

State by state summary of states that have completed some type of formal 404 assumption study

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	Benefits of 404 Assumption	Barriers to 404 Assumption	Alternatives recognized	State changes necessary	Federal changes necessary	Methods of Study
Virginia (2012)	<ul style="list-style-type: none"> - individual state control of water resources and a streamlined regulatory program - increased consistency in permit decisions - increased regulatory program stability and certainty 	<ul style="list-style-type: none"> - high financial cost - lack of dedicated federal funding for 404 operation and administration - difficulty in meeting program requirements - lack of partial assumption option - section 10 navigable waters - loss of corps' knowledge base 	<ul style="list-style-type: none"> - SPGP or 401, 401 is currently employed 	<ul style="list-style-type: none"> - new funding for additional staff, training, and database improvements - amended laws and regulations to implement CWA and consistency, including changing or removing exemptions 	<ul style="list-style-type: none"> - funding for implementation and operation of 404 assumption 	<ul style="list-style-type: none"> - assess current wetland programs: jurisdiction, permitting process, existing staff and workloads, and other expenditures - cost analysis - permit workloads
Montana	<ul style="list-style-type: none"> - increased efficiency combined with greater resource protection the the state, elimination of overlapping programs, more flexible regulations, & increased support for state review and local decision making 	<ul style="list-style-type: none"> - demonstrating state jurisdiction is equal in scope to the federal law regarding waters of the US and proving state program is consistent with federal law, providing adequate funding for administration and operation, and section 10 jurisdiction. 	<ul style="list-style-type: none"> - 401 is currently employed 	<ul style="list-style-type: none"> - need to determine whether the state has adequate enforcement capability, enough public support, and the legal authority to meet federal requirements. 		<ul style="list-style-type: none"> - identify overlapping regulations; - determine if Montana has the jurisdiction and authority to regulate activities covered by 404 - solicit information from *important parties* to determine potential benefits, disadvantages, and obstacles - evaluate costs of applying, assuming, and ongoing costs of assumption and identify state laws that may need amendment to assume primacy -

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Alaska	<ul style="list-style-type: none"> - From their study: “State assumption of the section 404 program gives Alaska, not the Corps or EPA, the leadership role in evaluating and issuing dredge and fill permits in “assumable waters” of the state. With a state-run section 404 program, two agencies – DEC and DNR – that have a long history of successful interaction – will run the program, rather than the four currently involved: The Corps, EPA, DEC, and DNR. Two vs. four simply means less bureaucracy” (6). - no NEPA review is a benefit 	<ul style="list-style-type: none"> - same as the other states, includes unclear jurisdictional between the states and the corps as a major deterrent. common threat with many coastal states. 	<ul style="list-style-type: none"> - SPGPs and/or 401 - 401 is currently in place 	<ul style="list-style-type: none"> - Epa requirements to meet as a state: “has an equivalent scope of jurisdiction for those waters they may assume; regulates at least the same activities as the federal program; provides for public participation; is consistent with the CWA section 404(b)(1)Guidelines...; and has adequate enforcement authority” 	<ul style="list-style-type: none"> -funding for implementation and operation -partial assumption as helpful -clear jurisdiction/definition of assumable waters 	<ul style="list-style-type: none"> -Memorandum of Understanding in implementation of 404 assumption study, agreed upon with specific responsibilities by Corps, EPA, and the State
Michigan	<ul style="list-style-type: none"> -From the commission's statement in support of continued assumption: “elimination of a high percentage of duplication ... reduced costs for program applicants and often faster permit processes, more effective resource management at the watershed level, drawing on localized expertise and integration of wetland management with other state or tribal land use management and 	<ul style="list-style-type: none"> -“ lack of state program equivalency, lack of state implementation funds, and unwillingness to pay for something the feds are already doing” 	<ul style="list-style-type: none"> - Currently employs 404 assumption 	<ul style="list-style-type: none"> - current issues with 404: financial pressures and jurisdictional uncertainties make it difficult for the EPA to review 404 violations in Michigan. -changes due to court cases (Rapanos and now Clean Water Rule) confuse jurisdiction/assumable waters 	<ul style="list-style-type: none"> -EPA has no effective strategy or framework to evaluate 404 violations, the EPA does not have sufficient resources to make informed decisions about allocation for enforcement -jurisdictional issues in enforcement 	<ul style="list-style-type: none"> -MOA between Michigan Department of Environmental Quality and USEPA Region 5

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	natural resource programs, incorporation of state goals into the overall permit process, and improved consistency and stability in the regulation of dredge and fill activities across multiple levels of state government.”					
New Jersey (1994)	<ul style="list-style-type: none"> - NJ passed a law in 1987 that mandated pursuing 404 assumption, seeking wetland protection - the building community was not enthused but preferred state programs as opposed to federal 	<ul style="list-style-type: none"> - in NJ specifically, opposition to assumption came from FWS and national environmental groups. There was fear of not complying with section 7 of ESA. Environmental organizations feared that NJ was a bad example because of a lack of access to third party appeals for permit decisions, enforcement, and program funding. 	<ul style="list-style-type: none"> - only other state that employs 404 	<ul style="list-style-type: none"> - program to assume 404 should be closest in structure to federal 404 program - keep extensive records on program implementation - direct conversation with other agencies - coordination between EPA and FWS about ESA; consultation and MOAs to make all parties happy 	<ul style="list-style-type: none"> - all federal agencies should adopt assumption as viable - “all involved federal agencies should suggest changes to the assumption regulations to address any additional concerns, such as satisfying the endangered species provisions. - more understanding standards of stringency - FUNDING 	<ul style="list-style-type: none"> - Memorandums of Agreement and Understanding with other agencies
Oregon (2002)		<ul style="list-style-type: none"> - (taken from 2002 document) : Oregon’s own Removal-Fill law contains a standard for evaluating alternative sites for proposed fills that 404 does not have in addition to public interest tests and alternative analyses - the state’s proposed standards for compensatory freshwater wetland mitigation are more stringent and far more specific 	<ul style="list-style-type: none"> - its own wetland protection policies, SPGPs, 401 is currently employed 	<ul style="list-style-type: none"> - changes in state endangered species conservation (salmon) 		<ul style="list-style-type: none"> - side by side comparison of the federal CWA section 404 and the state’s removal fill program - close examination of existing state wetland protection programs - examination of jurisdiction

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		<p>than those contained in the federal MOA</p> <ul style="list-style-type: none"> - in general, Oregon program enhances or exceeds the federal one by multiple standards - Oregon has an abundance of section 10 waters that are non-assumable - Oregon administers its endangered species program differently than the federal ESA 				
Florida (2005)	<ul style="list-style-type: none"> - mainly streamlining the process 	<ul style="list-style-type: none"> - lack of full assumption, like waters under Rivers and Harbors Act and other non assumable waters 	<ul style="list-style-type: none"> - SPGPs, 401 is currently employed 	<ul style="list-style-type: none"> - adjust power of DEQ (wetland management) - amend state law to be consistent with CWA on a “recapture” provision in regards to agriculture - amend Florida state law to comply with 404(b)(1) - remove Florida’s default permit to applications not processed in 90 days - funding - amendments made under ESA section 7 as opposed to 10 	<ul style="list-style-type: none"> - want powers of full assumption of 404, including changes to Rivers and Harbors act so that states can assume section 10 navigable waters - remove the 5 year limitation on state issued 404 permits - delete “clean break” provision unless adequate funding and resources are given to the state - require COE to continue monitoring, enforcing, and issuing modifications on permits previously issued by COE - allow the EPA administrator 	<ul style="list-style-type: none"> - comparison of SPGPs to 404 assumption

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Minnesota (1989)	<ul style="list-style-type: none"> - improve areas of overlap - increased state authority and enforcement - more regulation - public benefit - elimination of 401 program 	<ul style="list-style-type: none"> - costs with no funding - EPA oversight and override - controversy/confusion over assumable waters - state changes necessary to comply - reports to EPA (costly) as well as difficulty in reporting and coordination in regards to 404 violations 	<ul style="list-style-type: none"> - rgps 002,003,004 - 401 - wetland protection act - rewrite statutes to include state oversight of waters of the U.S. as defined by EPA - in lieu fee 	http://www.aswm.org/pdf/lib/404_assumption_feasibility_study_0509.pdf p.69	http://www.aswm.org/pdf/lib/404_assumption_feasibility_study_0509.pdf p.37	<ul style="list-style-type: none"> - types of activities and resources involved - federal conditions for state assumption - costs for state administration, alternative funding strategies - appropriate roles for state agencies and local units of government - necessary changes in current state law

* Montana important parties = the regulated community, conservation districts, local governments, the Depts. of Environmental Quality and Natural Resources and Conservation, the U.S. Army Corps of Engineers, the Environmental Protection Agency, and the public