opportunities to reduce these duplications while improving the review and permitting process.
- Coordination and reform of the existing piecemeal regulatory environment could ensure adequate and meaningful review of important natural resource issues, while reducing the time and expense required for such reviews. Development of State Programmatic General Permits is one example of integration of federal and state programs for wetlands protection.

Regional needs to address for special & unique wetland/water types that continue to decline or degrade

- States/Tribes are best positioned to utilize a watershed approach for both the permitting process and mitigation requirements by promoting the development and use of comprehensive wetland management plans by federal, state, and local agencies. These plans can ensure intergovernmental coordination and achieve the no net-loss goal, with an emphasis on the avoidance of wetland impacts.
- States/Tribes can help their programs (and the 404 program) in leading the development of wetland and stream functional assessment tools and methods. Require the use of these assessment tools to help make better permitting and mitigation decisions.
- Allow and encourage states and regional and local government entities to assume responsibility for specific portions of the Section 404 program, and other future legislated programs, so long as they develop and demonstrate the capacity to further the national goal of no-net loss, and adopt approved state wetlands management plans;

Greater knowledge and expertise in managing and protection aquatic resources

- States/Tribes can help in establishing standards for defining, classifying, and mapping existing and disturbed wetlands;
- Continue to support research in wetlands and their functions;
- Supporting public/public and public/private partnerships to overcome jurisdictional barriers that limit effective wetland management and utilization;
- Encouraging cooperative information sharing and wetland management across watersheds so that damage to wetlands can be avoided or minimized;
- Establishing and perfecting regionally adjusted restoration and mitigation procedures to offset such damage to wetlands as may occur;
- Facilitating the long-term monitoring of restoration and mitigation efforts, and wetland functions; and
- Supporting community, regional, and other planning efforts through the collection and dissemination of accurate information.

Gaps = Opportunities

- Increased Federal/State/Local/Tribal collaboration can help to fill the gaps.
- Utilizing and promoting new technologies and methodologies and approaches can advance better permitting/planning/ and protection of aquatic resources.
- States/Tribes have greater flexibility to develop statutes/rules or ordinances to extend protection to unprotected aquatic resources.