

# San Francisco District Regulatory Division




## Overview of the Corps Regulatory Program

San Francisco District  
U.S. Army Corps of Engineers  
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US Army Corps of Engineers  
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San Francisco District

# Corps Regulatory Authorities

Authority	Geographic	Activity	
<p><b>Section 10 Rivers and Harbors Act of 1899</b></p>	<p>Navigable Waters of the United States</p>	<p>All work over, through, and under navigable waters (e.g. dredging, docks, and beach renourishment)</p>	 <p><i>Residential Dock, Alameda, CA</i></p>
<p><b>Section 404 Clean Water Act of 1977</b></p>	<p>Waters of the United States (including wetlands)</p>	<p>Discharge of dredged or fill material</p>	 <p><i>Alameda Creek, Fremont, CA</i></p>
<p><b>Section 103 Marine Protection, Research, and Sanctuaries Act</b></p>	<p>Ocean</p>	<p>Transportation of dredged material for the purpose of disposal in the ocean</p>	 <p><i>Hopper dredge Essayons, Pacific Ocean</i></p>



# 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.



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# 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 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

## Waters of the United States:

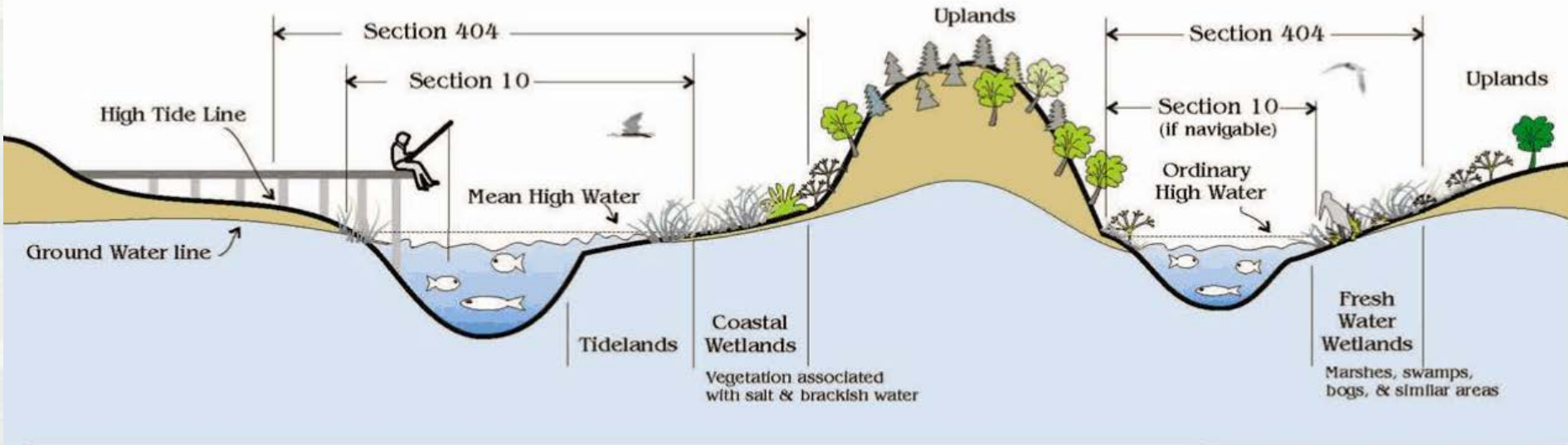
- Navigable waters
  - For example: oceans, bays, and inlets
- Tributaries to navigable waters
  - For example: rivers and creeks, ephemeral and intermittent streams
  - Lakes and ponds
- Interstate bodies of water or wetlands
- Wetlands adjacent to the waters listed above
- Special aquatic sites: wetlands,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



# CORPS OF ENGINEERS REGULATORY JURISDICTION

## Tidal Waters

## Fresh Waters



### Section 103 Ocean Disposal of Dredged Material

Ocean discharges of  
dredged material

### Section 404 Discharge 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,  
pillings, bulkheads, ramps, fills,  
overhead transmission lines, etc.

Typical examples  
of regulated activities

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# Jurisdiction limits - tidal waters

## High Tide Line:

shoreward limit of jurisdiction for **Section 404**; intersection of land and water at the **maximum** height reached by a rising tide.

## Mean High Water:

shoreward limit of jurisdiction for **Section 10**; line on the shore reached by the plane of the average high water..



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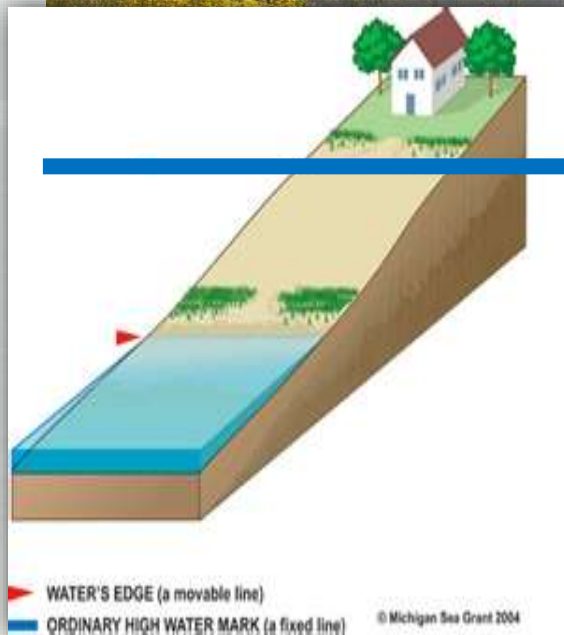
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# Jurisdiction limits – non tidal waters

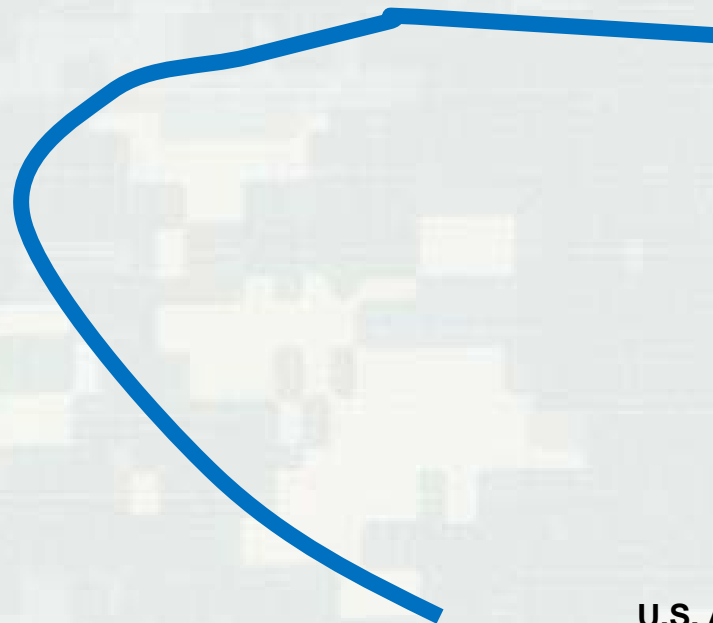
## Ordinary High Water:

shoreward limit of jurisdiction for **Section 404 (and Section 10 if navigable)**; line on the shore established by normal fluctuations in water level.



## Wetlands

- Hydric Soils
- Hydrophytic Vegetation
- Hydrology



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# **PERMITTING PROCESS & TYPES OF PERMITS**



# Permitting Process

Sequential Approach to Decision Making:

**Do we have jurisdiction?**

No

**No Permit  
Required**

Yes

**Exemption Applies (404(f))**

**Use lowest level, most simple and efficient form of authorization**

**General Permits**  
Regional/  
Programmatic  
General Permit  
Nationwide Permit

**LOP/  
Abbreviated  
Permit  
Process**

**Standard  
Permit  
(Individual  
Permit)**

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# Exemptions (33 CFR 323.4)

1. Normal farming, silviculture and ranching activities
2. Maintenance
3. Farm/stock ponds, irrigation ditches, drainage ditches
4. Temporary sedimentation basins
5. State approved 208(b)(4) activity
6. Farm & forest roads

- 1. Aids to Navigation
- 2. Structures in Artificial Canals
- 3. Maintenance
- 4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- 5. Scientific Measurement Devices
- 6. Survey Activities
- 7. Outfall Structures and Associated Intake Structures
- 8. Oil and Gas Structures on the Outer Continental Shelf
- 9. Structures in Fleeting and Anchorage Areas
- 10. Mooring Buoys
- 11. Temporary Recreational Structures
- 12. Utility Line Activities
- 13. Bank Stabilization
- 14. Linear Transportation Projects
- 15. U.S. Coast Guard Approved Bridges
- 16. Return Water From Upland Contained Disposal Areas
- 17. Hydropower Projects
- 18. Minor Discharges
- 19. Minor Dredging
- 20. Response Operations for Oil and Hazardous Substances
- 21. Surface Coal Mining Activities
- 22. Removal of Vessels
- 23. Approved Categorical Exclusions
- 24. Indian Tribe or State Administered Section 404 Programs
- 25. Structural Discharges
- 26. [Reserved]
- 27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
- 28. Modifications of Existing Marinas
- 29. Residential Developments
- 30. Moist Soil Management for Wildlife
- 31. Maintenance of Existing Flood Control Facilities
- 32. Completed Enforcement Actions
- 33. Temporary Construction, Access, and Dewatering
- 34. Cranes / Production Activities
- 35. Maintenance Dredging of Existing Basins
- 36. Boat Ramps
- 37. Emergency Watershed Protection and Rehabilitation
- 38. Cleanup of Hazardous and Toxic Waste
- 39. Commercial and Institutional Developments
- 40. Agricultural Activities
- 41. Reshaping Existing Drainage Ditches
- 42. Recreational Facilities
- 43. Stormwater Management Facilities
- 44. Mining Activities
- 45. Repair of Uplands Damaged by Discrete Events
- 46. Discharges in Ditches
- 47. [Reserved]
- 48. Commercial Shellfish Aquaculture Activities
- 49. Coal Remining Activities
- 50. Underground Coal Mining Activities
- 51. Land-Based Renewable Energy Generation Facilities
- 52. Water-Based Renewable Energy Generation Pilot Projects

# 52 Nationwide Permits



# Permitting Process

## General Permits

- Regional General Permits
  - ▶ Districts issue and use
  - ▶ Tailor program to district's aquatic environment
  - ▶ Best way to take advantage of other agency programs
- Programmatic General Permits
  - ▶ Districts issue based on state/local program
  - ▶ Most tiered for little or no review



# Permitting Process

## Letters of Permission

- Letters of Permission (LOPs)
  - ▶ A type of individual permit issued through abbreviated processing procedure
  - ▶ Procedures and standards for issuing LOPs are developed after coordination with Federal and State fish and wildlife agencies
  - ▶ Developed after a public interest evaluation



# Permitting Process

## Individual Permits

- Standard, Individual permits (IPs)
  - ▶ Public notice
  - ▶ Full public interest review
  - ▶ Environmental documentation
  - ▶ Section 404(b)(1) Guidelines compliance analysis
  - ▶ Review time is 60-120 days, occasionally much longer
- IPs are used to authorize activities that don't qualify for a general permit or letter of permission and/or have more than minimal adverse environmental effects



# Permitting Process

## Evaluation Criteria

### ■ Public Interest Review

- ▶ Done on all permit actions
- ▶ Balance benefits against detriments to public
- ▶ Corps issues unless “contrary to the public interest”

### ■ NEPA

- ▶ Ensure environmental considerations incorporated into Federal decision-making
- ▶ Agencies must have available and fully consider information regarding environmental effects at the time decisions are made
- ▶ Agencies must make the same information available to the public
- ▶ EA/FONSI (or EIS) on all actions



# Permitting Process

## Evaluation Criteria

### §404(b)(1) Guidelines



- Analysis only on §404 permits
- Pass fail tests
  - (a) least environmentally damaging practicable alternative (avoidance and minimization measures)
  - (b) other laws, ESA, §401, et
  - (c) Cannot mitigate to LEDPA
  - (d) all appropriate and practicable mitigation





# Questions

