

US EPA ARCHIVE DOCUMENT

Clean Water Act Section 404 Dredge/Fill Permit Program

EPA Clean Water Act Tribal Workshop

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Section 404 of the Clean Water Act:

- Requires a **permit**
- from the **Army Corps of Engineers**
- to place **dredged or fill material**
- from a **point source**
- into **the Nation's waters** (waters of the U.S.)

Goal of the Clean Water Act

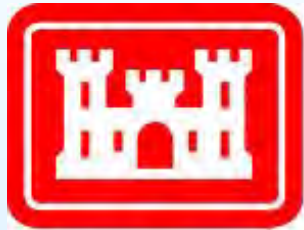
To protect the physical, chemical, and biological integrity of the Nation's waters (including wetlands)

- **Physical** integrity = reach and extent
- **Chemical** integrity = water quality
- **Biological** integrity = habitat



CWA 404 Permitting Agencies

- Program is jointly administered by:



**US Army Corps
of Engineers®**

- Issues 404 permits



- Has oversight authority

- Tribes or States can develop 404 permitting program (no tribal programs yet)



**US Army Corps
of Engineers®**

Responsibilities:

- Issue 404 permits
- Verify delineation of jurisdictional waters
- Ensure permit complies with National Environmental Policy Act and Endangered Species Act
- Ensure compliance with permit conditions and for unpermitted discharges

U.S. Army Corps Divisions



Los Angeles District: Southern California and AZ

Sacramento District: Central California and NV

San Francisco District: Bay Area and Northern CA

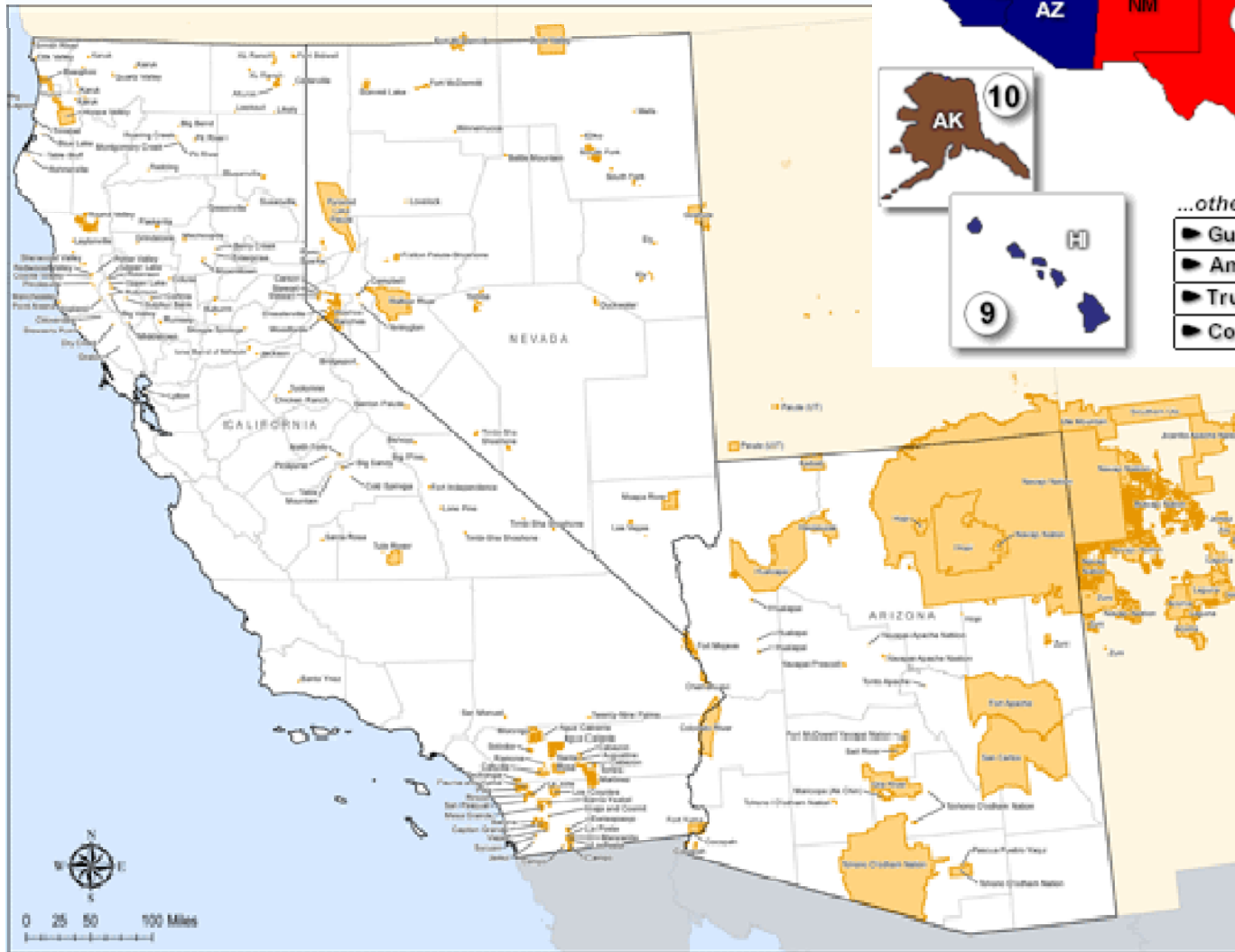
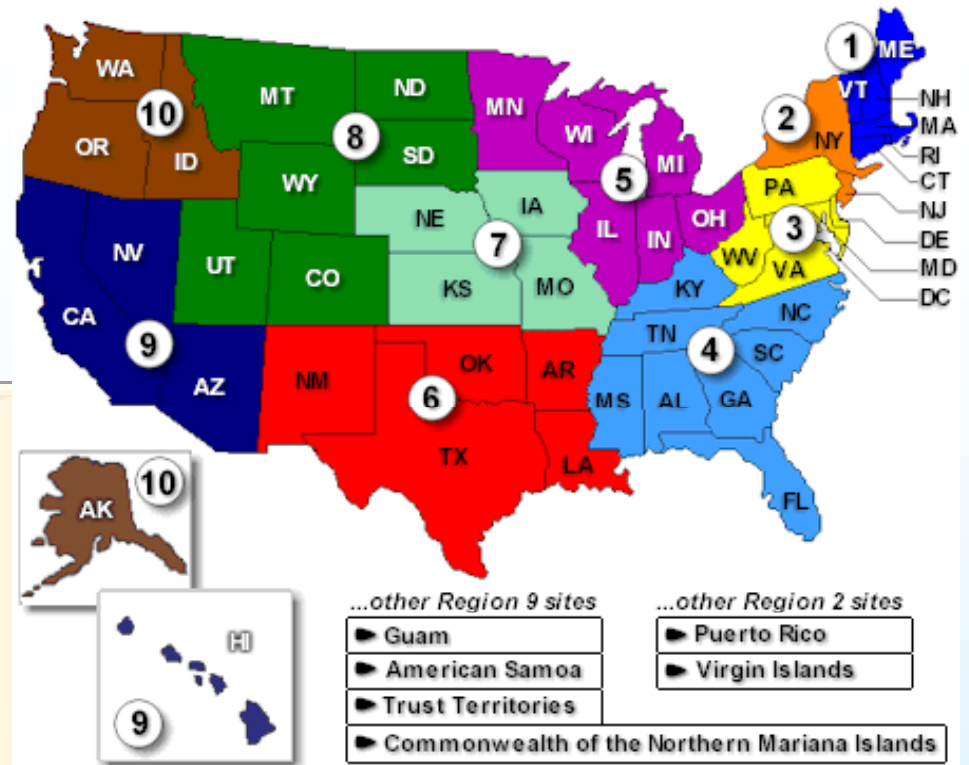
Albuquerque District: New Mexico, Utah and Colorado



U.S. EPA Responsibilities

- Review Army Corps permits
- Interpret environmental criteria for permits
- Identify exempt activities
- Elevate disagreements to Corps/EPA HQ
- Veto authority over Corps permit decisions
- Ensure compliance with 404 permit conditions and for unpermitted discharges

EPA Regional Offices



**Tribal lands
in Region 9**

Types of 404 Permits

- **Nationwide Permits**
 - 50 categories of common projects that have little cumulative impact (minor fills and discharges to waters – no piecemealing)
 - **General Permits**
 - Cover similar programmatic or regional actions
 - **Individual Permits**
 - For larger projects and/or where project-specific conditions, mitigation measures, etc. are required
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- **Army Corps staff determine type of permit applies to project**
 - **Increasing regulatory requirements, analysis, and time as you move down!**

Examples of projects requiring a 404 permit:



- Projects in “wet areas” that are actually wetlands
 - Delineate waters on site and have Corps verify delineation before starting work!

Examples of projects requiring a 404 permit:



- To build road crossings, bridges or culverts across water bodies
 - Don't assume you or your contractor can determine what are 404-regulated waters

Examples of projects requiring a 404 permit:

- Filling waters of the U.S. to extend agricultural land or development
- Channelizing streams

Your contractor is responsible for getting a permit before starting work!

Examples of projects requiring a 404 permit:



- Dredging a stream
 - Talk to the agencies first about project specifics

What are “the Nation’s waters?”

- The Territorial Sea
- Lakes, rivers, and tributaries to navigable waters
- Wetlands adjacent to navigable waters and their tributaries
- Interstate waters (waters of the U.S.)

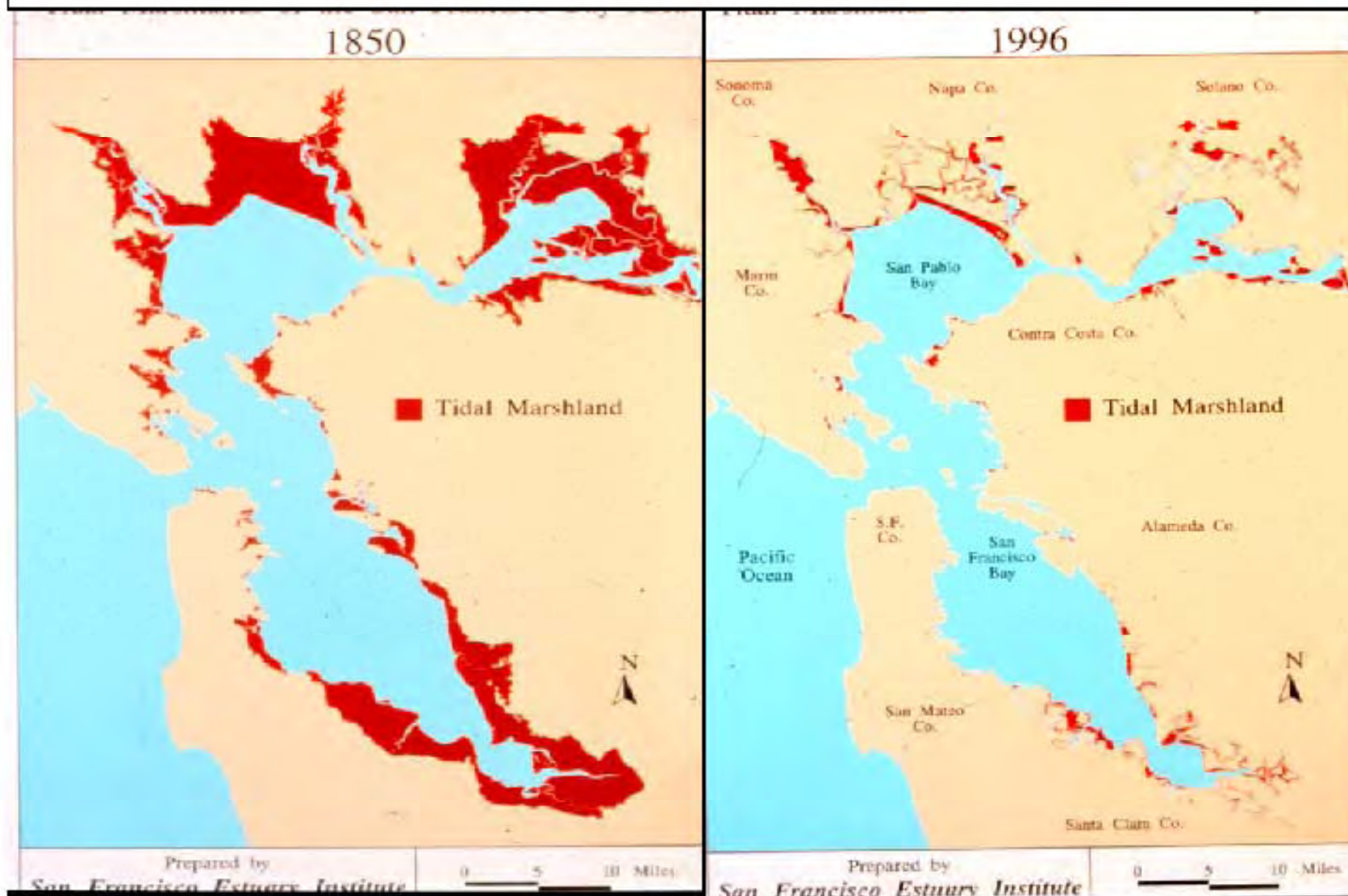
404 Regulated Waters



Wetlands Status and Trends

- Approximately 220 million acres in 1700 (lower 48)
- 105.5 million acres today (size of CA – more than 50% lost)
- 1950-1970 era of major loss
- Estimated annual loss: 58,000 acres (c. 2000)

San Francisco Bay Tidal Marshes: 1850 versus 1996



CWA 404 Permit Process

- Discuss project specifics with **Army Corps** district staff
- **Delineate waters** on site – you or your consultant
 - Wetland delineation, ordinary high water mark for streams/rivers, mean high tide line for tidal waters
- Apply for CWA Section **401 water quality certification** from U.S. EPA
- Submit project proposal, delineation of water bodies, and 401 certification to Army Corps
- Corps to **verify delineation** of jurisdictional waters; **issue** permit according to **404(b)(1) guidelines**

CWA 404(b)(1) Guidelines

- Determine **where** dredged or fill material may be placed in the Nation's waters
- **No discharge** of dredged or fill material may be permitted:
 - If there is a **practicable alternative** less damaging to the aquatic environment
 - If the Nation's waters would be **significantly degraded**

404 Permit Reviewers look for:

- Does the proposed activity comply with state/tribal water quality standards, the Coastal Zone Management Act, or jeopardize a threatened or endangered species?
- Have appropriate steps been taken to avoid or minimize adverse impacts to the aquatic environment?
- Are unavoidable impacts mitigated?

Describe steps taken to minimize impacts to waters

Mitigate for unavoidable impacts by enhancing, restoring, preserving or creating stream habitat or wetlands

Federal Mitigation Hierarchy

- **First:** Avoid impacts
- **Next:** Minimize impacts
- **Last:** Compensate for unavoidable impacts

See 2008 Final Mitigation Rule:

http://www.usace.army.mil/cecw/pages/final_cmr.aspx

CWA 404 Compliance

- For violations of permit conditions, or
- Failure to obtain permit before project starts
 - May add cost to project if modification or mitigation is required to remove or restore unauthorized fill areas

Tips and Tricks

- **Know your responsibilities**
 - Ignorance is not a defense
 - Know your contractor's responsibilities
 - Landowners are ultimately responsible
- **Know when to ask someone**
 - Agencies determine extent of jurisdiction and what type of permit is required
- **Know your permits**
 - When you need them
 - What they require
 - Who to call (for 404 – your local Corps office)

Thank you



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