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## Honolulu District Guam Field Office



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# Introductions


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## Topics of Presentation

- Permitting Authority & Jurisdictional Areas
- Types of Permits
- Application Review Process and Mitigation
- Enforcement and Permit Compliance

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## Regulatory Mission:

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



Photo courtesy of John Jocson



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## Regulatory Program Annual Facts

- Over \$220 billion of economic development
- ~70,000 written authorizations
- ~70,000 jurisdictional determinations
- About 2,500 enforcement cases


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## Overall Objectives


- To understand the breadth and scope of the Regulatory Program.
- To know when a Corps permit is required
- To understand the Corps' application review process

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## Bridge abutment repair




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## Outfall and riprap maintenance



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## USACE Jurisdiction: Geographic and Activity Based

Two Fundamental Questions to Ask

- 1) Is this **area** regulated by the Corps?
- 2) Is this **activity** regulated by the Corps?

Regulatory Authorities

Section 10 and Section 404, also Sec 9 and 103

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## Section 10 of the Rivers and Harbors Act of 1899


- To protect and preserve the navigability of navigable waters
- Section 10 permits are required for **structures** and/or certain **work** conducted in **navigable** waters of the U.S.



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## Navigable Waters of the U.S.

- 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.**

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## Activities regulated under Section 10 of the Rivers and Harbors Act include

- buoys
- floats
- marinas
- bulkheads
- breakwaters
- dredging
- fill
- debris booms
- piers
- piling
- boatlifts
- boat ramps
- marine railways
- disposal of dredged material
- silt fences



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## Section 10 Activities




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## Section 404 of the Clean Water Act

- To **restore** and **maintain** the chemical, physical and biological integrity of the waters of the U.S.
- Section 404 permit required for **discharges of dredged and/or fill material** in waters of the U.S.

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## Waters of the United States

- Navigable waters
- Tributaries to navigable waters
- Interstate bodies of water or wetlands (N/A Honolulu District)
- Wetlands
- Other Special aquatic sites

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## Activities Regulated under Section 404


- placement of fill (rock or dirt)
- grading
- mechanized land clearing
- excavation (with associated discharge)

  
Discharge of "fill" material into wetlands

  
riprap

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## District Regulatory Boundaries – Section 10 and 404

Jurisdiction extends to 3 nautical miles (or the outer continental shelf)


**HAWAII**

**GUAM**

**NORTHERN MARIANA ISLANDS**

**AMERICAN SAMOA**

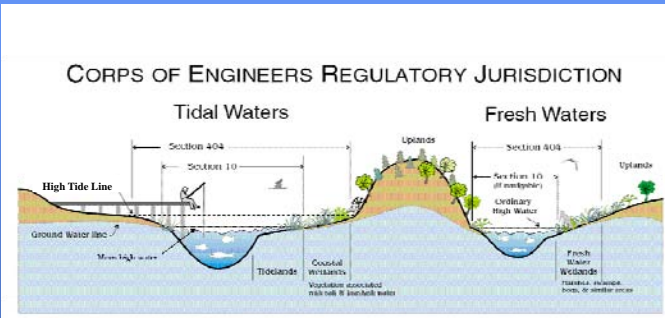
Section 10 authority also applies to Northwest Hawaiian Islands and Pacific islands that are U.S. possessions.



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## Jurisdictional Boundaries


### CORPS OF ENGINEERS REGULATORY JURISDICTION




Section 103	Section 404	Section 10
Disposal of dredged material	Disposal of Dredged or Fill Material (off waters of the U.S.)	All structures and work (regardless of use)
Typical examples of regulated activities	All filling activities, utility lines, coastal structures, road crossings, beach nourishment, riprap, jetties, some excavation activities, etc.	Erecting moorings, piers, wharves, dams, levees, conduits, piers, galleys, berths, aids, range aids, overhead transmission lines, etc.

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## Examples of Limits of Corps' Geographic Jurisdiction in Tidal Waters



Benchmarks can be found at: <http://tidesandcurrents.noaa.gov/>

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## Ordinary High Water (OHW) Line of Jurisdiction in Fresh Waters



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# Wetlands

An obvious example:



A not so obvious example:




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# Delineation of Wetlands

- 1987 Corps of Engineers Wetland Delineation Manual and Regional Supplement
- Wetland Criteria
  - Wetland hydrology
  - Hydric soils
  - Wetland vegetation



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## Coral Reefs



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## Department of the Army Permits ("Corps" Permit) Types and Processes

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## Types of Permits for Section 10 and 404 Activities

INDIVIDUAL


- Standard Individual Permit (IP)
- Letter of Permission (LOP)

GENERAL

- Nationwide (NWP)
- Regional (RGP)

Complexity ↑

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## Nationwide Permits

Updated every 5 years, will be reissued on March 18, 2012  
District office issues NWP **Verifications**


Common NWPs

- NWP 3 Maintenance
- NWP 6 Survey activities
- NWP 12 Utility line activities
- NWP 13 Bank stabilization
- NWP 14 Linear transportation projects
- NWP 33 Temporary construction, access, and dewatering

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## Letter of Permission (LOP)

- Section 10 activities only
- Non-controversial projects
- Small scale activities
  - Construction, maintenance, or replacement of piers, mooring piles, or floats
  - Minor dredging
- Streamlined process compared to Standard IP



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## Standard Individual Permit (IP)

- Application complete
- Public Notice (30 Days)
- ESA, EFH, and 106 Coordination
- Alternatives Analysis
- Public Interest Review
- Permit Decision
- Total review time can range from **6 months to 2+ years**. So **plan accordingly!**



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## Corps' 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

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## Section 404 of the Clean Water Act Evaluation Factors for Standard Individual Permits (IP)

### ALTERNATIVES ANALYSIS

The Section 404(b)(1) Guidelines, published by the U.S. Environmental Protection Agency in 1980, require examining alternatives.

The Corps must assume for a non-water dependent, special aquatic site fill, a *practicable alternative* exists that is less environmentally damaging.

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## Mitigation Sequencing

- Avoid
- Minimize
- Compensate (Compensatory Mitigation)

The aquatic functions lost due to the project must be considered.

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## Compensatory Mitigation

**Preferred Order:**

- In kind vs. Out of kind
- In lieu fee/mitigation bank vs. permittee-responsible
- Re-establishment
  - Restoration
- Rehabilitation
- Enhancement
- Establishment
  - Creation
- Protection
  - Preservation

The amount of compensatory mitigation is determined by the function(s) of the impacted aquatic resource and the scope of the project.




enhancement with plantings




establishment with excavation





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## Mitigation Plans

- The April 2008 Mitigation Rule (33 CFR 332) outlines all necessary considerations when developing mitigation and monitoring plans.
- Watershed approach preferred where appropriate.

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## Other Required Authorizations or Consultations

- Section 401 Water Quality Certification
- Coastal Zone Management consistency concurrence (CZM)
- Section 7 of the Endangered Species Act
- Magnuson-Stevens Fishery Conservation Management Act (Essential Fish Habitat)
- Section 106 of the National Historic Preservation Act
- National Environmental Policy Act
- Fish and Wildlife Coordination Act

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## Section 7 Endangered Species Act

- Required for federal actions
- Is there the potential to affect a listed **species** or is the activity in the **critical habitat** of a listed species?
- Consultation required for federal actions that “may affect”
- USACE permit is a federal action

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## Endangered Species Act Agencies (Services)


- National Marine Fisheries Service (NMFS): jurisdiction over marine animals such as sea turtles, whales and dolphins, and seals.
- U.S. Fish and Wildlife Service (USFWS): jurisdiction over birds, terrestrial mammals, arthropods, reptiles, snails, and plants.



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## Section 106 of the National Historic Preservation Act (NHPA)


A Federal agency “having direct or indirect jurisdiction” over a proposed **Federal undertaking** shall, prior to approval of the undertaking, take into account the effect of the undertaking on any historic property “in or eligible for inclusion in the National Register.”

Federal undertaking = Corps permit

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## Enforcement and Compliance

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## Enforcement Program of the Regulatory Branch

### Responsibilities

- To inspect permitted activities for compliance with permit conditions
- To investigate unauthorized activities; violations of Section 301 of CWA and Section 10
- USEPA has lead on unauthorized activities subject to 404

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## Permit Compliance or permit non-compliance in this case...



Violation of permit condition requiring work “in the dry”.


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# Unauthorized Activities



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# Enforcement Procedures

- Perform site inspection and investigation
- For violations:
  - Cease and desist order
  - Request and evaluate information
  - Resolution

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## Enforcement Program of the Regulatory Branch


### Resolution Options

- Initial corrective measures
- Voluntary removal or restoration
- Referral to the Environmental Protection Agency or DOJ
- Legal action, fine or prosecution
- After-the-fact permit application

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## Coordination with the Corps

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# When do I need a Corps Permit?




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# When you are planning on working in the water or in wetlands



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### Tips to expedite the review of your application

- **Avoid and minimize** impacts to wetlands and other waters of the U.S.
- Obtain wetland or other scientific **expertise**
- Coordinate **early** in the planning process

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### More tips to expedite the review of your application

- Pre-Application Meeting
- Submit a *complete* application
- Clear and concise drawings
- Submit appropriate supplemental information


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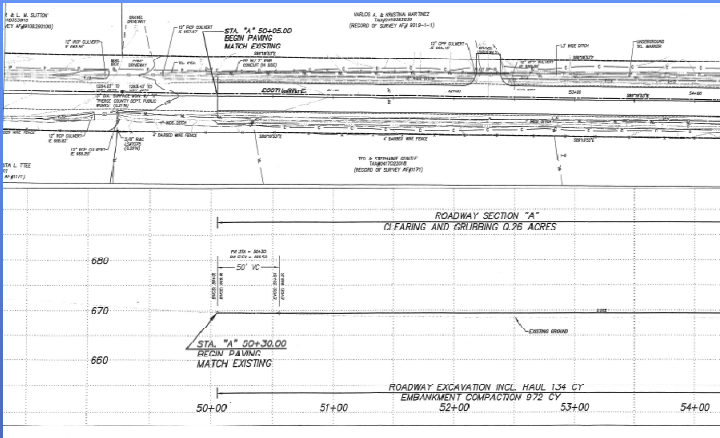





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# Bad Drawing






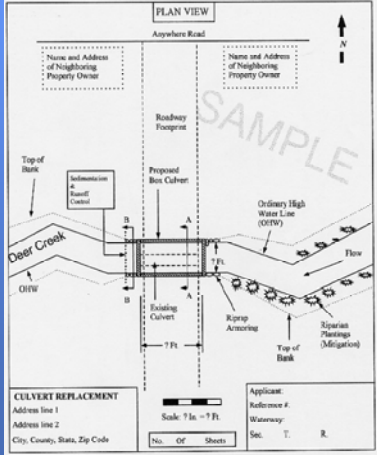
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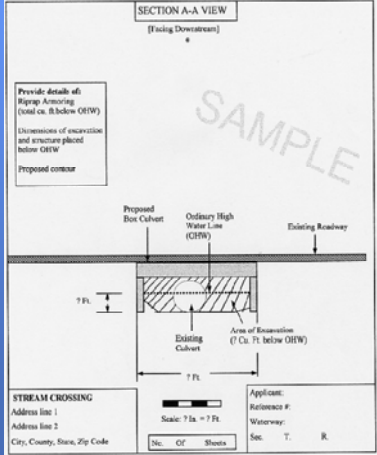


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# Good Drawings








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## Resources

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## Information on the Internet

- Honolulu District Regulatory Branch
  - [www.poh.usace.army.mil](http://www.poh.usace.army.mil)
  - ‘Obtain a Permit?’
- Corps Regulatory Headquarters
  - [http://www.usace.army.mil/CECW/Pages/cecwo\\_reg.aspx](http://www.usace.army.mil/CECW/Pages/cecwo_reg.aspx)
- Corps of Engineers Headquarters (D.C.)
  - [www.usace.army.mil](http://www.usace.army.mil)

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## Additional Questions

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