

US EPA ARCHIVE DOCUMENT

The background features a large, semi-transparent circular seal of the United States Environmental Protection Agency. The seal contains the text "UNITED STATES ENVIRONMENTAL PROTECTION AGENCY" around the perimeter and a central emblem with a sun, water, and a tree. Overlaid on this seal is the main title text.

**EPA TRIBAL
CONFERENCE
§404 Regulatory
Program**

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EPA Region IX

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San Francisco, CA

CLEAN WATER ACT

GOAL:

“Restore and maintain the **physical**, **chemical**, *and* **biological** integrity of the nation’s waters...”

Clean Water Act Goal

Physical Integrity = reach and extent

Chemical Integrity = water quality

Biological Integrity = habitat

Whaddaya know! It's about acreage AND functions of the nation's waters, folks!!



CWA §404 PROGRAM

Regulates the discharge of dredged or fill material into areas considered “waters of the United States,” including wetlands.

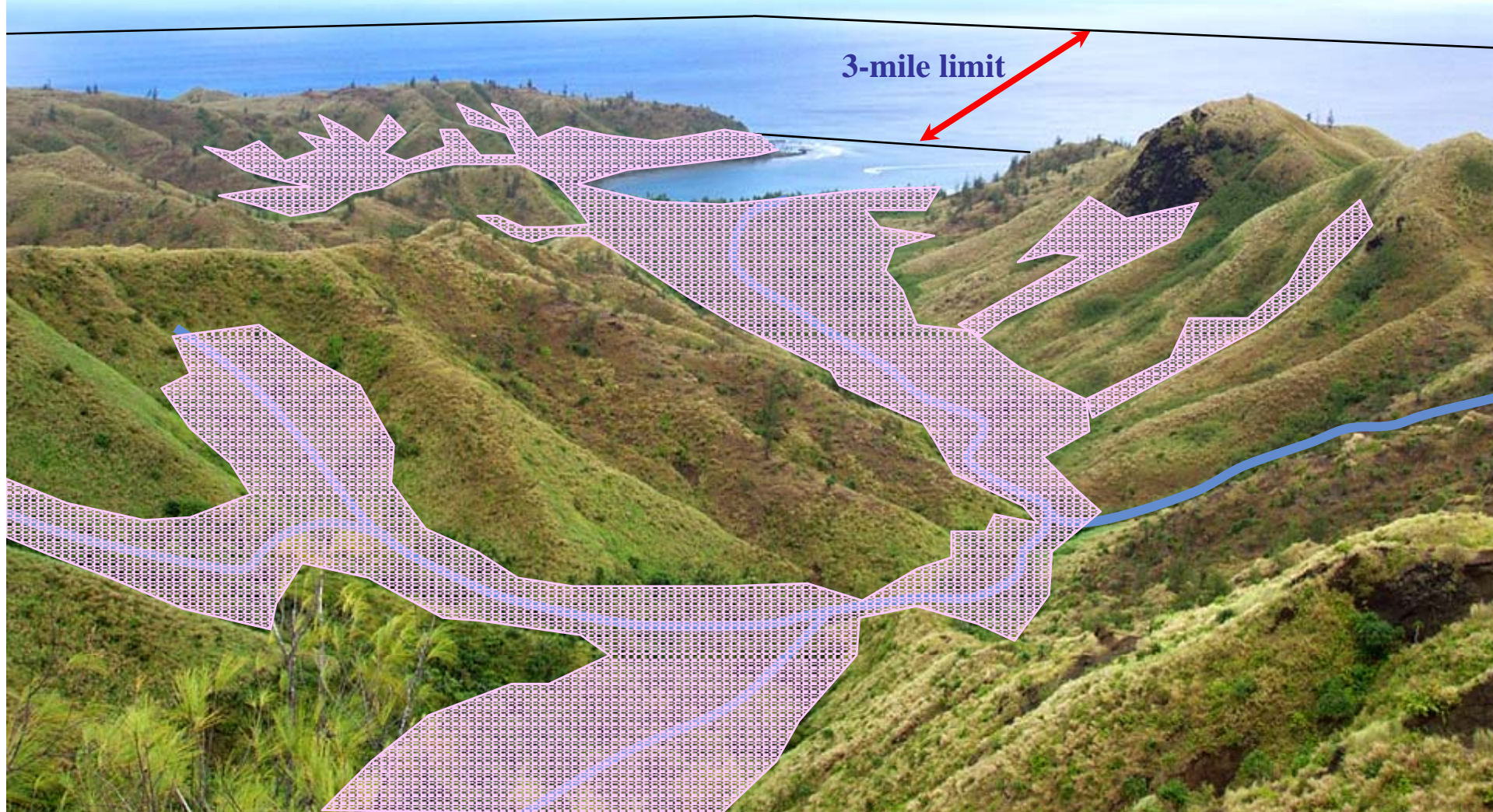
Basic premise: No discharge of dredged or fill material can be permitted

- if a practicable alternative exists that is less damaging to the aquatic environment
- if the Nation’s waters would be significantly degraded

What are “Waters of the United States”?

- **The Territorial Sea**
- **Lakes, rivers, and tributaries to navigable waters**
- **Wetlands adjacent to navigable waters and their tributaries**
- **Interstate waters**

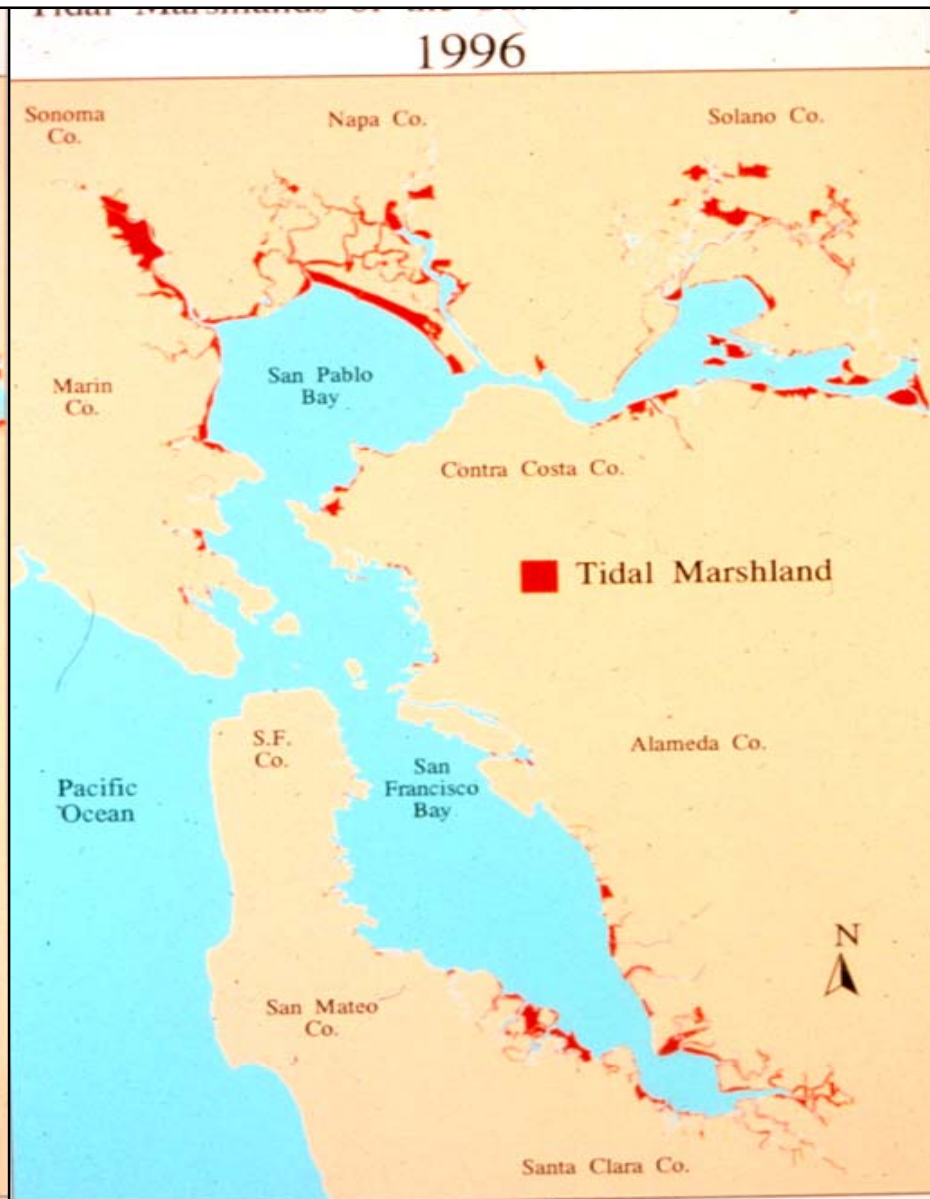
The Territorial Sea Tributaries
to navigable waters



Wetlands Status and Trends:

- Approximately 220 million acres in 1700 (lower 48)
- 105.5 million acres today (size of CA)
- 1950-1970 era of major loss
- Estimated annual loss 58,000 acres (c. 2000)

San Francisco Bay Tidal Marshes: 1850 versus 1996



Prepared by
San Francisco Estuary Institute

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EPA, the Corps, and You

- **The Army Corps of Engineers is the 404 permitting authority.**
- **EPA and the Corps jointly manage the 404 program.**
- **Contact your local Corps district office first with project-specific questions.**

Army Corps of Engineers Districts: San Francisco, Sacramento, Los Angeles, and Albuquerque.

<http://www.usace.army.mil/about/Pages/Locations.aspx>

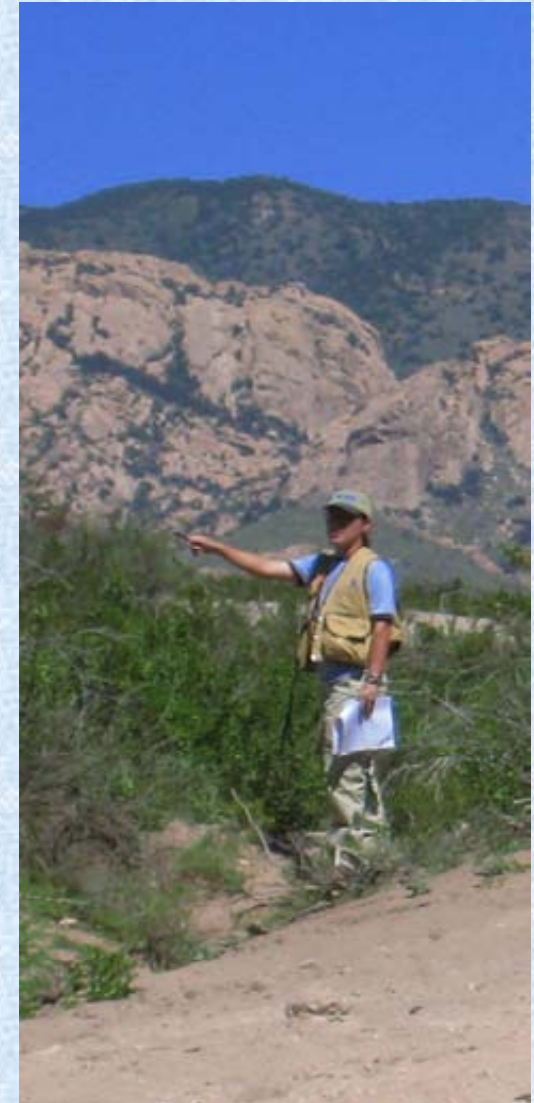
The Corps of Engineers Responsibilities



- **Permit issuance**
- **Verification of Wetland Delineations**
- **Jurisdictional Determinations**
- **National Environmental Policy Act (NEPA)**
- **Endangered Species Act (ESA)**
- **Enforcement (especially permit conditions)**

EPA's §404 Responsibilities

- **Permit review**
- **404 (b)(1) guidelines review**
- **Veto authority over permits**
- **Exempted activities**
- **Elevation to Corps/EPA HQ if disagreements in permit process**
- **Enforcement (especially**



What Kind of 404 Permits are There?

- **Nationwide permits**

- 50 categories of common projects that have little cumulative impact (minor fills and discharges to waters)

- **Regional General Permits**

- Cover additional categories of actions on a regional basis; often include detailed “special conditions”

- **Individual permits***

- For larger projects, &/or where project-specific special conditions, mitigation measures, etc., are

***As you move down the list, expect increasing levels of regulatory requirements, analysis, and time!**

I Wish I Had Gotten a Permit When...



... an area “too wet to work in” was actually a wetland.
Lesson learned: Get a wetland delineation done and
verified by the Corps before starting work!

I Wish I Had Gotten a Permit When...



... I needed to put in culverts for a road crossing, and my contractor didn't pull the permits for me.

Lesson learned: Know who is responsible for what before starting work!

I Wish I Had Gotten a Permit When



... I thought I needed to “clean out” the stream, but I didn’t talk to the agencies.

Lesson learned: Talk to the agencies about project specifics.

I Wish I Had Gotten a Permit When...



...I needed to put in a bridge to cross the river,
and built the approach in waters of the US.
Lesson learned: Don't assume you or your
contractors can decide what are waters!

CWA §404 REGULATION

According to §404 of the Clean Water Act:

Activities that result in a point-source discharge of dredged or fill material into areas considered "waters of the United States," including wetlands, must receive prior authorization via a Department of the Army permit, unless exempt [404(f)].

No such permit may be issued unless it complies with EPA's 404 (b)(1) Guidelines (40 CFR 230).

EPA's §404(b)(1) Guidelines

What do EPA permit reviewers look for?

1. Is there is a less environmentally damaging practicable alternative (LEDPA)?
2. Could the proposed activity violate applicable water-quality standards, the Coastal Zone Management Act, or could it jeopardize a threatened or endangered species?
3. Could the proposed activity cause or contribute to significant degradation of the aquatic ecosystem?
4. Have appropriate and practicable steps been taken to minimize adverse impacts to the aquatic ecosystem (mitigation)?

The Federal Mitigation Hierarchy

(similar under 404 and NEPA)

FIRST: Avoid impacts

NEXT: Minimize unavoidable impacts

**LAST: Compensate/Offset
any necessary
impacts**

Final Mitigation Rule posted on the Corps HQ
Website:

<http://www.usace.army.mil/cw/cecwo/reg/>

TIPS AND TRICKS

- **Know your responsibilities**
 - Ignorance is **not** a defense
 - Know your **contractors'** responsibilities
 - **Landowners** are ultimately responsible
- **Know when to ask someone**
 - **Agencies** determine jurisdiction
- **Know your permits**
 - When you need them
 - What they require
 - Who to call (your local Corps office)