



**EPA TRIBAL
CONFERENCE
§404 Regulatory
Program**

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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.

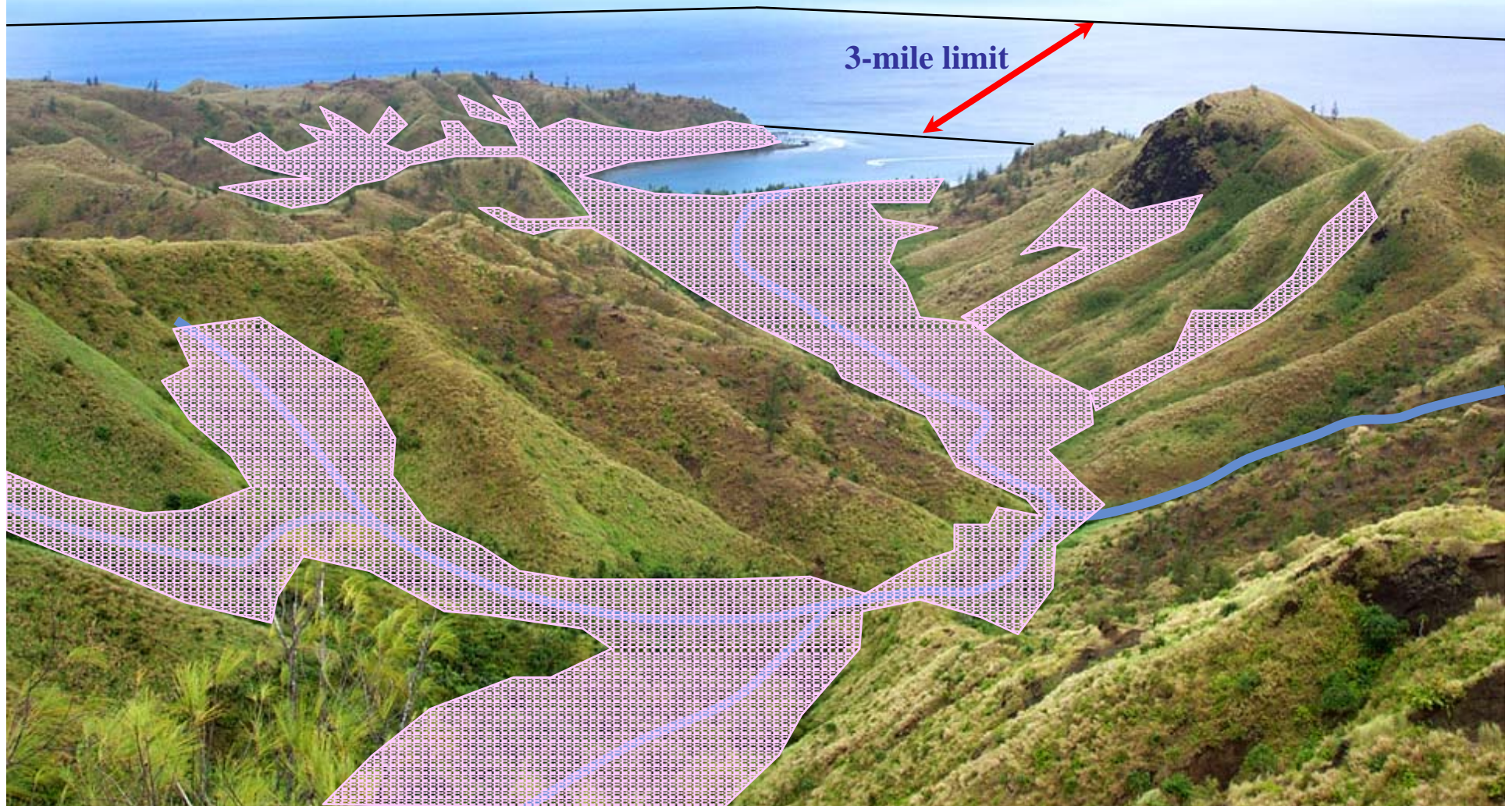
Basic premise: No discharge of dredged or fill material can be permitted

- 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**

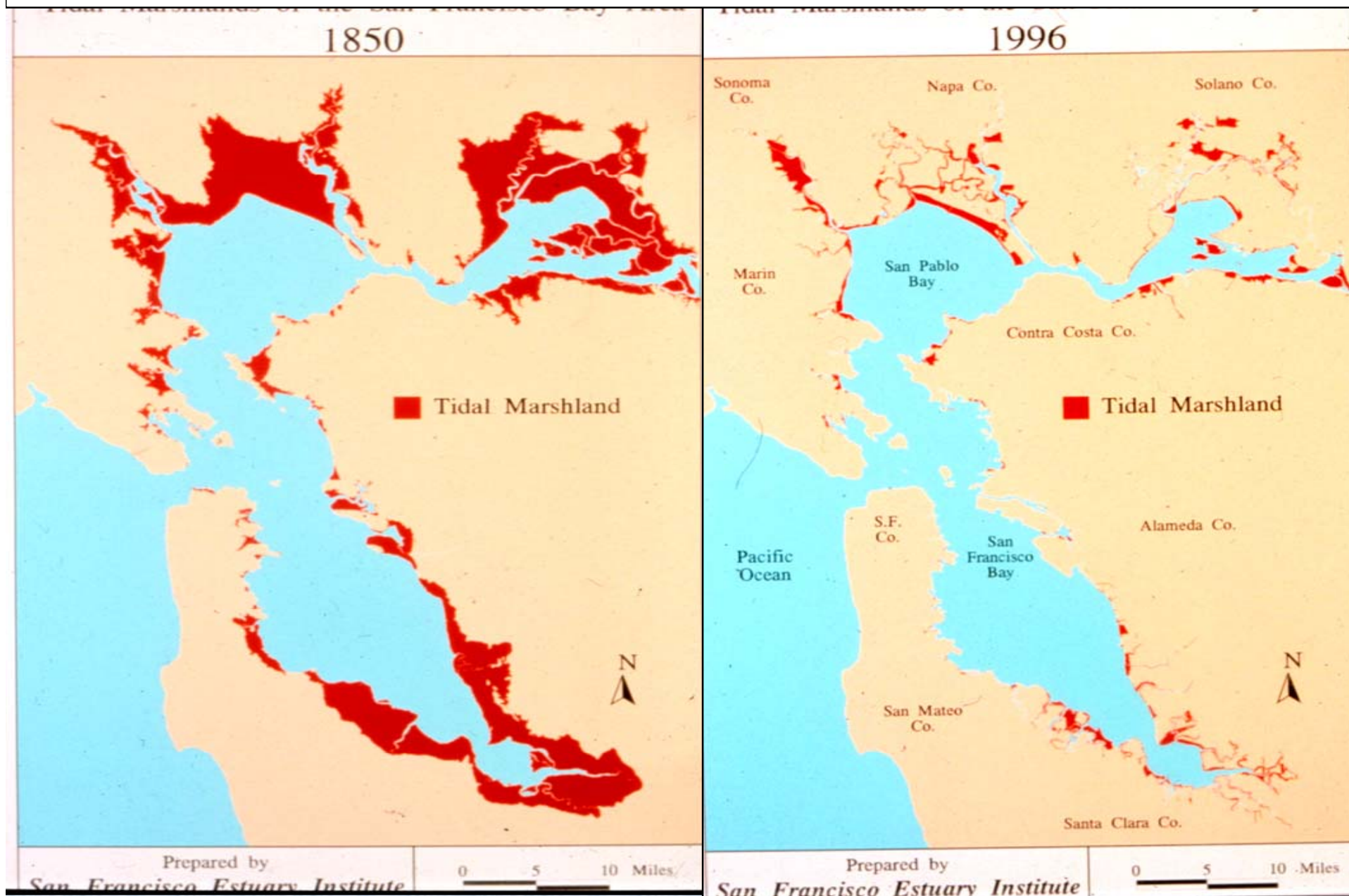
The Territorial Sea	tributaries	e
to navigable waters		



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



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>

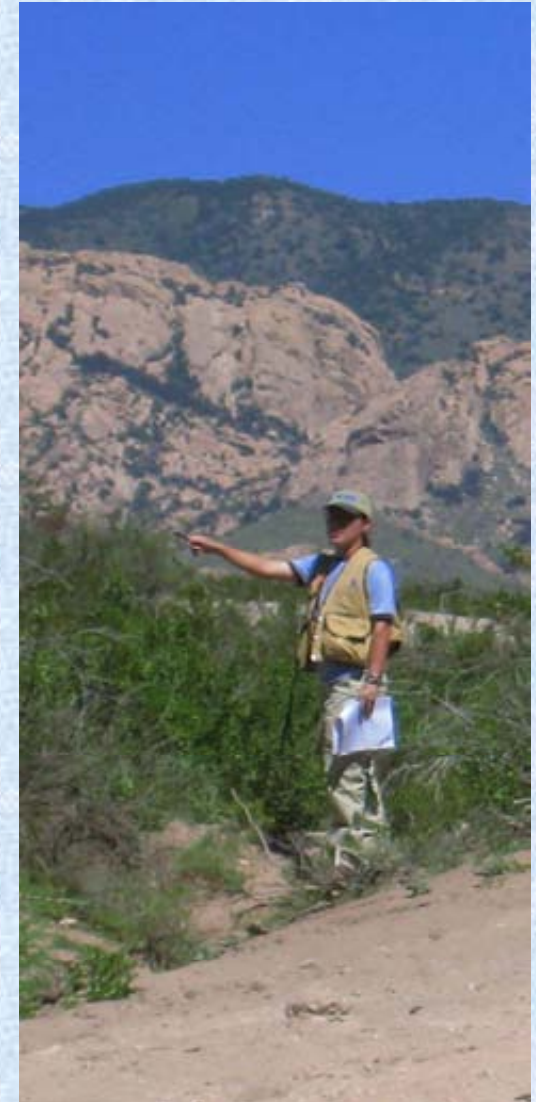
The Corps of Engineers Responsibilities



- **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)