Current & Future Environmental and Cultural Regulatory Changes

olsson®

Missouri Department of Transportation

Navigating Regulatory Changes

- Updates to several existing regulations are currently underway

- Understanding implications of these changes will facilitate timely environmental clearances

- Major regulatory changes include:

  - Changes to Section 404 (Wetlands and Streams)

  - Changes to T&E Species

  - Changes to Section 106 (Cultural Resources)

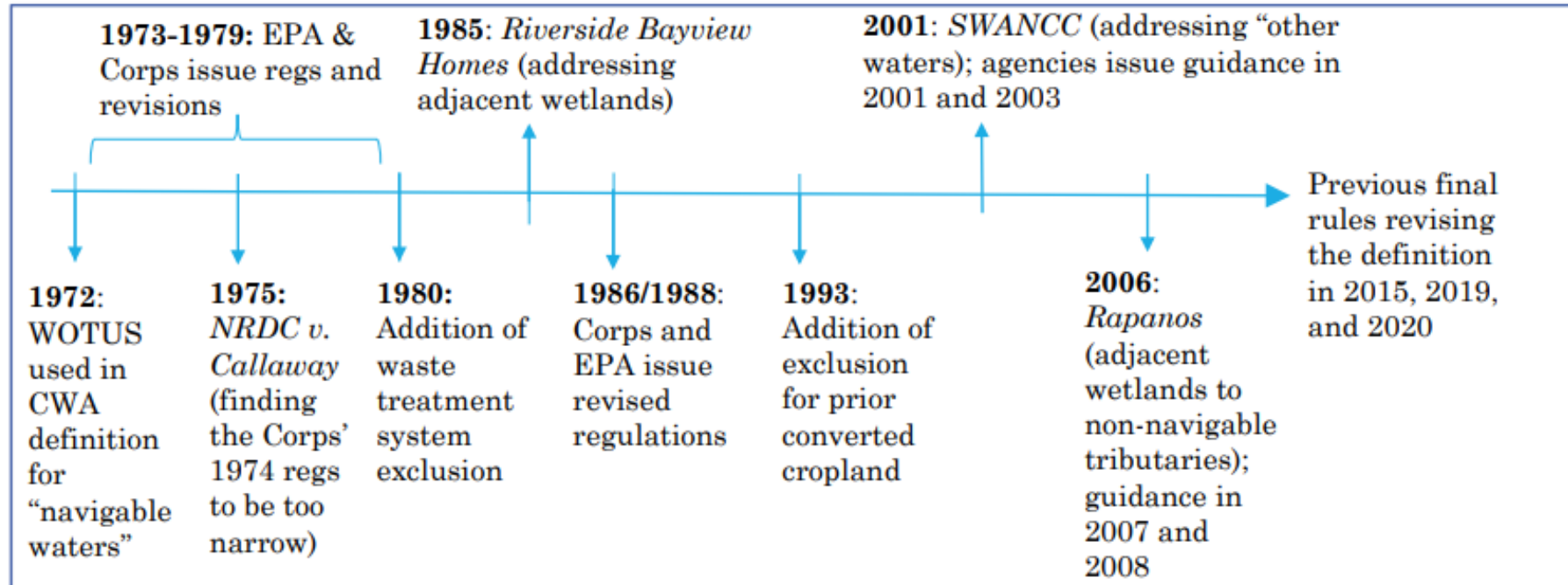 - Changes to Socioeconomic and Environmental Justice

olsson®

Overview of Section 404: Wetlands and Streams

- Clean Water Act Section 404 (1972)
  - Regulates the discharge of dredge or fill material into Waters of the U.S. (WOTUS)
  - Relevant regulated activities
    - Infrastructure development (transportation)
  - Administered by U.S. Army Corps of Engineers
  - Permit required before impacting WOTUS
    - Nationwide permits
    - Individual permits

olsson®

MoDOT Missouri Department of Transportation

History of Regulatory Changes to Section 404

From EPA Presentation Jan 19, 2023

Current Regulatory Guidance

- Current Definition of WOTUS (2023)
  - Replaces Navigable Waters Protection Rule
  - Pre-2015 definition, with amendments
  - Effective March 20, 2023

- Other considerations
  - Implications for transportation projects
  - Mitigation
    - 0.1 ac wetland
    - 0.03 ac stream

Definitions

(c)(1) Wetlands

(c)(2) Adjacent

(c)(3) High tide line

(c)(4) Ordinary high water mark

(c)(5) Tidal waters

(c)(6) Significantly affect

(c)(1) – (c)(5):
Pre-2015 definitions,
with no changes

(c)(6):
New term and definition
in the final rule

From EPA Presentation Jan 19, 2023

olsson

MoDOT Missouri Department of Transportation

Threatened and Endangered Species

Candidate for federal listing

Expect decision Fall 2023

Monarch Butterfly

olsson®

Missouri Department of Transportation

Tricolored Bat

Proposed as Endangered:
September 2022

Effective Date: Fall 2023

olsson®

Missouri Department of Transportation

Northern Long-Eared Bat

Currently listed as Threatened

Up-Listed to Endangered effective March 31, 2023

olsson®

Missouri Department of Transportation

Alligator Snapping Turtle

Proposed Threatened: November 2021

Additional review currently underway

www.mcalesternews.com

MoDOT Missouri Department of Transportation

Big Creek and St. Francis River Crayfish

Proposed Threatened with Critical Habitat September 2020

Expect listing sometime in 2023

olsson®

MoDOT Missouri Department of Transportation

Other Pollinators

Top left: American Bumblebee
Lower left: Linda's Roadside Skipper
Lower right: Regal Fritillary

© Donna Brunet

olsson®

MoDOT Missouri Department of Transportation

Section 106 of the National Historic Preservation Act of 1966

- Requires federal agencies to consider the effects on historic properties of projects they carry out, assist, fund, permit, license, or approve

- Encourages, but does not mandate preservation

- Ensures that the views of consulting parties and the public are factored into the planning process

- Ensures that agencies will assume responsibility and public accountability for their decisions

olsson®

MoDOT Missouri Department of Transportation

Hiring a Cultural Resources Management Consultant

- MoDOT OnCall List | Missouri Department of Transportation – Environmental - Cultural Resources list

- LPA On-Call List | Missouri Department of Transportation (modot.org) – Historic Preservation list

- Archaeology and Historic Preservation Consultants List and Professional Qualifications | Missouri State Parks (mostateparks.com) – Consultant List

olsson

MoDOT Missouri Department of Transportation

Submittals to the State Historic Preservation Office

SECTION 106 REVIEW

Under Section 106 of the National Historic Preservation Act (NHPA), federal agencies must consider the effect of their actions on historic properties and provide the federal Advisory Council on Historic Preservation (ACHP) the opportunity to comment on proposed actions. Each State Historic Preservation Office (SHPO) plays a critical role in the Section 106 process. As set out in Sections 101(b)(3) and 101(d) of the NHPA, they "consult, advise, and assist" federal agencies in carrying out the agency's Section 106 responsibilities. Under Section 101(b)(9)(a) of the NHPA, SHPOs have a responsibility to "consult with appropriate Federal agencies . . . on Federal undertakings that may affect historic property." Pursuant to these authorities, SHPOs annually review more than 110,000 federal undertakings. While the SHPO participates in the Section 106 consultation process, it is the federal agency that bears the responsibility for initiating various steps in the process. Although the federal agency may use the services of applicants, consultants or designees to prepare information, analyses and recommendations, the federal agency remains legally responsible for all required findings and determinations.

To successfully complete Section 106 review, federal agencies must:

1. **Review and Compliance Information Form**

2. **Cultural Resources Investigation Form**

Section 106 Conclusions

- **EPG: 127.2 Historic Preservation and Cultural Resources (MoDOT Jobs)**
- **EPG: 136.6.4.1 Section 106 (Cultural Resource) Compliance (LPA Jobs)**

olsson®

Missouri Department of Transportation

Socioeconomic and Environmental Justice

Updates and Changing Practices

olsson®

Missouri Department of Transportation

Limited English Proficiency (LEP) Outreach Documentation
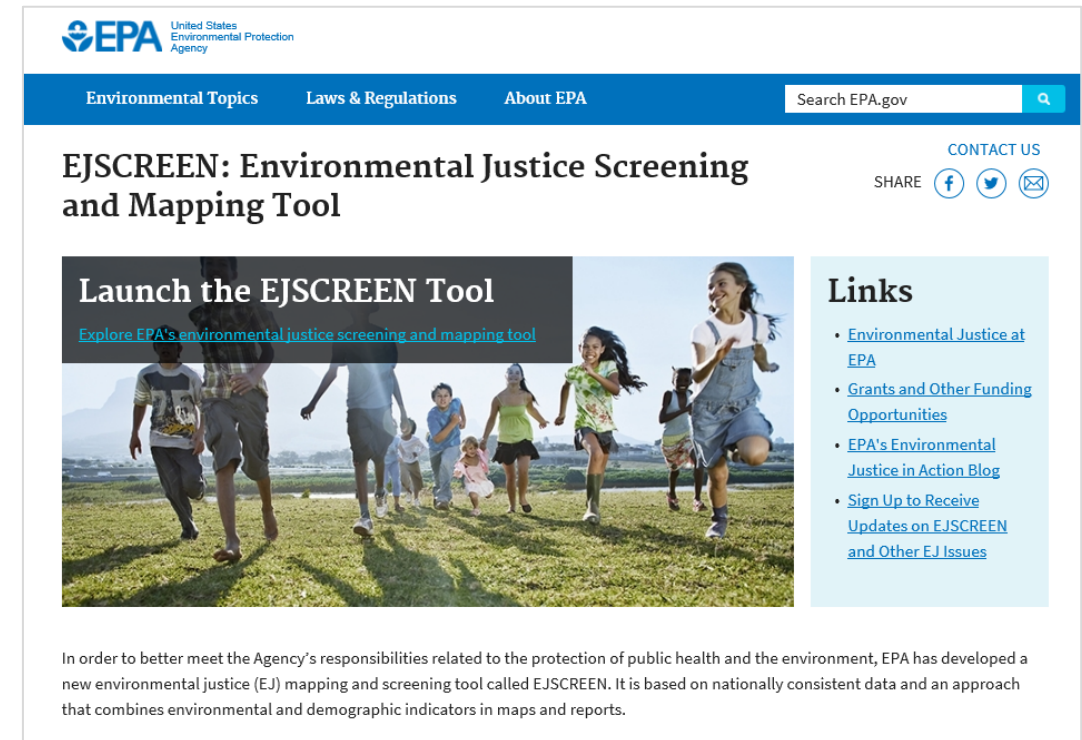
Determine the need for direct outreach to LEP populations.

- Did the LEP analysis show that 1,000 persons or more who speak a language other than English also speak English "less than very well"?
- Did the LEP data analysis show that 5% or more of the population who speak a language other than English also speak English "less than very well"?
- Did the interview(s) with community leaders indicate the need to accommodate certain languages?

If the answer to any of the above questions is yes for the project, direct outreach may be needed.

olsson®

Missouri Department of Transportation

Detailed Community Impact Statements

- Development of a community profile
  - Provides data to conduct proper analysis
  - Helps determine potential mitigation

- Checklist under development to help determine if a detailed community profile is required

Public Involvement

Changing standards for documentation of public involvement decisions

See EPG 129 for:

- Update to PIP requirements for LEP and CE2s
- Documentation housed in eProjects
- Public involvement expectations by project type
- Suggestions of common outreach methods
- Standards for documentation

olsson®

Missouri Department of Transportation

QUESTIONS?

olsson®

MoDOT Missouri Department of Transportation