

The Federal Standard

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Coming Attraction

- The laws shaping the federal standard
- Changes to Clean Water Act
- Coastal Zone Management Act
- The Federal Standard
- Exclusions/Exemptions
- The Navigation Program
- Other Laws
- Regulatory Authorities



The Laws

- Federal Water Pollution Control Act of 1972---amended and renamed the Clean Water Act in 1977.
- Coastal Zone Management Act of 1972.



FWPCA/CWA

- Federal Water Pollution Control Act of 1972.
 - ▶ Section 401(a)(6). “No Federal agency shall be deemed to be an applicant for purposes of this subsection.”
 - ▶ Revoked with 1977 CWA amendments.



TITLE IV- Permits and Licenses---CWA

- Section 401 – Requires water quality “certification” of activities needing a federal license or permit
- Section 402 – NPDES Dredged material excluded at 40 CFR 122.3(b)
- Section 403 - Ocean Discharge Criteria - Same criteria as at 102 of the ODA
- Section 404 - Permits for Dredged or Fill Material - 404(b)(1) guidelines developed by EPA in conjunction with Corps - requires comparability in testing between Sec 404 and Sec 403 (Legal basis for ITM/OTM single manual)
- Section 405 - Disposal of Sewage Sludge prohibits disposal in waters absent an EPA Permit



Coastal Zone Management Act

- Section 307(c) requires that federal activities and federally licensed activities be consistent to the maximum extent practicable.
- *All 35 coastal and Great Lakes states and territories (with the exception of Alaska) participate in the National CZMP.*
- NOAA implements through regulations at: 15 CFR 923.53--Federal consistency .
 - ▶ If state does not concur in consistency determination?
 - ▶ Conditional concurrences not allowed.
 - ▶ Do not use mediation!

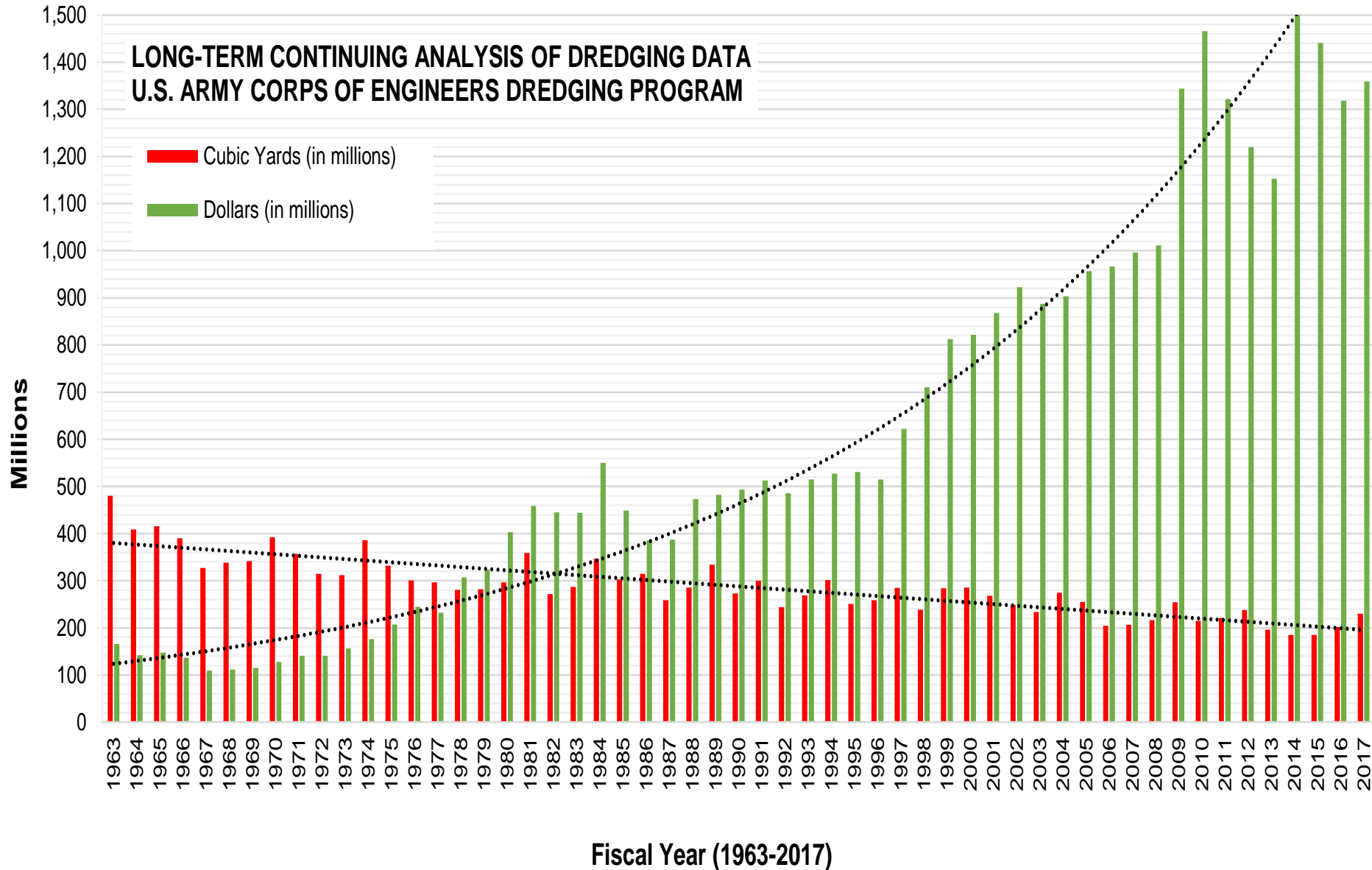


Why a Federal Standard?

- The concept of a Federal Standard is not new. There are FS's in DOT, HUD, FAA, etc.
- Following the CWA amendments states began to quickly add requirements.
 - ▶ In 1978 the DCW issued policy embodying the elements of the current FS.
 - ▶ Ops Chiefs sought HQ relief from state requirements.
 - ▶ Revision to existing 209.145 dredging regulation completed in April 1988.
 - ▶ O&M navigation program down from about 500 dredging to less than 300.



LONG-TERM CONTINUING ANALYSIS OF DREDGING DATA U.S. ARMY CORPS OF ENGINEERS DREDGING PROGRAM



The Federal Standard

- Federal standard means the dredged material disposal alternative or alternatives identified by the Corps which represent the least costly alternatives consistent with sound engineering practices and meeting the environmental standards established by the 404(b)(1) evaluation process or ocean dumping criteria.
 - ▶ Codified at 33 CFR 335.7 (definitions)
 - ▶ And, 336.1(c)(1)
 - ▶ Excessive State Requirements at 337.2
 - ▶ Deferral of Dredging at 337.2(b)(3)



Federal Standard and Beneficial Use

- The Corps is all-in for beneficial use of dredged material.
- However, no budget increase other than for inflation in over 45 years.
- We should be actively seeking BU options.
- Engage stakeholders to help us find BU options within existing appropriations.
- No new money.



Sec 402 Point Source Discharge Exclusion

Based in legislation at CWA Sec 402 (a)(1).

§ 40 CFR Part 122.3 Exclusions.

The following discharges do not require NPDES permits:

- (b) Discharges of dredged or fill material into waters of the United States which are regulated under section 404 of CWA.
- Nationwide Permit # 16: Return water from upland contained disposal areas.



Hazardous Waste Exemption

- In 1998 EPA published the hazardous waste identification rule.
 - ▶ Dredged material is exempted at 40 CFR 261.4(g) when subject to a permit issued under 404 of the CWA or 103 of the ODA.
 - ▶ Dredged material may be subject to regulation as a solid waste under RCRA Subtitle D if there is no return water from a CDF.



Quantities of Dredged Sediments

- 250 million cubic yards from 25,000 miles of navigation channels
- 75 million cubic yards from permits
- 325 million cubic yards each year



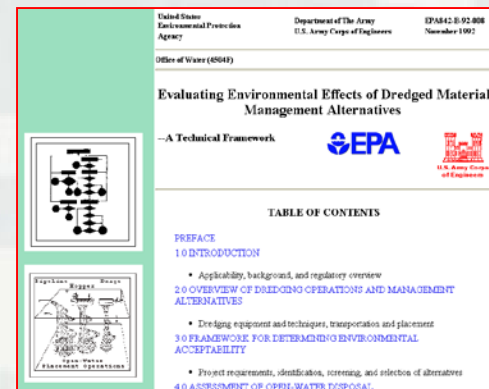
Quantities of Dredged Material Placed

- 55 million cubic yards goes to about 97 ocean sites regulated under the Ocean Dumping Act
- 270 million cubic yards regulated under the Clean Water Act



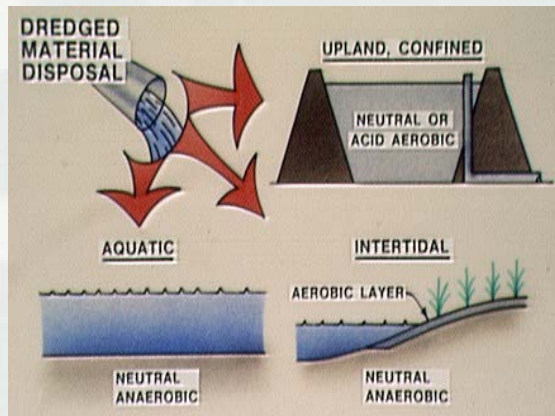
Navigation Dredging

- 33 CFR 335-338 Corps Dredging Regulation
- EPA/Corps Technical Framework for DM
- Testing and Evaluation Manuals for Ocean (103) and Inland (404) Waters - National and Regional Manuals
- Ocean Site Designation Manual
- DM Capping Guidance Manual
- Upland Testing Manual



National and International Leadership

London Dumping Convention



CORPS/EPA Disposal Guidelines & Criteria



Environmental Laws and Regulations Applicable to Dredging and Dredged Material Disposal Activities

1. National Environmental Policy Act of 1969

2. Clean Air Act of 1970

- Section 309 requires EPA review of federal action agency NEPA documents

3. Resource Conservation and Recovery Act of 1976

Dredged material excluded as a hazardous waste through 1998 rule making at 40 CFR 261.4(g).

- When no return water, could be regulated by state as a solid waste.



4. Rivers & Harbors Act of 1899

- Section 10 - Permits for Structures and Activities in Navigable Waters.
- Section 13 - Refuse Act. CWA subsumed the permitting provisions of Section 13 into Section 402 of the CWA. Enforcement provision was retained. Currently used by the Corps to remove obstructions to navigation.

5. National Historic Preservation Acts of 1966 and 1980, plus the Antiquities Act of 1906.

6. Fish and Wildlife Coordination Acts of 1934, 1956 and 1958.

- Must consult must consider.
- Consult with state fish and game agencies.



7. Marine Protection, Research and Sanctuaries Act of 1972. --- commonly called the Ocean Dumping Act.

Title I - Ocean Dumping

- Section 102 - EPA permits for everything but dredged material. Currently two fish waste sites. Sinking ships and burial at sea general permitted.
- Establish criteria for all waste and consult with Corps for criteria affecting civil works program.
- Section 103 – Corps issues permits for transportation for disposal of dredged material.
- Must apply EPA 102(a) criteria.
- Discharge/placement of **fill/dredged material** in territorial sea regulated under CWA.
- Disposal of dredged material in territorial sea regulated under ODA Sec 103. See 40 CFR 230.2(b)



8. Endangered Species Act of 1973

- Section 7 - Interagency Cooperation.

- When ESA listed species or critical habitat present must consult.
- Prepare biological assessment offering RPA's and/or RPM's to avoid jeopardy.
- Services review draft BA and return with comments to action agency if requested.
- Action agency either accepts or modifies Services' recommendations.
- Services issue final BO.
- Once BO issued, consultation is over.



9. Magnuson-Stevens Fishery Conservation and Management Act (MSA)

- Enacted in 1976, aimed at protecting essential fish stocks through catch allocations
- Eight fishery management councils Headed by NOAA RA's.
- Comprised of state fish and game heads in the regions.
- Essential Fish Habitat (EFH) regulations promulgated in 1996 establishing consultation requirements for federal agencies
 - Between 1976 and 1996 NOAA completed studies for EFH designation
 - Essentially all coastal, marine and estuarine waters and water bottoms out to the 200 mile limit EEZ designated as CH.
 - NOAA conservation recommendations are not mandatory, only that when not accepting them we must explain why.



10. Submerged Lands Act of 1953.

- States own dredged material in navigation channels, except?
- When they claim ownership. If so, the Corps has authority under the Refuse Act (Sec 13 of the 1899 R&HA)
- If dredged material placed in a CDF, the real estate interest merges with the underlying fee owner of the CDF.
- If material is sold from that CDF the state may claim a royalty for that sale.



Regulatory Authorities

- U.S. NOAA Fisheries
- U.S. Fish and Wildlife Service
- U.S. Environmental Protection Agency
- State Fish and Game Agencies
- State Water Quality Certifying Agencies
- State Coastal Zone Management Agencies
- Other Federal and State Agencies



Questions?



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