

ASFPM

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Notes from Natural & Beneficial Function Committee Call Aug. 14, 2019

Agenda & Notes

- Welcome & roll call, suggested changes to the agenda
- Watershed Pod liaison: NAI & Stormwater Committee updates (**John Velimesis**)
 - No updates. Committee chair meeting is Sep 17-19
- **Policy Updates (Eileen & Friends):**
 - **Clean Water Act (Marla Stelk)**
 - Changes to Section 404(c):
 1. The EPA is developing a proposal for changes to implementation of 404(c), which allows for veto of projects that are harmful to the environment or public health. EPA is providing a pre-proposal comment period for intergovernmental groups. Potential changes include:
 - a. revising when the Agency can initiate a Section 404(c) review
 - b. changing how regional offices coordinate with EPA Headquarters on 404(c) review process
 - c. revising permit elevation procedures
 - d. whether to incorporate a process for how to modify or withdraw a Section 404(c) Final Determination
 2. S. 2410 has been introduced by Sen. Hyde-Smith to overturn the 404(c) veto of the Yazoo Pumps project
 - The EPA/USACE final WOTUS rule (the repeal and replacement of the Obama Administration's Clean Water Rule clarifying the Clean Water Act's jurisdiction over small streams and wetlands) is due to be released soon.
 - Section 401: On Friday, August 9th, 2019, the U.S. Environmental Protection Agency (EPA) signed a proposed rule to revise implementation of Section 401 of the Clean Water Act (CWA). EPA Administrator Wheeler made the announcement at the Council of Manufacturing Associations Summer Leadership Conference in Charleston. In April, President Trump issued [Executive Order 13868](#) "Promoting Energy Infrastructure and Economic Growth" and directed EPA to take appropriate action to accelerate and promote the construction of pipelines and other energy infrastructure. EPA is scheduled to finalize this rule in May 2020. The proposed rule is available for review [here](#). EPA will accept public comment on the proposed rule for 60 days following publication in the Federal Register.
 - The U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency (the Agencies) have proposed a rulemaking to revise the compensatory mitigation regulations. Potential changes identified by the Agencies include: removal of the IRT Process; alternatives to add efficiencies in mitigation bank and ILF program evaluation; compliance with Miscellaneous Receipts Statute; ILF program accounting; multi-purpose compensation projects; changes to the mitigation

regulations to address State/Tribal assumption of the Section 404 program; and clarity for principal unit of credits for stream mitigation projects. A pre-proposal comment period was initiated on Thursday, June 20 and concluded on Friday, August 9, 2019.

- **WRDA (Eileen)**

- WRDA 2020 development is underway. Senate EPW Committee members must submit their requests by early Oct. Non-Committee Senators will submit requests when they return from recess.
- Senate EPW Committee held a few hearings, a lot of focus on flooding given the Midwest flood. [ASFPM testified in July](#). Recommendations included:
 1. Congress should set policy on decision making that will result in natural infrastructure being a preferred alternative due to its multi-benefit approach.
 2. Congress and the Corps should adopt policies for new or reconstruction of levees that are set back from the water's edge to preserve riparian areas, reduce erosion and scour, reduce flood levels and flooding risks, and allow natural floodplain ecosystems to better absorb floodwaters.
 3. Congress should mandate that inundation mapping developed by the federal government and/or associated with federal programs for dams and levees be made publically available.
 4. ASFPM urges strong, continued federal oversight to make sure levees are built to a level approved by FEMA, the Corps or state programs or regulations, and it must be adequately enforced.
 5. Congress and the Corps should remove bias towards structural projects and against nonstructural projects.

- **Transportation Bill (Eileen)**

- Senate marked up a Transportation bill at the end of July that includes a number of provisions related to natural infrastructure and resilience
- Natural infrastructure provisions in the bill ([TNC SUMMARY](#)):
 1. Definitions:
 - a. Natural infrastructure that captures conservation, restoration activities that protect, restore and enhance the function of natural systems. It defines it in a way to apply to natural infrastructure in coastal, riverine and urban settings.
 - b. Resilience captures the ability of a project to anticipate, prepare for, withstand or recover rapidly from weather events, natural disasters. Making resilient investments will lead to reduced vulnerability and increased adaptive capacity of projects to weather events and natural disasters.
 2. Block Grant Program:
 - a. Natural Infrastructure and wildlife crossings will be eligible projects under the block grant program
 - b. Adds a \$250 million, 5 yr Wildlife Crossing Pilot Program
 3. New grant program for resiliency improvements.
 - a. Authorized at almost \$1B- \$786M formula to distribute to states, and \$200M competitive grants

- b. Natural infrastructure, aquatic ecosystem restoration elements functionally connected to a transportation improvement are all eligible.
- **BRIC** (Eileen)
 - DRRRA authorized new pre-disaster mitigation program that could result in more stable funding, and be a game changer in pre-disaster mitigation.
 - It's unclear at this point where natural and beneficial functions will fall within the program. FEMA's Webinar on infrastructure mitigation projects included examples of "traditional mitigation projects" that included green stormwater storage and rain gardens. AR and conservation groups recommended that FEMA prioritize or incentivize nature-based approaches.
 - ASFPM's comments [can be found here](#):
 1. ASFPM's major concern is how FEMA will prioritize "traditional mitigation projects". Some concern that this will be expanded from acquisition, elevation, relocation and floodproofing to larger infrastructure projects
 2. ASFPM also encouraged BRIC to:
 - a. support hazard mitigation planning
 - b. include minimum state set-aside
 - c. consider higher regulatory standards
 - EDF comments addressed FEMA's BCA which still doesn't consider natural infrastructure benefits.
- **FEMA's new [National Mitigation Investment Strategy](#)**:
 - Recommendations include decision-making that involves nature-based solutions and natural assets
- **NFIP and ESA** (Dave Carlton)
 - FEMA is working on two ESA initiatives:
 1. Bret Gates provided update on NPEIS at ASFPM: FEMA has progressed to the final stages of working with FEMA Regional and HQ SMEs to determine what "Obtain and Maintain" community ESA compliance means and this process will end with recommended options to management coming soon.
 2. FEMA is pursuing voluntary ESA Section 7(a)(1) conservation of species and habitat activities. See the attached brochure for our current progress [FEMA FactSheet](#).
 - a. Improve website- Next step is to solicit comments on webpage from stakeholders
 - b. Develop web-based mapping tool on FEMA's GeoPlatform on ArcGIS that includes NFIP, USFWS, and NMFS data layers
 - c. CRS pilot for promoting existing CRS ESA activities and identify activities and approaches for T&E species conservation
 - i. Developed pilot approach and identified communities to interview. Currently implementing the pilot phase by interviewing communities
 - ii. Next phase is providing technical assistance to a smaller group of communities
 - iii. This culminates in CRS recommended changes for CRS communities to go above and beyond the minimum requirement of "obtain and maintain" ESA compliance. We

are making good progress on suggested CRS changes, and in September, Bret Gates plans to combine our 7(a)(1) work group sub-committee with the soon to be restarted CRSTF N&B Committee.

- Has FEMA backed off on requirements for making every community come into compliance with ESA? new model ordinance? Not sure?
 1. Pretty sure something is coming
- **FIFMTF** (John McShane/Maria Honeycutt)
 - The FIFMTF was reestablished earlier this year and the five subcommittees are wrapping up their work and expect the principles to be meeting towards the end of the month. We hope to have more details by the next call.
- New Resource:
 - WRI/World Bank newish report: Integrating Green and Grey: Creating Next Generation Infrastructure. A booklet with recommendations for implementation, financing and policy, as well as some powerpoint decks on nature-based solutions. We will post a link on the NBF website and in the notes.
 - <https://www.wri.org/publication/integrating-green-gray>
- Set next call date (**October 9th, 2019**) & Adjourn