EPA's Section 404 Regulatory Program

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Overview

- What is the CWA Section 404 Program and what is EPA's role and responsibilities?
- What are the types of information EPA considers in the review of aquatic resource restoration projects, specifically stream restoration?
- What information can facilitate the review of a project?

The CWA Section 404

- *CWA- Goal is to restore and maintain the physical, chemical, and biological integrity of the nation's waters.*
  - *Section 404 of the Clean Water Act (CWA) establishes a program to regulate the discharge of dredged or fill material into waters of the United States.*
  - *Section 404 requires a permit before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt from Section 404 regulation.*
- *Jointly administered program between Corps and EPA*

Section 404(b)(1) Guidelines

- Guidelines are regulations
- Provide substantive environmental criteria against which projects are evaluated.
- Fundamental precept is that no discharge of dredged or fill material may be permitted if a practicable alternative exists which is less damaging, or if the nation's waters would be significantly degraded.

EPA's Role in the 404 Program

- Commenting agency
  - Provides comments on applications
- Scope of geographic jurisdiction
  - Waters of the U.S.
- Section 404(c) – Veto Authority
- Section 404(q) – elevation of special cases

Restoration of Aquatic Resources

- Regulatory program has had extensive experience with restoration work through our review of mitigation projects
  - Permitee-responsible
  - 3rd party mitigation banks
- Compensation through:
  - Enhancement
  - Rehabilitation
  - Creation

Lessons Learned

- Engage stakeholders early in the planning process
- Site selection is important
- Understanding the stressors to the system and it's landscape position
- Understand what the tradeoffs may be
  - Unintended consequences
- Data – pre and post construction monitoring data

Stream Restoration Should…

- Ideally a stream restoration project will consider all sources of stress on a stream
- Do no harm
  - Minimize unintended consequences
- Provide a functional or ecological lift of the existing system
  - Re-establishment of chemical, physical, and biological components of an aquatic ecosystem
  - Emulate natural, functioning, and self-sustaining systems
- Risk is not greater than the expected benefits

What is EPA looking for?

- Baseline assessment data
  - Physical, chemical, and biological components of the existing system
- Goals and Objectives of the restoration project
  - Data driven
  - Post-construction monitoring plan
  - Success criteria – how do we know the project is successful
- Functional assessment
  - What is the site's potential?
- Causes of impairments
- Criteria and general principles used to develop the design

Information Needs Continued

- Inventory of past successes
  - Post-construction monitoring data
  - Studies
- Benefits expected
- Risks considered
  - How minimized
- Assurances that the project will be self-sustaining
  - Have a high likelihood for success
  - Long-term viability
  - Little to no maintenance

Moving forward

- Engage stakeholders early in the process
- Utilize Pre-application meetings
- Work outside of waters to the extent practicable.
  - Improved stream habitat and water quality
    - Addressing upland impacts
    - Enhancing riparian buffers
    - Constructing floodplain wetlands.

Conclusion

- Engage regulatory program early in the process
- Good site selection
- Provide necessary information understand the project
  - Goals and Objectives
  - Why here, why now
  - Baseline Data
  - Other supporting information
  - Other considerations
- Engage early in the planning process.