The Corps Regulatory Program

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ACEC/HGAC Project Development Workshop
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Outline of Topics

• Jurisdiction
• Wetlands and Waters of the U.S.
• What do we regulate?
• Permit Process
• Application Submittal/Example Plans
• Mitigation
Map of Galveston District
Jurisdiction
Regulations and Definitions

Section 10 – Rivers and Harbors Act of 1899
• all navigable waters of the U.S.
  • subject to ebb and flow of tide shoreward to the mean high water mark
  • presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce
  • extends seaward to include all ocean waters within a zone three nautical miles from the coast line (the "territorial seas")

Section 404 – Clean Water Act of 1972
• “Waters of the United States, including the territorial seas” plus...
  • Waters of the United States in 33 CFR 328.3(a)
Jurisdiction (JD)

Section 10 – Rivers and Harbors Act of 1899

Section 404 – Clean Water Act of 1972

**CORPS OF ENGINEERS REGULATORY JURISDICTION**

**Tidal Waters**
- Section 10
- Section 404
- High Tide Line
- Mean High Water
- Tidelands
- Coastal Wetlands
- Vegetation associated with salt & brackish water

**Fresh Waters**
- Section 10 (if navigable)
- Ordinary High Water
- Fresh Water Wetlands
- Marshes, swamps, bogs, & similar areas

**Section 103**
Ocean Discharge of Dredged Material
- Typical examples of regulated activities
- Ocean discharges of dredged material

**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
- Dredging, marinas, piers, wharves, floats, intake / outtake pipes, pilings, bulkheads, ramps, fills, overhead transmission lines, etc.
Waters of the U.S.
as defined in 33 CFR 328.3(a)

- **Surface water tributary systems** (including intermittent streams, and associated water bodies)
- **Adjacent Wetlands**
- **Vegetated Shallows** (ex: Seagrass Meadows)
- **Sanctuaries and Refuges**
- **Coral Reefs**
- **Riffle and Pool Complexes**
- **Some isolated waters** (ex: sloughs, prairie potholes, playa lakes, natural ponds, abandoned construction and mining pits)
What is a Wetland?

- Hydrology = Water
- Hydrophytic Plants = Plants Adapted for Wet Conditions
- Hydric Soils = Wet
Examples of Wetlands

Bottomland Hardwood Forested Wetlands

Freshwater Wetlands
Examples of Wetlands

Fringe Wetlands in a Riverine System

Salt Marsh
Wetland Identification and Delineation

- A tool that identifies the presence/absence, amount, and type of aquatic resources within the defined project boundaries

- The 1987 Wetland Delineation Manual maintains the technical guidance and procedures

- The regional supplements contain wetland indicators, delineation guidance, and other information specific to the particular region
Documenting Jurisdiction
(Section 10, 404, or both)

Approved Jurisdictional Determinations (AJD)

• Form used to document the amount and type of aquatic resources within the defined project boundaries that are subject to our regulations (Section 10, 404, or 10/404)

• May require coordination with EPA and Corps HQ

• Approved for 5 years

• Can be appealed through the appeal process as outlined in 33 CFR Part 331
Documenting Jurisdiction (Section 10, 404, or both)

Preliminary Jurisdictional Determinations (PJD)

• Form that documents **ALL** aquatic resources that **APPEAR** within the defined project boundaries

• **ALL** aquatic resources will be considered to be jurisdictional for the purposes of permitting and mitigation

The Preliminary JD is not appealable, however an Approved JD can be requested at any time.
<table>
<thead>
<tr>
<th><strong>What do we regulate?</strong></th>
<th>Work, Structures, Fill</th>
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**Rivers and Harbors Act of 1899**

**Section 10** – Requires permit from the Corps for **structures or work** in, or affecting, the course, location, or condition of a navigable water of the United States

**Clean Water Act of 1972**

**Section 404** – Requires authorization from the U.S. Army Corps of Engineers to discharge dredged or **fill** material into waters of the United States.
Fill Material

Any material placed in waters of the U.S. where the material has the effect of replacing any portion of a water of the U.S. with dry land or changing the bottom elevation of any portion of a water
Section 10 – Rivers and Harbors Act of 1899

Structures

Work
Examples of Regulated Activities
Section 404 – Clean Water Act of 1972
Examples of Regulated Activities
Examples of Regulated Activities
Examples of Regulated Activities
Corps Permit Process
Corps Permit Process

Who Needs A Permit?
Anyone who conducts work, places structures, or discharges fill in a jurisdictional aquatic resource may need a permit.

Is a Permit Required?
If in doubt, **ASK**.
The Corps will make determinations and verify wetland delineations.
The Corps’ Permit Is one Trigger That Subjects the Regulated Activity to Jurisdiction of Other Laws

- The Corps’ permit is one of many possible Federal actions that initiates review under other environmental laws such as: ESA, NHPA, NEPA and others
- If a Corps permit is not required, these other acts may or may not apply to the proposed action
Stepwise Process of Review

Avoid

Minimize

Then

Mitigate
Important Notes

• It is highly recommended that you coordinate with the Corps

• Consultants can give their opinion, but the final jurisdictional authority lies with the Corps
Tips on Working with Corps

• Contact the Corps **EARLY** in project planning

• Attend pre-application meetings OR Joint Evaluation Meetings

• Be aware that heavy Regulatory Program workload may delay Corps decisions
Joint Evaluation Meeting (JEM) Process

- Held 2nd Wednesday of each month from 9:30 am to 4 pm
- Participation is requested by Applicants
- Forum to meet with State and Federal Resource Agencies to discuss planned/proposed projects (pre- or post-application) i.e. EPA, NMFS, USFWS, TPWD, TGLO
- Topics include proposed impacts, pros/cons of proposed designs, suggestions to minimize environmental impact of projects, alternative project sites, potential compensation options (if required)
### APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT

OMB CONTROL NO. 0710-0003
Expires December 31, 2004

The public burden for this collection of information is estimated to average 15 hours per response, although the majority of applications should require 5 hours or less. This includes 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 this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Service, Directorate of Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22203-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0710-0003), Washington, DC 20503. Respondents should be aware that not understanding any other provision of law person shall be subject to any penalty 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 the addresses. Completed applications must be submitted to the District Engineer having jurisdiction over the location of the proposed activity.

#### PRIVACY ACT STATEMENT

Authority: Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research and Sanctuaries Act, Section 103, 33 USC 1413. Principal Purpose: Information provided on this form will be used in evaluating the application for a permit. Routine Uses: This information may be shared with the Department of Justice and other federal, state, and local government agencies. Submission of requested information is voluntary, however, if information is not provided the permit application cannot be evaluated nor can a permit be issued.

One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to the application (see sample drawings and instructions) and submitted to the District Engineer having jurisdiction over the location of the proposed activity. An application that is not completed in full will be returned.

#### ITEMS 1 THRU 4 TO BE FILLED BY THE CODE

1. APPLICATION NO.  
2. FIELD OFFICE CODE  
3. DATE RECEIVED  
4. DATE APPLICATION COMPLETED

#### ITEMS BELOW TO BE FILLED BY APPLICANT

5. APPLICANT’S NAME  
6. APPLICANT’S ADDRESS  
7. APPLICANT’S PHONE NOS. IF N/A USE CODE  
8. AUTHORIZED AGENT’S NAME AND TITLE (or agent is not required)  
9. AGENT’S ADDRESS  
10. AGENT’S PHONE NOS. IF N/A USE CODE  
11. STATEMENT OF AUTHORIZATION

I hereby authorize: [signature]

to act in my behalf as my agent in the processing of this application upon request, supplemental information in support of this permit application.

APPLICANT’S SIGNATURE  

DATE

#### NAME, LOCATION AND DESCRIPTION OF PROJECT OR ACTIVITY

12. PROJECT NAME OR TITLE (see instructions)  
13. NAME OF WATERBODY, IF KNOWN OR specified  
14. PROJECT STREET ADDRESS OR specified  
15. LOCATION OF PROJECT  
16. COUNTY  
17. STATE  
18. OTHER LOCATION DESCRIPTIONS, IF KNOWN, (see instructions)  
19. DIRECTIONS TO THE SITE

#### USE BLOCKS 20-22 IF DREDGED AND/OR FILL MATERIAL IS TO BE DISCHARGED

20. Reason(s) for Discharge  
21. Typical of Material Being Discharged and the Amount of Each Type in Cubic Yards

#### 22. SURFACE AREA IN ACRES OF WETLANDS OR OTHER WATERS FILLED (see instructions)

#### 23. Is Any Portion of the Work Already Complete? Yes__ No__ IF YES, DESCRIBE THE COMPLETED WORK

#### 24. Addresses of Adjoining Property Owners, Lessors, Etc., Whose Property Adjuts the Waterbody (If more than can be entered here, please attach a supplemental list).

#### 25. List of Other Certifications or Approvals/Denials Received from other Federal, State or Local Agencies for Work Described in This Application.

<table>
<thead>
<tr>
<th>AGENCY</th>
<th>TYPE APPROVAL*</th>
<th>IDENTIFICATION NUMBER</th>
<th>DATE APPLIED</th>
<th>DATE APPROVED</th>
<th>DATE DENIED</th>
</tr>
</thead>
</table>

#### 26. Application is hereby made for a permit or permits to authorize the work described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.

SIGNATURE OF APPLICANT  

DATE  

SIGNATURE OF AGENT  

DATE

The application must be signed by the person who desires to undertake the proposed activity (applicant) or it may be signed by a duly authorized agent if the statement in block 11 has been filled out and signed.

18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguise a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than $10,000 or imprisoned not more than five years or both.
Items to Include with the application

- Site Vicinity Map
- Plan and cross sectional views reflecting:
  - Named waterbody and/or all aquatic resources within the project boundaries
  - Mean high water or ordinary high water mark
  - Cubic yards of fill material (if applicable)
  - Wetland Delineation (if applicable)
  - Dimensions and cubic yards of material removed during dredging (if applicable)
# Types of Permits

## General Permits (GP)
- For activities having minor impacts

## Nationwide General Permits (NWP)
- Subject to Section 10 and Section 404 for specific activities
- These permits are developed by USACE Headquarters
- Already issued to the nation and have been pre-coordinated with other agencies for water quality impacts, endangered species concerns, etc.
- Some permits require notification to the Corps = Pre-Construction Notification (PCN)

## Regional General Permits (RGP)
- Subject to Section 10 (for specific activities)
- These permits are developed by the USACE districts

## Standard Permits (SP)
- For activities having more than minor impacts

## Letters of Permission (LOP)
- Subject to Section 10 only
- These permits require a 15 Day Interagency Coordination
- Do not require Section 401 CWA Certification

## Individual Permits (SP)
- Subject to Section 10 and Section 404
- The permits include a 15/30 Day Public Notice
- Requires all other elements of permit evaluation
Commonly used NWPs

<table>
<thead>
<tr>
<th>NWP</th>
<th>Description</th>
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<tbody>
<tr>
<td>3</td>
<td>Maintenance</td>
</tr>
<tr>
<td>7</td>
<td>Outfall Structures</td>
</tr>
<tr>
<td>12</td>
<td>Utility Line Activities (pipelines, power lines)</td>
</tr>
<tr>
<td>13</td>
<td>Bank Stabilization (bulkheads, riprap)</td>
</tr>
<tr>
<td>14</td>
<td>Linear Transportation Project (roads, railways)</td>
</tr>
<tr>
<td>18</td>
<td>Minor Discharges (fill material)</td>
</tr>
<tr>
<td>19</td>
<td>Minor Dredging</td>
</tr>
<tr>
<td>33</td>
<td>Temporary Construction Access and Dewatering</td>
</tr>
<tr>
<td>35</td>
<td>Maintenance Dredging</td>
</tr>
</tbody>
</table>

Each project is unique, not all projects qualify for a NWP
Summary of the NWP process

• Assigned to Project Manager
• Geographic Jurisdictional Determination
• Determination if project meets the terms of the General Permit
• Review of project plans and determination of completeness
• Internal Review
• Corps evaluates response and determines whether additional information or coordination is needed
• Decision document and Verification Letter written
Summary of the SP process

- Assigned to Project Manager
- Geographic Jurisdictional Determination
- Internal Review
- External Coordination/Public Notice
- Forward comments to applicant
- Applicant responds
- Corps evaluates response and determines whether additional information or coordination is needed
404(b)(1) Guidelines
Alternative Analysis

• Inherent assumption to guidelines is that a non water dependent project does not need to be built in a special aquatic site
  
  • i.e.: Roadway
    - basic purpose is vehicular transportation
    - it does not need to be built in waters of the U.S.

• It is assumed there are other practicable alternatives and locations that are available
404(b)(1) Guidelines

Alternative Analysis

• Permit can be NOT issued if it does not comply with the guidelines (33 CFR 320.4)
• Corps has final responsibility for determining compliance with the guidelines
• Must select “least environmentally damaging practicable alternative”
• Level of review commensurate to impact (RGL 93-2)
404(b)(1) Guidelines
Alternative Analysis

• The Alternative Analysis is not a justification of the action.

• It is the process of finding other practicable alternatives for the action.

• The majority of the actions that come into our office, do receive a permit, but most likely will not look like the action that was proposed.
Mitigation – 33 CFR 332

• Mitigating the environmental impacts of necessary development actions on the Nation's wetlands and other aquatic resources is a central premise of Federal wetlands programs

• The Clean Water Act (CWA) Section 404 permit program relies on the use of compensatory mitigation to offset unavoidable damage to wetlands and other aquatic resources through, for example, the restoration or creation of wetlands

Type and Location of Mitigation

- Mitigation Banks
  - Regulatory In lieu Fee and Bank Information Tracking System (RIBITS)

- In-Lieu Fee

- Permittee-Responsible Mitigation
  - Under a Watershed Approach
  - On-site and In-kind
  - Off-site and/or Out-of-Kind

- Watershed Approach (Preservation, Restoration, and/or Enhancement)
How much Mitigation is Required?

- Sufficient to replace lost aquatic resource functions

- An appropriate functional or condition assessment method or other suitable metric that is available can be used for determination of the amount of compensatory mitigation required
End of Corps Permit Process

- The Corps generates an Environmental Assessment (EA) which evaluates environmental impacts, concludes with a “significance” determination if an EIS is or is not required

- The EA takes the form of a decision document that concludes a decision to issue, issue w/conditions, or deny the permit application
Why does it take so long?

• An estimated 4,355 permits were finalized in the last calendar year for the Galveston District
  • Includes pre-application meetings that were recorded
• The Galveston District has 10 project managers that carry an average of 30-50 permit applications each
• Training, section meetings, app phone calls, pre-application meetings, JEM, office day phone calls, etc. interrupt review time
Items to include with the application

• Site Vicinity Map
• Plan and cross sectional views reflecting:
  • Named waterbody and/or all aquatic resources within the project boundaries
  • Mean high water or ordinary high water mark
  • Cubic yards of fill material (if applicable)
  • Wetland Delineation (if applicable)
  • Dimensions and cubic yards of material removed during dredging (if applicable)
Example Project Plans

• How do we determine the limits of our geographic authority from these drawings?

• How does EPA, USFWS, NMFS, TPWD, local agencies, adjacent landowners review these impacts in light of their regulatory authority and personal interests?
Where is the waterbody?
What is being built here?
What other aquatic resources are present?
How much fill material is being discharged?
Why is this relevant to our review of the impacts to the aquatic resource?
What is going on here?
Can YOU read this text?
What is being done?

Where are the limits of our jurisdiction?

What other aquatic resources are present?

How much fill material is being discharged?
What is the acreage of the wetland?
What are the cubic yards of fill material?
No detail drawings showing the granite crossing, path and bridge, asphalt footpath, etc. were provided.
What kind of rip rap?

What size and cubic yards of rip rap?

The water level needs a reference datum. Our regulations lists MHW or OHWM.
What is the name of the waterbody?

What is the water level – MHW/OHWM?

What is the size and cubic yards of the rip rap being placed for bank stabilization under the outfall?
What is being built?

Where are the aquatic resources?

Where is the named waterbody?
The OHWM is labeled but there are no units and values and no reference bottom elevation.
Example Permitted Plans
SECTION A-A

Legend

- Excavation in Waters of the U.S.
- Combined Excavation/Fill in Waters of the U.S.
- Fill in Waters of the U.S.

HO 5 10 15 20 meter

0 25 50 60 feet
Restoration Plan

In accordance with a NWP 33, the following restoration plan will be implemented. The proposed project will temporarily impact Wetland Z, Wetland Y and Wetlands ZZ during the construction of the turn-around road west of Cedar Bayou and the installation of bridge pilings for the proposed Cedar Bayou Bridge.

Within 2 weeks from completion of construction, all temporary fill will be removed to an area that has no waters of the US, and the area will be restored to pre-construction elevations and contours as depicted on the plans (Attachment B).

Based on the Wetland Delineation Report (SWG-1992-01589) with an Approved Jurisdictional Determination (AJD), the existing dominant vegetation within Wetland Z is Black willow (Salix nigra), Chairmaker’s bulrush (Schoenoplectus americanus) and Bushy bluestem (Andropogon glomeratus). The existing dominant vegetation within Wetland Y and Z is Black willow (Salix nigra), Chinese tallow (Triadica sebifera), Broadleaf cattail (Typha latifolia), Dollarweed (Hydrocotyle umbellate) and Dwarf Palmetto (Sabal minor).

All temporary impacts to Wetland Z, Wetland Y and Wetland ZZ will be removed and restored to pre-construction contours. The restored areas will all be revegetated as appropriate, with native species as described above and in accordance with TxDOT’s Roadside Vegetation Management Manual (Revised September 2013).

No secondary impacts to downstream flows, hydrology, or water quality are anticipated as a result of the proposed project.

General Condition 9 of the NWP Program requires compliance with Section 401 of the Clean Water Act, which stipulates the use of Best Management Practices (BMPs) to manage water quality on construction sites. Best Management Practices will be used during both pre- and post-construction. The Storm Water Pollution Prevention Plan (SW3P) prepared for this project would include at least one BMP in each of the three categories identified in the Section 401 Water Quality Certification Conditions for NWP as published by the Texas Commission on Environmental Quality (TCEQ) on April 12, 2002. These BMPs will address the following categories:

- Category I: Erosion control
- Category II: Sediment Control
- Category III: Post Construction total suspended solids control.

Category I would be addressed by installing temporary vegetation and erosion control blankets and matting to disturbed areas. Category II would be addressed by the installation of silt fences across drainage swales and/or upstream of water bodies to prevent turbid discharges from adversely affecting ambient water quality. Category III would be addressed by extended detention basins. These measures would minimize potential adverse affects to water quality and with the implementation of these measures, no long-term effects to water quality are anticipated.
Tools to help

- Better plans and maps
  - 8 ½ x 11 size – no blueprint sizes in tubes
  - Reflect the impact to the jurisdictional water of the U.S.
- Participate in pre-application meetings to discuss the project and information that is needed for our review
- Participate in the JEM process to discuss the project with agencies
Summary

• Areas of Jurisdiction (10 and 404)
• Jurisdictional Determinations
• Waters of the U.S. (wetlands, other special aquatic sites)
• Permit types (NWP, GP, LOP, IP)
• Permit Evaluation Process
• Mitigation (includes avoidance)
Questions ??

http://www.swg.usace.army.mil/