

USACE Regulatory Program Emergency Permitting

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US Army Corps of Engineers
BUILDING STRONG®
San Francisco District

Section 10 of the Rivers and Harbors Act

- To protect and preserve the navigability of navigable waters
- Requires that you obtain a permit for any **structure** or **work** in a **navigable** water of the U.S.



Section 10 of the Rivers and Harbors Act

Definitions

Navigable waters: waters subject to the ebb and flow of the tide; has a connection to transportation of interstate commerce

Interstate commerce: defined as has, had, presently has, or potential for interstate commerce

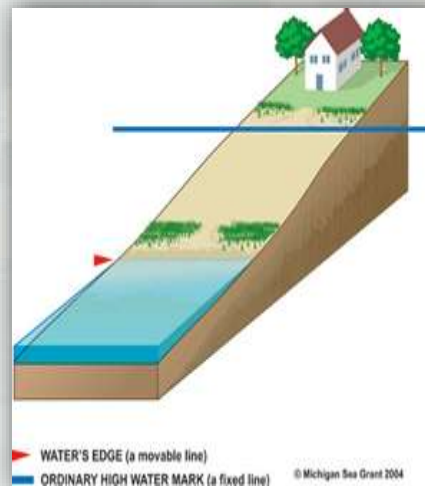


Section 10 of the Rivers and Harbors Act

Definitions

Ordinary High Water: shoreward limit of jurisdiction for all **non-tidal** waters; line on the shore established by normal fluctuations in water level.

Mean High Water: shoreward limit for all **tidal** waters; line on the shore reached by the plane of the average high water.



Section 404 of the Clean Water Act

- To restore and maintain the chemical, physical and biological integrity of the waters of the U.S.
- Requires that you obtain a permit for the **discharge of dredged or fill material** in any **water of the U.S.**



Section 404 of the Clean Water Act (Water of the United States)

- Navigable waters
 - For example: oceans, bays, and inlets
- Tributaries to navigable waters
 - For example: rivers and creeks, ephemeral and intermittent streams
 - Lakes and ponds
- Interstate bodies of water or wetlands
- Wetlands adjacent to the waters listed above
- Special aquatic sites: wetlands, mudflats, vegetated shallows, riffle and pool complexes, coral reefs



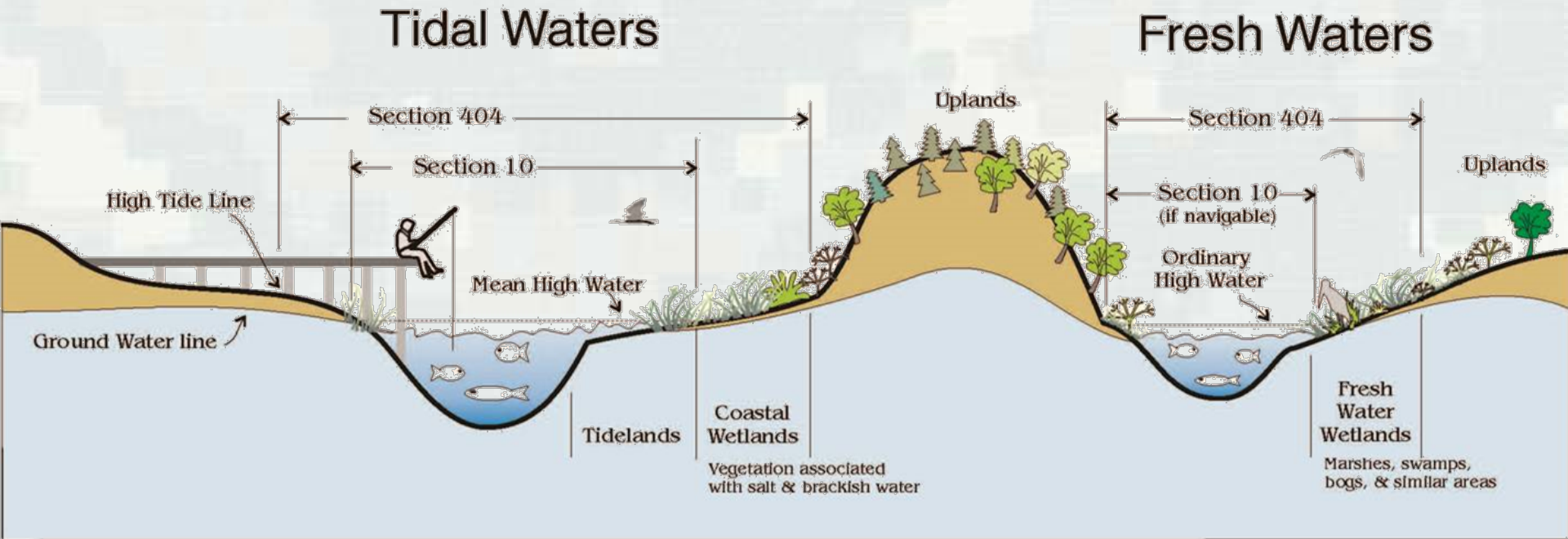
Section 404 of the Clean Water Act

Definitions:

High Tide Line:
shoreward limit of jurisdiction for all **tidal** waters (Section 404 regulated activities); intersection of land and water at the **maximum** height reached by a rising tide.



Regulatory Jurisdiction



Section 103
Ocean Discharge
of Dredged Material

Ocean discharges of
dredged material

Typical examples
of regulated activities

Section 404

Disposal of Dredged or Fill Material
(all waters of the U.S.)

All filling activities, utility lines, outfall structures,
road crossings, beach nourishment, riprap,
jetties, some excavation activities, etc.

Section 10

All Structures and Work
(navigable waters)

Dredging, marinas, piers, wharves,
floats, intake / outtake pipes,
pilings, bulkheads, ramps, fills,
overhead transmission lines, etc.



Emergency Permitting Overview

- Contact the Corps at the earliest possible convenience
- Corps determines if the situation is an “emergency.”
- Determine if the proposed emergency work requires a DA permit.
 - Jurisdictional boundary?
 - Section 10 and/or Section 404
 - Section 404 exemption?
- If DA permit is required, determine type of permit
 - General Permit (NWP, RGP) – District Engineer
 - Standard Permit – Division Engineer
- Reasonable efforts will be made to receive comments from interested Federal, State, and local agencies and the affected public. (33 CFR 325.2(e)(4))



Emergency Definition

An “Emergency” is a situation which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures.

33 CFR 325.2 (e)(4)



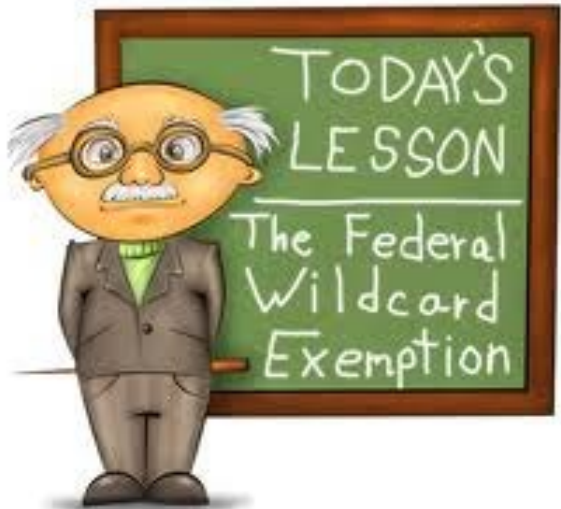
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404(f) Exemptions

- **Exemptions** – Discharges not requiring permits (**Section 404 waters only**)
 - **33 CFR 323.4(a)(2)** *Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures. **Maintenance does not include any modification that changes the character, scope, or size of the original fill design.** Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption.*



There are currently no exemptions for work proposed in designated Section 10 waterways...



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Authorization Alternatives

- **Nationwide Permits** – Use applicable NWP for the category of work.
 - NWP 3 – *Maintenance*
 - provided the work is commenced, or is under contract to commence, within two years of the date of their destruction or damage....in cases of catastrophic events this two-year limit may be waived by the district engineer
 - NWP 45 – *Repair of Uplands Damaged by Discrete Events*
 - Work must commence, or be under contract to commence, within two years of the date of damage, unless this condition is waived in writing by the district engineer
 - NWP does not apply to land lost to normal erosion
 - NWP does not authorize beach restoration or nourishment.
- **Standard Permits (IP or LOP)** – Division Engineer will instruct the District Engineer on processing application.



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External Coordination

- National Marine Fisheries Service (NMFS)
- U.S. Fish and Wildlife Service (USFWS)
- Environmental Protection Agency (EPA)
- State Historic Preservation Office (SHPO)
- State Environmental Office (RWQCB, BCDC, CCC)
- Federally Recognized Tribes (Tribes)
- National Park Service (NPS)





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RGP 5 Conditions

- The proposed emergency work must be the minimum necessary to alleviate the immediate emergency.
- Projects must be initiated within 7 days of receiving authorization.
- Permittees must provide a Post-Activity Report within 45 days of completing the project.
- Pre- and post-construction photos are **required**



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Questions?

