

# Other Federal Laws and How They Affect the Permit Process

Prepared by Matthew Roberts and  
Nicole Schleeter

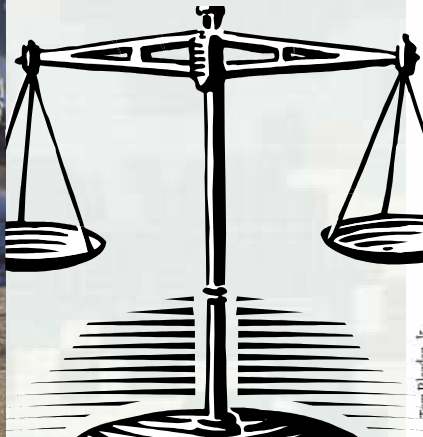
US Army Corps of Engineers  
Sacramento District

March 6, 2019



# Regulatory Program Mission

*To protect the Nation's aquatic resources, while allowing reasonable development through fair, flexible and balanced **permit decisions**.*



**“No Net Loss of Wetlands”**



# Authorities to Issue Permits



# 33 CFR Parts 320.2

- Section 9 of the Rivers and Harbors Act of 1899
- **Section 10 of the Rivers and Harbors Act of 1899**
- Section 11 of the Rivers and Harbors Act of 1899
- Section 13 of the Rivers and Harbors Act of 1899
- Section 14 of the Rivers and Harbors Act of 1899 (Section 408)\*\*
- **Section 404 of the Clean Water Act**
- Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972





# Section 10 of the Rivers and Harbors Act of 1899

*(33 CFR Part 322)*

Permit required for construction of **structures** in, over, or under, **excavating** from or **depositing material** into, and any other work affecting the course location, condition, or capacity of **navigable waters and interstate lakes or rivers.**



# Section 404 of the Clean Water Act

(33 CFR Part 323)

Permit required to **discharge dredged or fill material** into “waters of the United States”



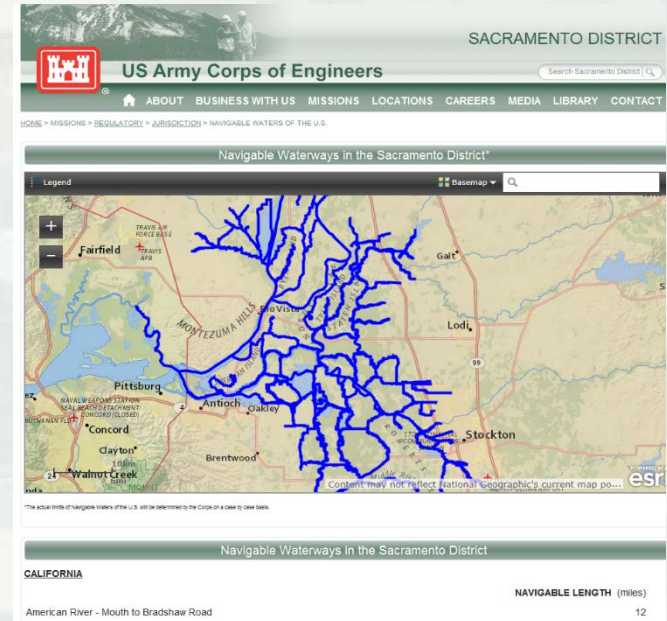


# Navigable Waters

*(33 CFR Part 329)*

- Subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
- Not extinguished by later actions or events which impede or destroy navigable capacity.

<http://www.spk.usace.army.mil/Missions/Regulatory/Jurisdiction/NavigableWatersoftheUS.aspx>



# Waters of the United States

*(definition at 33 CFR 328)*

- Navigable waters and the territorial seas
- Interstate waters, including wetlands
- Impoundments, tributaries, and adjacent wetlands to the above

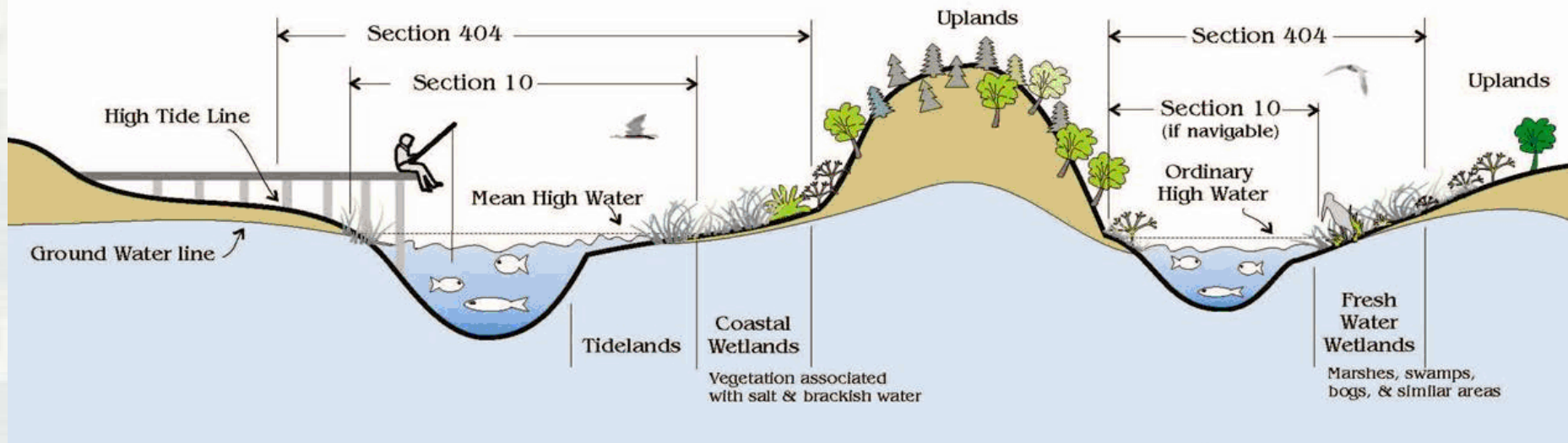




# CORPS OF ENGINEERS REGULATORY JURISDICTION

## Tidal Waters

## Fresh Waters



Typical examples  
of regulated activities

### **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,  
pilings, bulkheads, ramps, fills,  
overhead transmission lines, etc.



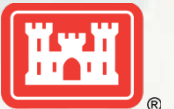
# Section 14 of the Rivers and Harbors Act of 1899

(33 U.S.C. 408)

- Commonly referred to as “**Section 408**”
- Authorizes the Secretary of the Army, on recommendation of the Chief of Engineers of the USACE, to grant **permission for the alteration or occupation or use of a USACE civil works project** if determined that the activity will not be injurious to the public interest and impair the usefulness of the project.



# Compliance with Other Federal Laws





# 33 CFR 320.3 – Related Laws

- *National Environmental Policy Act (NEPA)*
- *Clean Water Act (CWA) - Section 401*
- *Endangered Species Act (ESA)*
- *Magnuson-Stevens Fishery Conservation and Management Act*
- *National Historic Preservation Act (NHPA)*
- *Wild and Scenic Rivers Act*
- *Marine Mammal Protection Act*



# NEPA

*(42 U.S.C. 4321-4347)*

**Section 102:** “To the fullest extent possible: (1) The policies, regulations, and public laws of the U.S. shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall [...] insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision-making along with economic and technical considerations [...]”



# NEPA

(42 U.S.C. 4321-4347)

- Implementing regulations at 33 CFR Part 325, Appendix B (effective 1988)
  - ▶ **General Permits (GP):** preparation of a *single document* with no additional NEPA requirement for subsequent activities under the GP.
  - ▶ **Letters of Permission (LOP):** *categorically excluded* - do not require NEPA documentation.
  - ▶ **Standard Permits (SP):** require issuance of *public notice* and completion of an environmental assessment (*EA*) or, if impacts are determined to be significant, an environmental impact statement (*EIS*).





# CWA – Section 401

(33 U.S.C. 1341)

Requires **any *applicant* for a federal license or permit to conduct any activity that may result in a discharge of a pollutant into waters of the U.S. to obtain a *certification from the State* [...]** that the discharge will comply with the applicable effluent limitations and water quality standards. The certification obtained for the construction of any facility must also pertain to the subsequent operation of the facility.



# CWA – Section 401

(33 U.S.C. 1341)

- Nationwide permits may be verified conditionally pending issuance or waiver of certification.
- Certification must be issued or waived prior to issuance of an individual permit.
- Central Valley Regional Water Quality Control Board: [http://www.waterboards.ca.gov/water\\_issues/programs/cwa401/](http://www.waterboards.ca.gov/water_issues/programs/cwa401/)



# ESA - Section 7

*(50 CFR Part 402)*

Requires that federal agencies, in consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, insure that any action authorized, funded, or carried out by the Agency is not likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of critical habitat for such species.





# ESA - Section 7

**The following information is needed in order to initiate consultation (from Consultation Handbook, Sec 4.2):**

1. A description of the action to be considered.
2. A description of the specific area that may be affected by the action.
3. A description of any listed species or critical habitat that may be affected by the action.
4. A description of the manner in which the action may affect any listed species or critical habitat and analysis of any cumulative impacts.
5. Relevant reports including any environmental impact statement, environmental assessment, or biological assessment prepared.
6. Any other relevant available information on the action, the listed species, or critical habitat.



# Magnuson-Stevens Fisheries Conservation and Management Act

*(50 CFR Part 600)*

- Magnuson-Stevens Fisheries Conservation and Management Act Amendment of 1996 requires Federal action agencies to consult with the National Marine Fisheries Service on essential fish habitat, or EFH.
- <http://www.habitat.noaa.gov/protection/efh/efhmapper/index.html>



# NHPA - Section 106

*(16 U.S.C. 470 et seq.)*

- Requires the head of any Federal department or independent agency having authority to license any undertaking to take into account the effect of the undertaking on any district, site, building, structure, or object included in or eligible for inclusion in the National Register prior to the issuance of any license.
- Also requires any such Federal agency to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment.





# NHPA - Section 106

*(16 U.S.C. 470 et seq.)*

- Corps' Regulatory Program's implementing regulations at 33 CFR Part 325, Appendix C and Interim Guidance
  - ▶ Sacramento District 106 Guidelines (checklist)  
([http://www.spk.usace.army.mil/Portals/12/documents/regulatory/pdf/2011-02-25\\_Section\\_106\\_Guidelines.pdf](http://www.spk.usace.army.mil/Portals/12/documents/regulatory/pdf/2011-02-25_Section_106_Guidelines.pdf))
  - ▶ Be aware of differences between CEQA, NHPA, and Appendix C guidelines for cultural resources



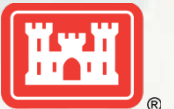
# NHPA - Section 101

(16 U.S.C. 470)

- **Section 101(d)(6)(B):** “In carrying out its responsibilities under section 106 of this Act, *a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties described in subparagraph (A).*”
- **Section 101(d)(6)(A):** “Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization *may be determined eligible for inclusion on the National* Register.”



# **In What Other Ways Does the Corps Comply with These Laws?**



- Complete applications!

- [http://www.spk.usace.army.mil/  
Missions/Regulatory.aspx](http://www.spk.usace.army.mil/Missions/Regulatory.aspx)



| <b>U.S. ARMY CORPS OF ENGINEERS</b><br><b>APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT</b><br>D2 CTR 325. The proponent agency is CECOG-DC-01.  |                      |                  |                                   | Form Approved<br>OMB No. 0710-0003<br>Expires: 30-SEP-2009/03-2015 |              |
|--|----------------------|------------------|-----------------------------------|--|--------------|
| <p>Public reporting for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0710-0003). Respondents should be aware that notwithstanding any other provision of law, no person shall be penalized for failing to comply with a collection of information if it does not display a currently valid OMB control number. Please DO NOT RETURN your form to either of these addresses. Completed applications must be submitted to the District Engineer having jurisdiction over the location of the proposed activity.</p> |                      |                  |                                   |  |              |
| <b>PRIVACY ACT STATEMENT</b>   |                      |                  |                                   |  |              |
| <p>Authorities: Rules and Regulations Act, Section 13, 33 USC 402; Civil Rights Act, Section 404, 33 USC 1346; Marine Protection Resources, and Sanctions Act, Section 103, 33 USC 1413; Regulatory Programs of the Corps of Engineers, 33 USC 320-322; Federal Purpose. Information provided on this form will be used to evaluate the applicant for a permit. Clear Use. This information may be shared with the Department of Justice and other Federal, State, and local government agencies, and the public and may be made available as part of a public notice as required by Federal Law. Substances of requested information is voluntary, however, if information is not provided the permit application cannot be evaluated nor can a permit be issued. One can be original, current or good reproducible copies of the information of the proposed activity must be attached to the application (see sample drawings and/or instructions) and be submitted to the District Engineer having jurisdiction over the location of the proposed activity. An application fee is not completed or full will be waived.</p>  |                      |                  |                                   |  |              |
| <b>ITEMS 1 THRU 4 TO BE FILLED BY THE CORPS</b>  |                      |                  |                                   |  |              |
| 1. APPLICATION NO.   | 2. FIELD OFFICE CODE | 3. DATE RECEIVED | 4. DATE APPLICATION COMPLETE      |  |              |
| <b>(ITEMS BELOW TO BE FILLED BY APPLICANT)</b>   |                      |                  |                                   |  |              |
| <p>5. APPLICANT'S NAME: <span style="float: right;">6. PROJECT NAME - NAME AND TITLE (if not required)</span></p>  |                      |                  |                                   |  |              |
| First _____  | Middle _____         | Last _____       | First _____                       | Middle _____   | Last _____   |
| Company _____  |                      |                  | Company _____                     |  |              |
| E-mail address _____   |                      |                  | E-mail address _____              |  |              |
| 7. APPLICANT'S ADDRESS:  |                      |                  | 8. AGENT'S ADDRESS:               |  |              |
| Address _____  |                      |                  | Address _____                     |  |              |
| City _____   | State _____          | Zip _____        | City _____                        | State _____  | Zip _____    |
| 9. APPLICANT'S PHONE NO. (AREA CODE)   |                      |                  | 10. AGENT'S PHONE NO. (AREA CODE) |  |              |
| a. Residence _____   | b. Business _____    | c. Fax _____     | a. Residence _____                | b. Business _____  | c. Fax _____ |
| <b>STATEMENT OF AUTHORIZATION</b>  |                      |                  |                                   |  |              |
| <p>11. I hereby authorize _____ to act in my behalf as my agent in the processing of this application and to furnish, upon request, required information in support of this permit application.</p>  |                      |                  |                                   |  |              |
| SIGNATURE OF APPLICANT   |                      |                  | DATE                              |  |              |
| <b>NAME, LOCATION, AND DESCRIPTION OF PROJECT OR ACTIVITY</b>  |                      |                  |                                   |  |              |
| 12. PROJECT NAME OR TITLE (see instructions)   |                      |                  |                                   |  |              |
| 13. NAME OF WATERBODY, IF KNOWN (if applicable)  |                      |                  |                                   |  |              |
| 14. PROJECT STREET ADDRESS (if applicable)   |                      |                  |                                   |  |              |
| Address _____  |                      |                  |                                   |  |              |
| 15. LOCATION OF PROJECT  |                      |                  |                                   |  |              |
| Latitude _____   | Longitude _____      | City _____       | State _____                       | Zip _____  |              |
| 16. LOCATION DESCRIPTION (if known (see instructions))   |                      |                  |                                   |  |              |
| State Tax Parcel ID _____ Municipality _____   |                      |                  |                                   |  |              |
| Section _____  | Township _____       | Range _____      |                                   |  |              |





# Consultation

- In the case of ESA and NHPA, the Corps makes an effect determination following information review.
- The Corps will initiate consultation with appropriate agency if necessary, and permit will not be verified/issued without ensuring compliance.
- Terms and conditions implemented via project specific special conditions.



# Questions??

