

REGULATORY AND POLICY TRENDS IN THE GALVESTON DISTRICT

Society of American Military
Engineers

Houston, TX

22 October 2019

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"The views, opinions and findings contained in this report are those of the author(s) and should not be construed as an official Department of the Army position, policy or decision, unless so designated by other official documentation."



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ORGANIZATION OF THE CORPS OF ENGINEERS

WHERE WE ARE — U.S. ARMY CORPS OF ENGINEERS



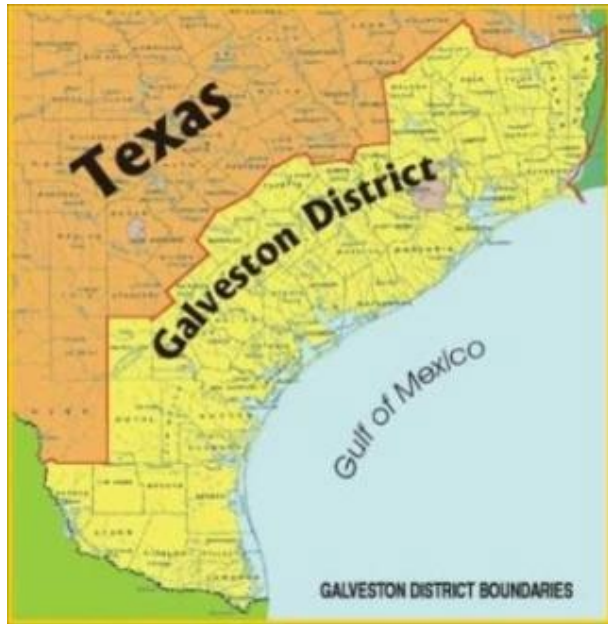
38 Districts, 8 Divisions, 1 HQ
 Regulatory Boundaries do not necessarily align with
 CW Boundaries



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USACE GALVESTON DISTRICT - History



- First engineer district in Texas, established 1880
- 50,000 square mile district boundary, ~100+ miles inland
- 28 ports handling 538+ M tons of commerce annually (FY 16)
- 1,000+ miles of channels
 - 750 miles shallow draft
 - 270 miles of deep draft
- 367 miles of Gulf coastline
- 30-40 M cubic yards/yr material dredged
- 16 Congressional districts
- 48 Texas counties, 4 Louisiana parishes
- 18 Coastal counties - bays / estuaries
- 9 river basins
- Approx. 400 employees and growing



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GALVESTON DISTRICT - Primary Missions

Civil Works

- Navigation
- Flood Risk Management
- Ecosystem Restoration



Military

- Interagency/International Support (IIS)
- Border Patrol



Regulatory

- Section 10 and Section 404 Permits
- Section 103

Disaster Response and Recovery

- FEMA Missions



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REGULATORY MISSION

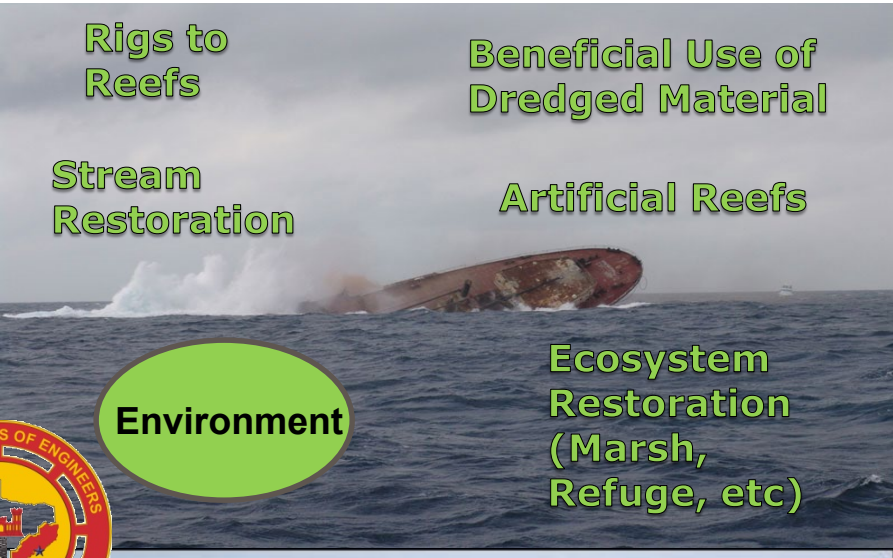
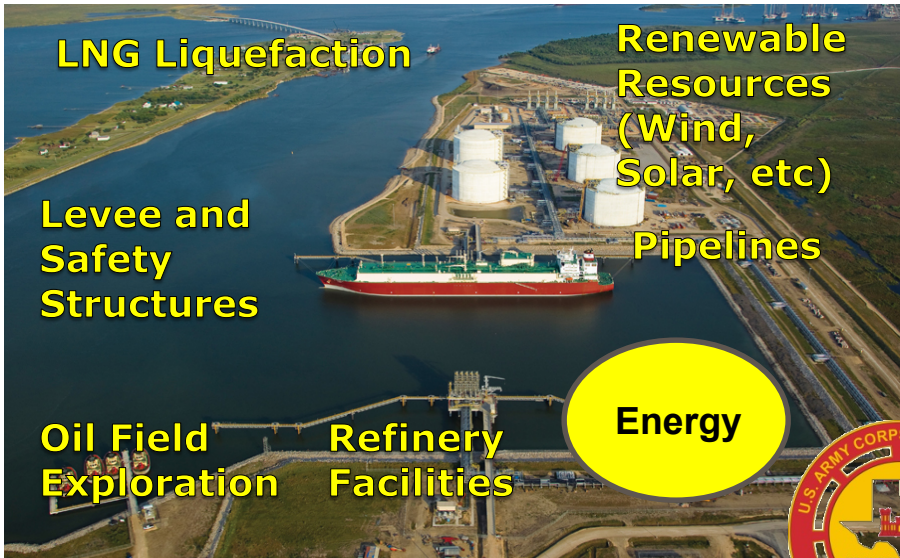
To protect the Nation's aquatic resources, while allowing reasonable development through fair and balanced decisions.



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REGULATORY DOES IT ALL



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U.S. ARMY

REGULATORY WORKS WITH



TEXAS HISTORICAL COMMISSION
real places telling real stories

RIVERS AND HARBORS ACT OF 1899

SECTION 10

Structures



Work



CLEAN WATER ACT OF 1972 SECTION 404



SECTION 103 OF THE MARINE, PROTECTION, RESEARCH, AND SANCTUARIES ACT (MPRSA)

Regulates activities involving the transport of dredged material for the purpose of dumping in the ocean waters.



Hopper Dredge – Glen Edwards

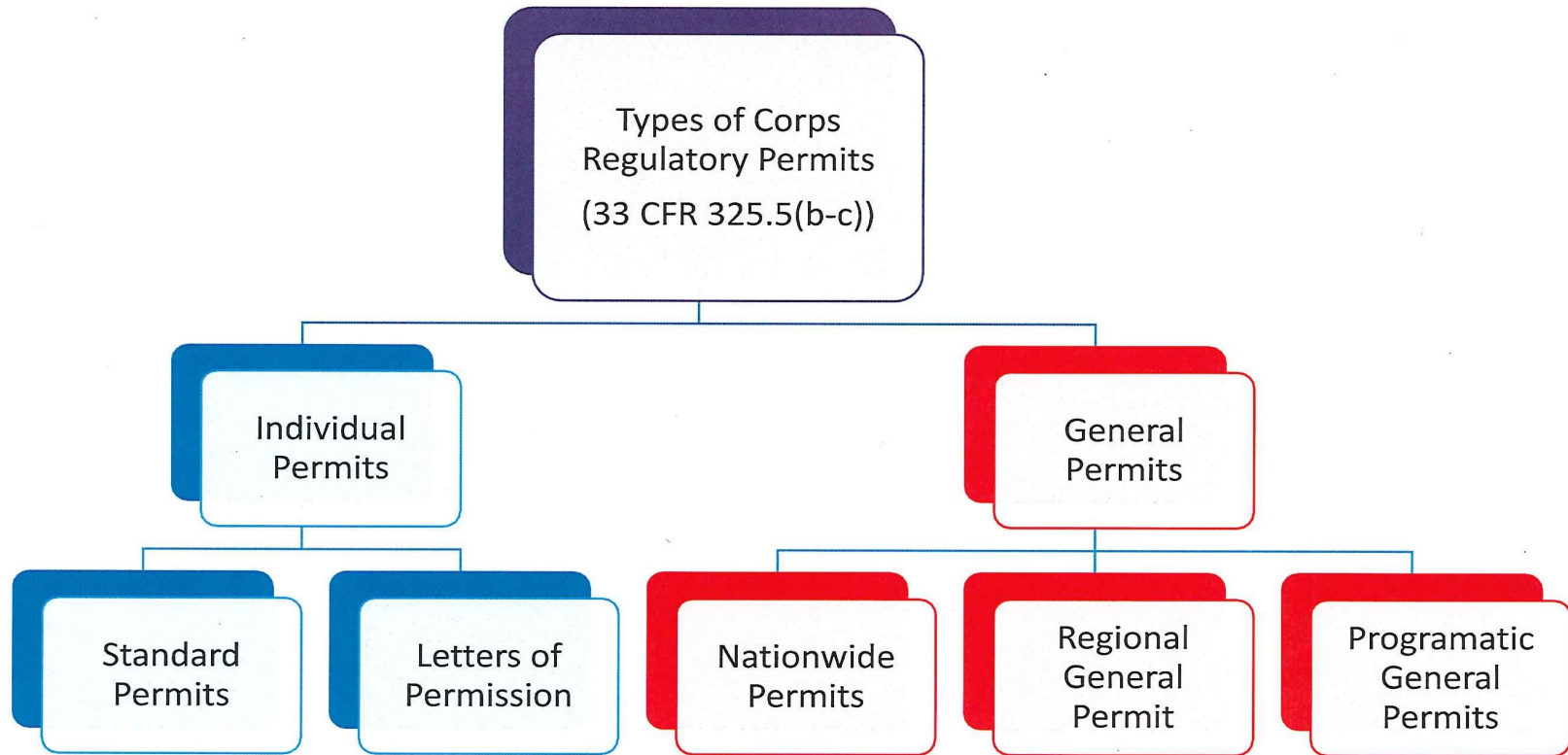


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TYPES OF PERMITS

INDIVIDUAL AND GENERAL PERMITS



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PUBLIC INTEREST REVIEW (PIR)

- 33 CFR 320.4(a) Public interest review
- 21 PIR Factors (ex. conservation, aesthetics, etc.)
- **Public Interest** = the public's rights and concerns over the protection and use of waters of the U.S.
- More than an evaluation of impacts to the aquatic environment, and includes cumulative impacts.
- Applies to **ALL** permit decisions.
- PIR for RGPs, PGP, and NWP is done at the regional/HQ level at the time of issuance.
- PIR for SPs and LOPs done on a case-by-case basis.

Recreation



Fish and Wildlife Values



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PUBLIC INTEREST REVIEW FACTORS

Conservation

Economics

Aesthetics

General Environmental
Concerns

Wetlands

Historic Properties

Fish and Wildlife Values

Flood Hazards

Floodplain Values

Land Use

Navigation

Shore Erosion and Accretion
Recreation

Water Supply and
Conservation

Water Quality

Energy Needs

Safety

Food and Fiber Production

Mineral Needs

Property Ownership

Needs and Welfare of the
People



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CLEAN WATER ACT SECTION 401: Water Quality Certification (WQC)

- Section 401(a)(1) – requires WQC or waiver before any Federal license or permit is issued to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into navigable waters
- RGL 87-03: General Corps guidance on when WQC is required
- 33 CFR 325.2(b)(1) Section 401 WQC: Requires the Corps Public Notice to provide a statement regarding WQC requirements of the proposed project.
- WQC for General Permits is issued at the time of issuance/ re-issuance.



**WQC is required
prior to
permit issuance for 404
actions.**

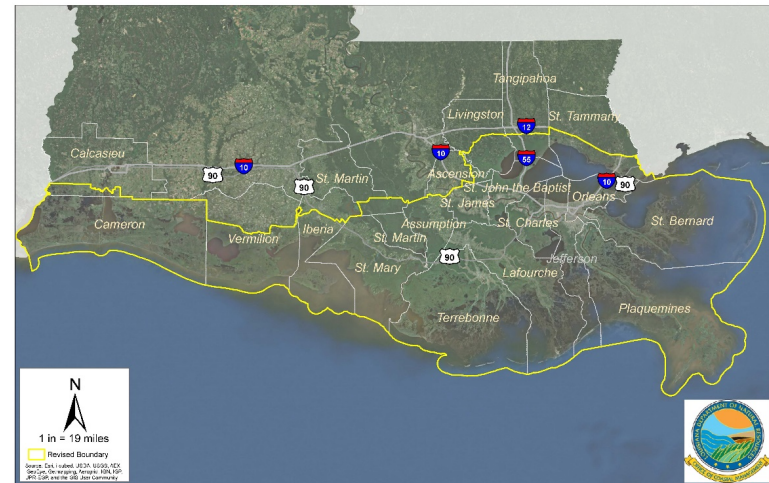
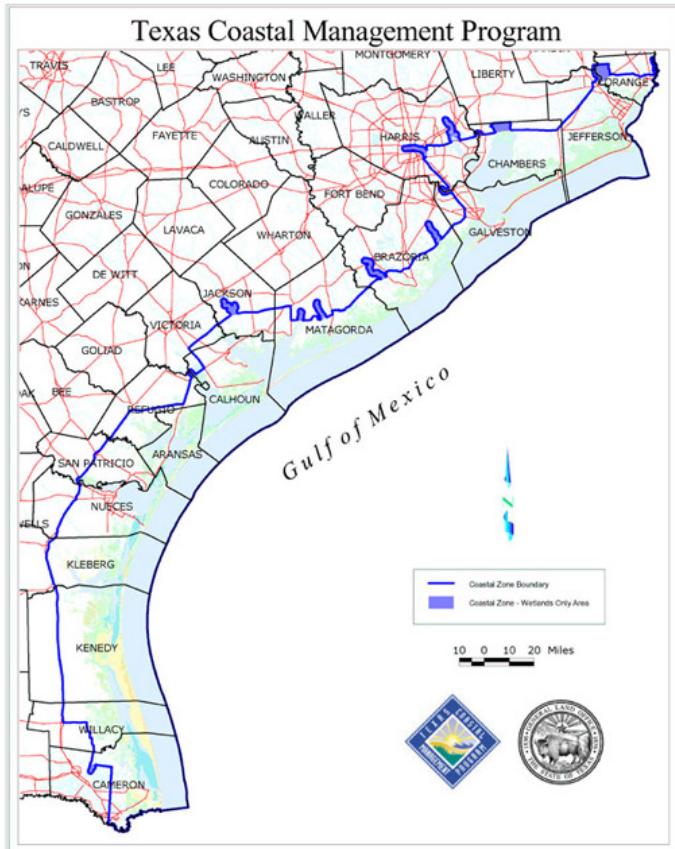


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COASTAL ZONE MANAGEMENT ACT (CZMA)

- Approved CZM program in both Texas and Louisiana
- Applicable to both Sec. 10 and 404 resources within CZM boundary
- 33 CFR 325.2(b)(2) CZM consistency



A CZMA consistency finding, or presumed concurrence, is required prior to permit issuance.

NATIONAL HISTORIC PRESERVATION ACT: Section 106

- Requires an agency to take into account the agency's **undertakings** on properties included in or eligible for the National Register of Historic Places (NRHP).
- Historic Property: any **prehistoric or historic** structure, district, site, building, or object **included in or eligible for inclusion in the NRHP.**
- 33 CFR 325 Appendix C: Corps' implementing regulations
Revised Interim Guidance for Implementing Appendix C, April 25, 2005
Clarification of Revised Interim Guidance, January 2007



ENDANGERED SPECIES ACT (ESA)

- Program for the conservation of Federally listed threatened and endangered (T&E) plants and animals and the habitats in which they are found.
- Requires federal agencies, in consultation with the appropriate Federal agency, to ensure that actions they **authorize**, fund, or carry out are not likely to jeopardize the continued existence of any Federally listed species or result in the destruction or adverse modification of designated critical habitat of such species.
- 33 CFR 325.2(b)(5) Processing of Applications, Procedures for particular types of permit situations, Endangered Species: Corps regulations regarding the review of applications pursuant to Section 7 of the ESA

Houston Toad



Whooping Crane



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ESSENTIAL FISH HABITAT (EFH)



- Regulated under the Magnuson-Stevens Fishery Conservation and Management Act
- Establishes procedures designed to identify, conserve, and enhance [tidal and non-tidal] EFH for those species regulated under a Federal fisheries management plan (FMP).
- Requires Federal action agencies to consult with NMFS on all actions authorized by the agency that **may adversely affect EFH**.
- EFH: *“those **waters and substrate necessary to fish, for spawning, breeding, feeding, or growth to maturity.**”*
- If the Corps determines that a proposed permit action may adversely impact EFH, then an EFH assessment will be prepared and submitted to NMFS for consultation.

EFH consultation must be concluded prior to permit issuance.



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ESA and EFH Responsible Federal Agencies Summary



USFWS	NOAA NMFS	
ESA	ESA	EFH
<ul style="list-style-type: none"> • Terrestrial T&E species • Manatee • Critical habitat for above • Sea turtles on the beach (nesting) 	<ul style="list-style-type: none"> • Marine aquatic T&E species • Anadromous fishes (in marine <u>and</u> freshwater habitats) • Critical habitat for above • Sea turtles in the water 	<p><i>waters and substrate necessary to fish, for spawning, breeding, feeding, or growth to maturity</i></p>



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BIPARTISAN BUDGET ACT of 2018

Title IV - Corps of Engineers

- **Investigations**
 - \$75M (of \$135M total) for States and areas impacted by Harvey, Irma, and Maria
 - Full Federal expense
 - Reduce flood and hurricane risk
- **Construction**
 - \$10.425B (of \$15B total) for States and areas impacted by Harvey, Irma, and Maria
 - NFS cash contribution financed over 30 years post construction completion
 - Construct flood and storm damage reduction projects authorized/Chief's Reports/studies under investigations
- **Implementation Guidance and Investment Program:**
<https://www.usace.army.mil/Missions/Civil-Works/Budget/>

USACE – Galveston District Funded Projects

Project Name	Funding
CONSTRUCTION	
Brays Bayou, TX	\$75,000,000
Buffalo Bayou and Tributaries, TX (Phase 1)	\$1,454,000
Clear Creek, TX	\$295,165,000
Hunting Bayou, TX	\$65,000,000
Lower Colorado River Ph 1 (Wharton, TX)	\$73,290,000
Sabine Pass to Galveston Bay, TX	\$3,957,134,000
White Oak Bayou, TX	\$45,000,000
TOTAL CONSTRUCTION	\$4,512,043,000
GENERAL INVESTIGATION STUDIES	
Coastal Texas Protection & Restoration Study, TX	\$3,804,000
Buffalo Bayou Resiliency Study, TX	\$6,000,000
Houston Regional Watershed Assessment, TX	\$3,000,000
Brazos River Erosion Management Study, TX	\$3,000,000
TOTAL STUDIES	\$15,804,000

BUDGET AND PERSONNEL - REGULATORY DIVISION

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Annual budget approximately \$7,000,000; Level for about 5 years
Personnel of 50; Currently 5 Vacancies



Division Chief/Admin - 2 positions

Policy Analysis Branch - 11 positions (Chief, 2 funded by 214, 1 vacant,
1 Archeologist, 1 Budget Analyst, 5 PMs for Policy related work)

Evaluation Branch - 17 positions (Chief, 2 Admin, 2 Team Leaders, 1 Legal
Instruments Examiner, 8 PMs, (4 of 8 < 1 yr), 3 unaffordable vacancies)

Compliance Branch - 11 positions (Chief, Admin, 1 Team Leader, 8 PMs (4 of 8 < 1
year)

Corpus Christi Field Office - 7 positions (Chief, Admin, 1 Team Leader, 3 PMs,
1 vacant)

Administrative Records - 4 positions



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SECTION 214 of WRDA 2000

Current 214 Agreements

Harris County Flood Control District

Harris County Engineering Department

Texas Department of Transportation

Port of Houston Authority

Port of Corpus Christi Authority

Section 214 of WRDA 2000, as amended (Sec. 214), Title 23 U.S.C. Section 139(j), and Title 49 U.S.C. Section 307 allow the Secretary of the Army to accept and expend funds contributed by certain entities to expedite the permit evaluation process.



SECTION 214 OF WRDA 2000 (CONTINUED)

Entity Qualifications for 214 [from Sec 214 of WRDA 2000, as amended (version Dec 2018), include qualifying:

- * non-federal public entity
- * public-utility company
- * natural gas company
- * railroad carrier
- * 214 Agreements are good for 5 years and can be terminated at any time by either the Entity or the Corps.
- * The Corps requests a 3-year commitment to funding, if an Entity wishes to fund a Full Time FTE.
- * 214 Agreements take appx 1 year to be established (from request to final execution of the MOA).
- * GENERALLY, the program will realize a 20% reduction in processing times, on average. The timing of each action depends on the complexity and controversial nature of the action, as well as the number of other actions an entity is requesting at the same time. Does not guarantee “permit approval”.
- * SWG POC for 214 Agreements is Felicity Cunningham. (409) 766-3105



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RECENT TRENDS – Higher workload, Less Resources

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Impacts of Hurricane Harvey and Imelda

- Increased funding for jurisdictional activities throughout the region
- Increased sensitivity and interest in actions that may have an impact on flooding potential

Nation's Energy Coast

- Increase in number of large scale energy projects along the entire coast – 14+ active pipeline applications (SWG-Lead District in Tx); LNG, port, channel and refinery development
- Increased overlap of Civil Works and Regulatory responsibilities
- Limitations on capacity for placement of dredged material
- Increased interest in use of Section 103 of MPRSA for use of ODMDS



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TEXAS PORTS COASTAL NAVIGATION VALUE TO THE NATION

LEADING U.S. PORTS

(2017 TONNAGE)

HOUSTON #2 – 260.1 MILLION TONS
#1 FOREIGN TONNAGE & #2 TOTAL TONNAGE

BEAUMONT #5 – 89.4 M.TONS
#1 MILITARY PORT IN WORLD

CORPUS CHRISTI #6 – 87.3 M.TONS
AMERICA'S ENERGY GATEWAY

PORT ARTHUR #17 – 39.2 M.TONS
VITAL BREAK-BULK PORT

TEXAS CITY #18 – 37.7 M.TONS
SERVICES LARGEST PETROCHEMICAL COMPLEX

FREEPORT #31 – 24.5 M.TONS
CONNECTING GLOBAL SERVICES
VIA CARIBBEAN RELAY PORT

GALVESTON #59 – 7.8 M.TONS
#4 CRUISE SHIP PORT

BROWNSVILLE #61 – 7.7 M.TONS
#1 SHIP RECYCLING PORT

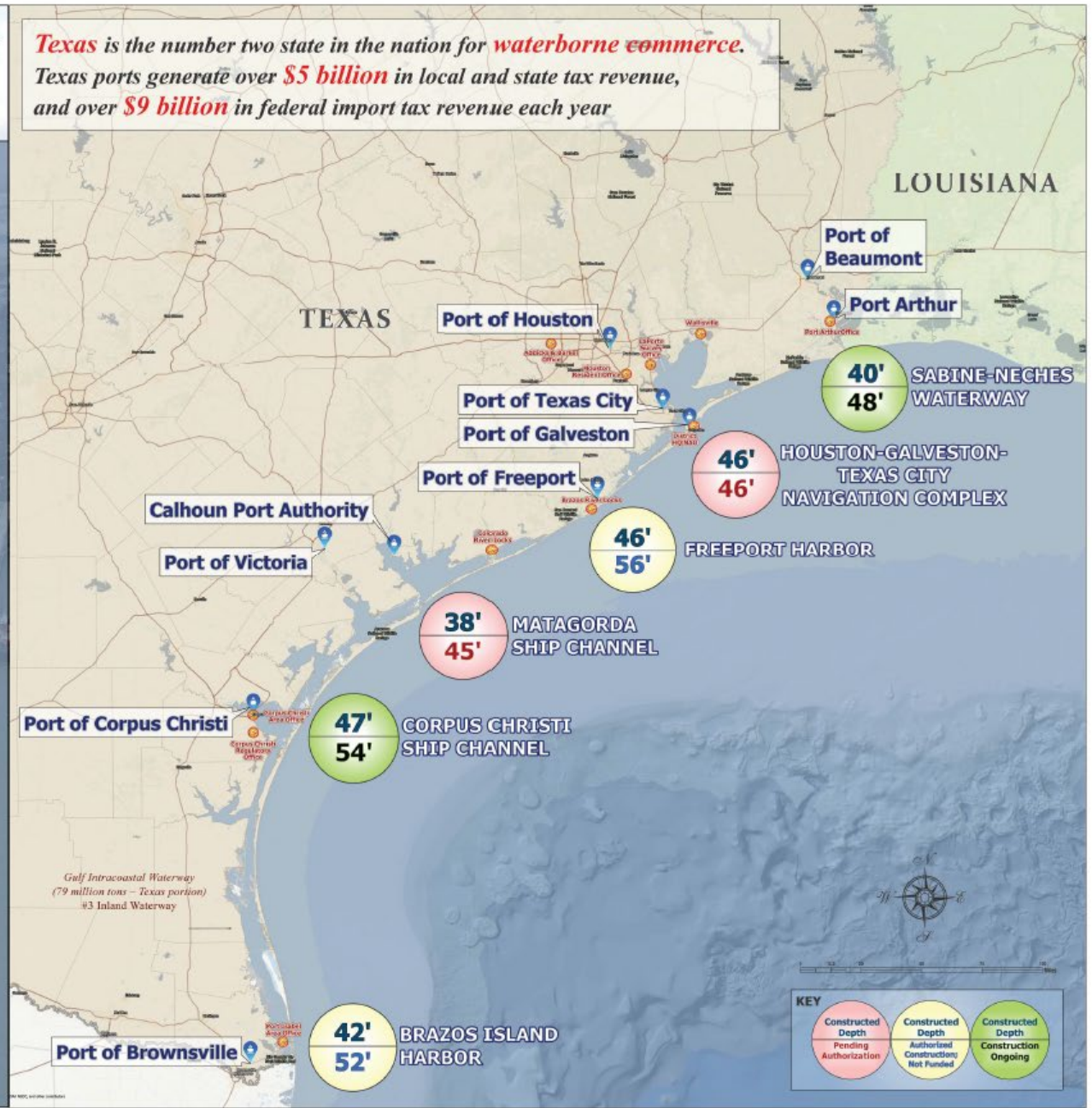
VICTORIA #80 – 4.3 M.TONS
#2 SHALLOW-DRAFT PORT FOR DOMESTIC
CRUDE PETROLEUM

CALHOUN COUNTY PORT #81 – 4.3 M.TONS
(MATAGORDA SHIP CHANNEL)

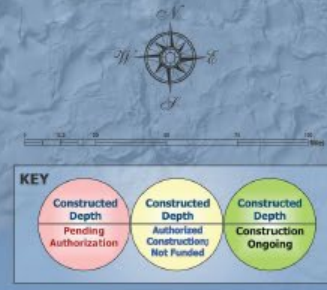
Data Source: USACE, Waterborne Commerce Statistics Center - 2017



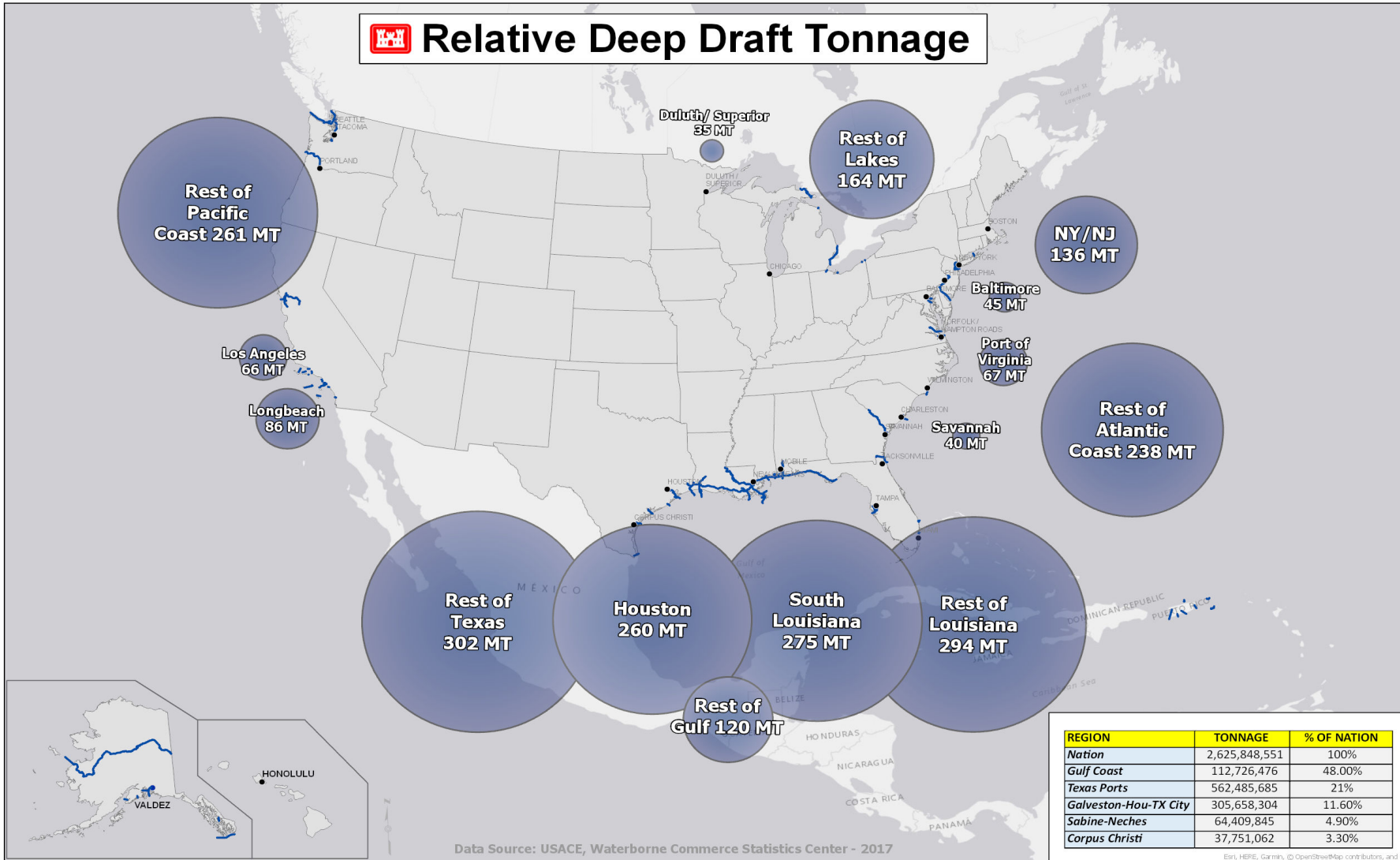
*Texas is the number two state in the nation for **waterborne commerce**.
Texas ports generate over **\$5 billion** in local and state tax revenue,
and over **\$9 billion** in federal import tax revenue each year*



*Gulf Intracoastal Waterway
(79 million tons - Texas portion)
#3 Inland Waterway*



Relative Deep Draft Tonnage



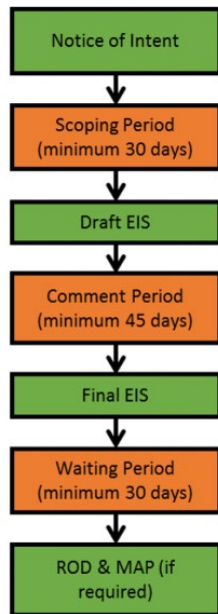
Data Source: USACE, Waterborne Commerce Statistics Center – 2017



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ESRI, HERE, Garmin, © OpenStreetMap contributors, and



More Environmental Impact Statements - 15

- Cooperating Agency status: 3 new and 5 existing LNG's (FERC), and one High Speed Rail (FRA) project
- 5 proposed deepwater ports (MARAD/USCG)
- Leading two EIS's - Industrial water use and Navigation (FAST 41: 1 of 2 Ports and Waterways Projects for USACE, only one in Regulatory nationwide)

EO 13807 – One Federal Decision

- Two Year Goal
- Establishing a permitting timetable
- Development of single EIS/ROD
- Process for issue resolution

EO 13777 Regulatory Reform

- Nationwide Permit Reissuance - Proposed for later this year
(Opportunity to comment on NWP's and Regional Conditions)
- Increased need for fast decisions and efficiencies



Increased lack of permit compliance, risk taking



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SECTION 408 PERMISSIONS

Section 14 of the Rivers and Harbors Act of 1899

408 reviews typically cost
between \$3,000 and
\$20,000

EC 1165-2-220 Alterations of USACE Civil Works Projects

Phase I – Due end of second quarter 2019

- Establish single point of contact for inquiries
- Develop synchronization SOP
- Link Regulatory and 408 databases



Phase 2 – Implementation of “One Door to the Corps”

- Due end of fourth quarter 2019
- Stand up processes for synchronization

Phase 3 – Assessment of synchronization measures

- Identification of remaining challenges
- USACE may pilot different organizational structures



WATERS OF THE UNITED STATES

SPECIAL PUBLIC NOTICE CLEAN WATER ACT FINAL RULE REPEALING THE 2015 CLEAN WATER RULE AND RE-CODIFYING THE PREVIOUS DEFINITION OF THE “WATERS OF THE U.S.”



On September 12, 2019, the Environmental Protection Agency and Department of the Army (the agencies) signed a final rule to repeal the 2015 Clean Water Rule (2015 Rule) and re-codify the regulatory text defining "waters of the United States" (WOTUS) that existed prior to the 2015 Rule. This action will, when effective, provide regulatory certainty as to the definition of "waters of the United States" in light of ongoing litigation over the 2015 Rule. This final rule will be implemented in accordance with Supreme Court decisions, agency guidance, and longstanding practice.



SPECIAL PUBLIC NOTICE (CONTINUED):

This final rule follows the February 28, 2017, Presidential Executive Order on "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule." The February Order states that it is in the national interest to ensure that the Nation's navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of Congress and the States under the Constitution. To meet these objectives, the agencies have followed a two-step rulemaking process. Today's final rule is the first step of that process (Step 1 Final Rule). It was first proposed on July 27, 2017, with a supplemental proposal on June 29, 2018, and received 770,000 public comments. The Step 1 Final Rule provides regulatory certainty by removing the patchwork of regulations that existed across the country as a result of various judicial decision enjoining the 2015 Rule, and it reestablishes national consistency across the country by returning all jurisdictions to the longstanding regulatory framework that existed prior to the 2015 Rule, which is more familiar to the agencies, States, Tribes, local governments, regulated entities, and the public.

The Step 1 Final Rule provides the aforementioned regulatory certainty while the agencies engage in the second step of rulemaking to revise the definition of WOTUS. The second step, or the Step 2 Proposed Rule, was published in the Federal Register on February 14, 2019, and the public comment period closed on April 15, 2019. The agencies are currently reviewing over 600,000 public comments before taking final action.

More information regarding the WOTUS rulemaking can be found at EPA's website:

<https://www.epa.gov/wotus-rule>. If you have specific questions regarding this Step 1 Final Rule, please contact a local Corps District office or EPA Regional office.



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New National Regulatory Program Success Criteria

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SUCCESS

1. Transparent Practices and Engagements with applicants/consultants and stakeholders
 - 1.1 Conduct outreach
 - 1.2 Maintain ORM 2 public facing page
2. Regulatory Development Program
 - 2.1 New hire training
 - 2.2 Continuing development of current staff
3. Timely Permit Decision
 - 3.1 GP decision in 60 days or less
 - 3.2 IP decision in 120 days or less
4. Effective Compliance Program
 - 4.1 Perform strategic compliance inspections
 - 4.2 Strategic resolution of non-compliance, unauthorized and enforcement
5. Third Party Mitigation



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WORKLOAD LARGEST IN SWD

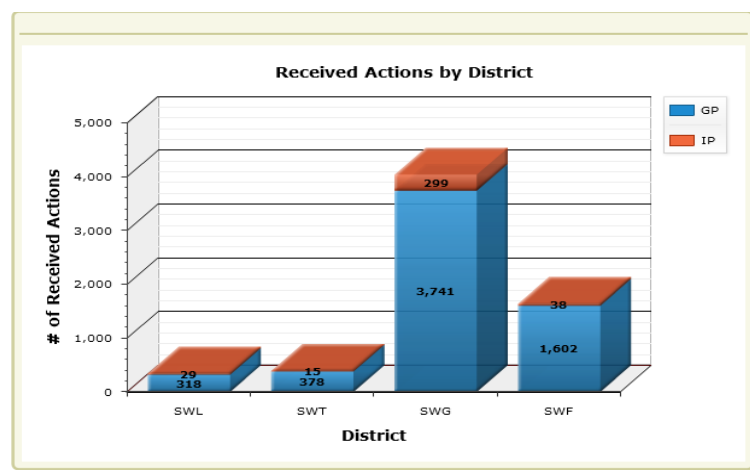
Increasing NWP workload- Finalized Actions

FY 2017 – 1305
FY 2018 – 2314
FY 2019 – 4091

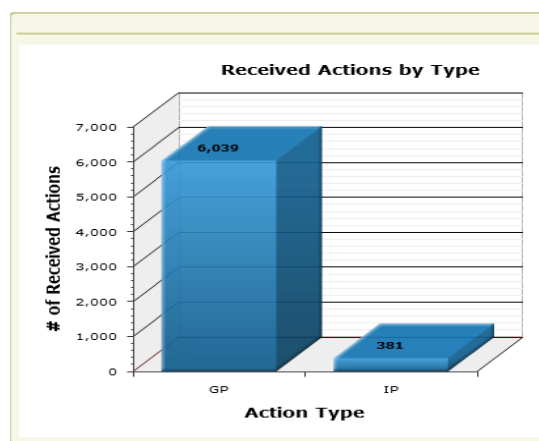
* > # of Pipeline NWPs

Average Evaluation Days- FY 2019

Regional General Permits: 70
Letters of Permission: 133
Standard Permits: 431



2019 IP = LOP, SP



2019

Ave Files/Eval PM: 40

Pending SPs: 147

Ave Files/Compl PM: 60
-100 (JD, Comp/Enf)



WHY DOES THE PERMIT PROCESS TAKE SO LONG?

Primary cause of **delay** for applications is:
incomplete,
inaccurate, or
contradictory information.
Need QA-QC!

Written descriptions and/or tables provided must match what is reflected on the project plans (drawings)

Requests for additional information cause the project manager to take away from review time and write an additional information letter; complete applications get worked on and produce a decision!



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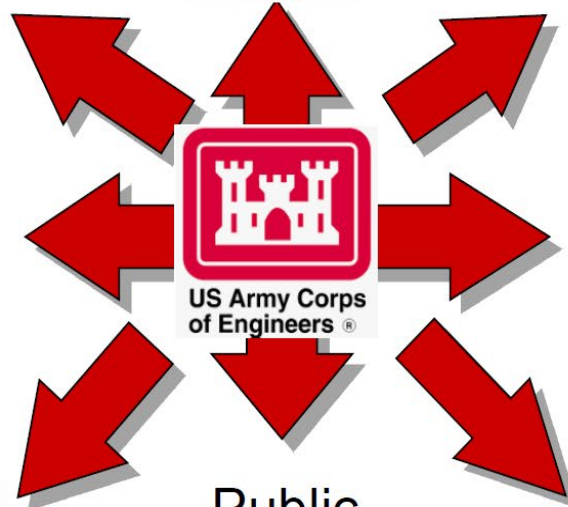




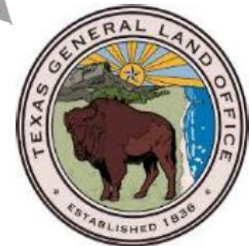
EXTERNAL COORDINATION/PUBLIC NOTICE

15 Days from Federally Complete to publish PN

- ✔ Is the information sufficient for the Public and agencies to make substantial comments?
- ✔ Does the application address avoidance and minimization, siting criteria, alternatives analysis, single and complete project?
- ✔ Plans are fully developed, not conceptual.
- ✔ Applicant's response addresses all substantive comments



Public, including Neighbors & Groups



Incomplete, Incorrect or nonresponsive requests will be withdrawn!



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LEVEL OF EFFORT.....!

Incomplete SP - Withdrawn



45-Day PCN



Increases with complexity of the Project,
amount of information to be reviewed and/or level
of errors and inconsistencies in the application



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CURRENT EFFICIENCIES

- 52 Nationwide Permits
- 4 Regional General Permits
- 5 Programmatic General Permits
- 4 Agency Specific Regional General Permits
- 3 Letter Of Permission Procedures
- 9 Approved Wetland and/or Stream Mitigation Banks,
including Interdistrict Mitigation Banks (SWG & SWF)
- 21 Proposed Wetland and/or Stream Mitigation Banks
- 5 Section 214 Agreements
- * Use of Pre-application Meetings; KM initiatives
- * Use of templates for most documents
- * Continual improvement of business practices
and processes !



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OUR VISION



- Continued pursuit for additional resources, personnel or cooperative assistance such as interagency personnel partnerships
 - Enhanced consistency and increased timeliness of decisions/ determinations w/o sacrificing quality of reviews
 - Increase transparency
 - Continued search for efficiencies in coordination and business practices
 - New streamlined processes
 - Opportunities for enhanced outreach
- Next Workshop:

When: January 30, 2020

Where: Galveston District HQ

What: Joint Corps/Interagency format – ESA, 106 Consultation, 408 Coordination, CMP, PSC, GLO Leasing

Watch our Internet Site for Registration Information!

New Regulatory Division

Chief:

Mr. Joe McMahan

10 November 2019



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www.facebook.com/GalvestonDistrict



ON TWITTER

www.twitter.com/USACEgalveston



ON YOUTUBE

www.YouTube.com/GalvestonDistrict



ON DVIDS

www.dvidshub.net/units/USACE-GD



ONLINE

www.swg.usace.army.m



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