



# **EPA TRIBAL CONFERENCE**

## **§404 Regulatory Program**

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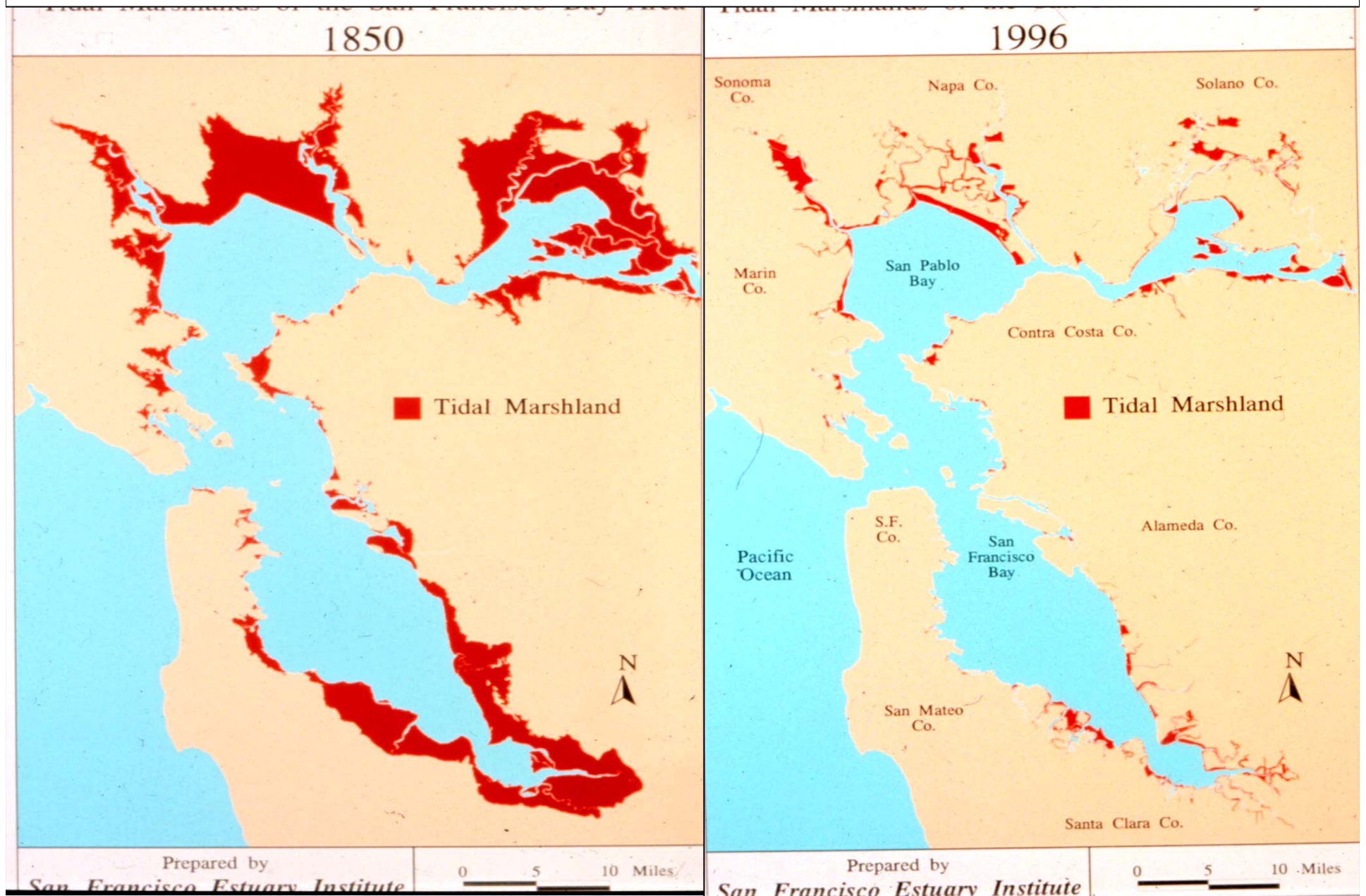
# CLEAN WATER ACT

## GOAL:

“Restore and maintain the  
**physical**, **chemical**, *and* **biological**  
integrity of the nation’s waters...”

(emphases and colors added!)

# San Francisco Bay Tidal Marshes: 1850 versus 1996



# Clean Water Act Goal

**Physical Integrity = reach and extent**

**Chemical Integrity = water quality**

**Biological Integrity = habitat**

**Whaddaya know! It's about  
acreage AND functions, folks!!**





# **CWA §404 REGULATION**

**According to §404 of the Clean Water Act:**

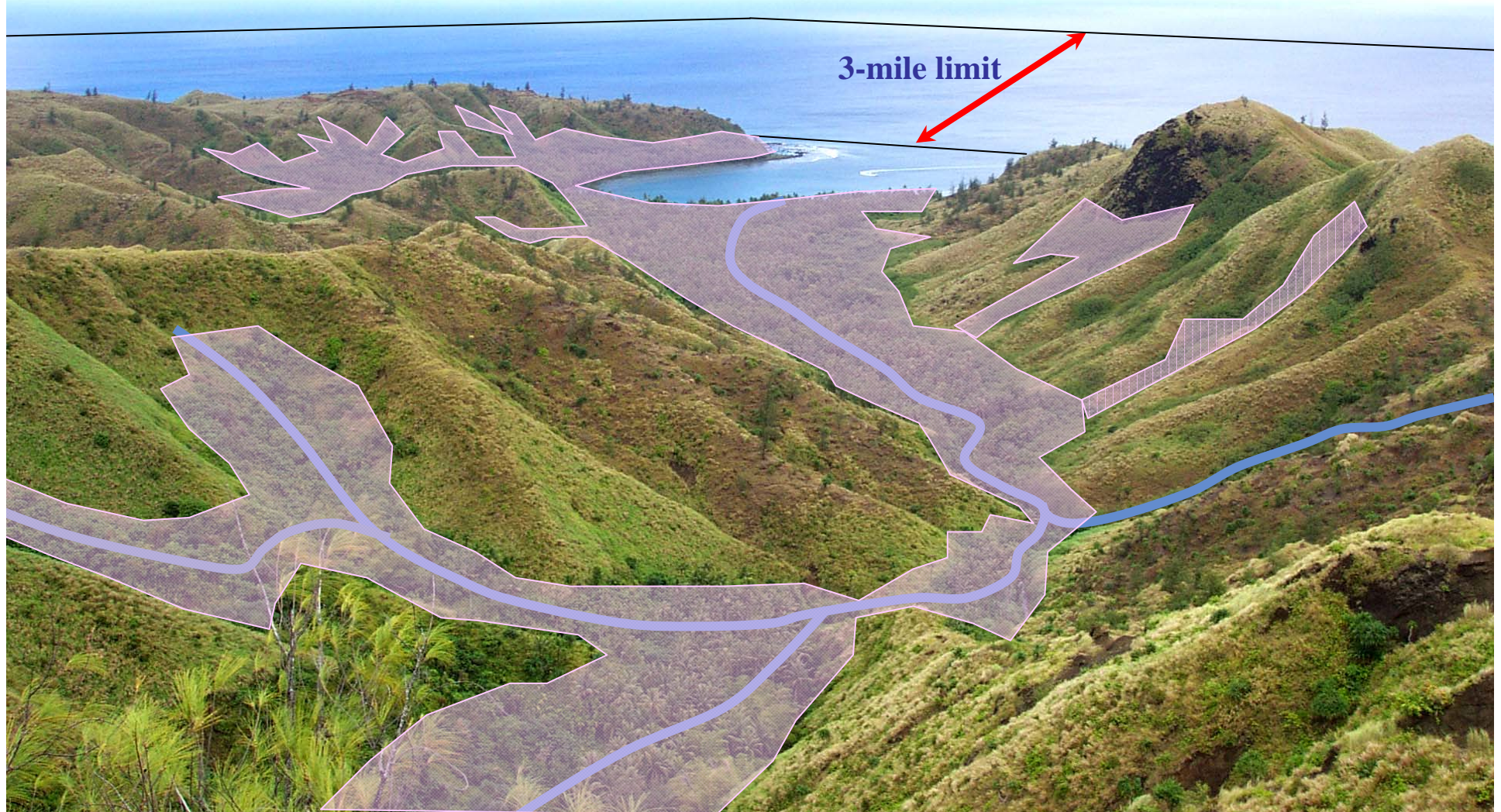
**Activities that result in a point-source discharge of dredged or fill material into areas considered "waters of the United States," including wetlands, must receive prior authorization via a Department of the Army permit, unless exempt [404(f)].**

# **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**



<b>The Territorial Sea</b>	<b>tributaries</b>	<b>e</b>
<b>to navigable waters</b>		





**The Army Corps of Engineers is the permitting authority.**

**EPA and the Corps jointly manage various aspects of the 404 program.**

**Contact your local Corps district office first with project-specific questions. EPA Region IX works with U.S. Army Corps of Engineers Districts: San Francisco, Sacramento, and Los Angeles.**



# The Corps of Engineers Responsibilities



- **Permit issuance**
- **National Environmental Policy Act (NEPA)**
- **Endangered Species Act (ESA)**
- **Enforcement (especially permit conditions)**

# **EPA's §404 Responsibilities**



- **Permit review**
- **404 (b)(1) guidelines**
- **Veto**
- **Exempted activities**
- **Elevation to Corps/EPA HQ if disagreements in permit process**
- **Enforcement (especially unpermitted discharges)**



# What Kind of 404 Permits are There?

- **Nationwide permits**
  - Cover 50 categories of common projects that have little cumulative impact (minor fills and discharges)
- **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 required

**\*As you move down the list, expect increasing levels of regulatory requirements, analysis, and time!**



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**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**



# NATIONAL MITIGATION GOALS

Why we need to compensate for impacts

- **Short-term**
  - No overall net loss of wetland resources (acreage and function)
- **Long-term**
  - 50% Net gain in wetland resources

# Final Mitigation Rule

- **Mitigation standards**
- **Developing mitigation plans**
- **Reporting and long-term monitoring**

Final Rule posted on the Corps HQ

Website:

<http://www.usace.army.mil/cw/cecwo/reg/>