

U.S. ARMY CORPS OF ENGINEERS: REGULATORY PROCESS FOR DREDGING

Presented By:
Theresa Stevens, Ph.D.
Senior Project Manager
U.S. Army Corps of Engineers
Los Angeles District
Regulatory Division

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USACE STATUTORY AUTHORITIES

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- Rivers and Harbors Act 1899 § 10 (33 U.S.C. 403): codified federal authority over navigation and interstate commerce under the Commerce Clause (case law dates to 1824). Administered by U.S. Army Corps of Engineers (USACE).
- Clean Water Act 1972 § 404 (33 U.S.C. 1344): codified federal authority over discharges of dredged or fill material to waters of the United States. Administered by USACE with oversight by U.S. Environmental Protection Agency (EPA).
- Marine Protection, Research and Sanctuaries Act 1972 § 103 (33 U.S.C. 1413): codified federal authority over intentional ocean disposal of material. Administered by EPA and USACE.



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USACE IMPLEMENTING REGULATIONS



- 33 CFR § 320-332 (USACE Regulatory Program)
- 40 CFR § 230 (EPAs' Section 404(b)(1) Guidelines)
- 40 CFR § 227-228 (EPAs' ocean disposal regulations)



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RELATED LAWS & REGULATIONS

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- 36 CFR § 800 (National Historic Preservation Act)*
- 50 CFR § 402 (Endangered Species Act)*
- 50 CFR § 600 (Magnuson-Stevens Fishery Conservation and Management Act)*
- Clean Water Act § 401 and § 402
- Clean Air Act
- Coastal Zone Management Act
- Fish and Wildlife Coordination Act*
- Marine Mammal Protection Act

* - indicates consultation or coordination required during permit review process.



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WATERS OF THE UNITED STATES: DEFINITIONS

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33 CFR § 328.3(a)

All waters which are currently used, or were used in the past, or maybe susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide (§ 404)

33 CFR § 329.4

Navigable waters of the United States are those waters that are 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. A determination of navigability, once made, applies laterally over the entire surface of the water body, and is not extinguished by later actions or events which impede or destroy navigable capacity (§ 10)



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USACE LIMITS OF JURISDICTION ON THE SHORE

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- Clean Water Act (discharges of dredged or fill material): high tide line elevation (not including storm surge) (HTL)
- Rivers and Harbors Act (work and/or structures): mean high water elevation (MHW)

An appropriate datum and these elevations (HTL and MHW) should be identified clearly on all plan view, profile, and cross section drawings



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RIVERS AND HARBORS ACT § 10

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- § 10 - Gives USACE authority to regulate structures (docks, bulkheads, piles, wharves, cranes, revetments, etc.) and work (dredging, work from a barge) affecting the course, location, condition or capacity of navigable waters of the United States below MHW.
- Based on the definition of navigable waters of the U.S., navigable waters of the U.S. below MHW are jurisdictional by statute.



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RIVERS AND HARBORS ACT § 408

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- Applies to federally funded/USACE property and facilities (i.e., federal breakwaters, federal navigation channels).
- Requires USACE engineering division review and approval prior to issuance of a Regulatory permit.
- When both a 408 approval and a Regulatory permit are required, the process is integrated to the maximum extent possible. No Regulatory permit is issued in advance of 408 approval.
- Submit inquiries to the email link on the website below if there are questions about 408 permits and process.

<https://www.spl.usace.army.mil/Missions/Permitting/>



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CLEAN WATER ACT § 404

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- Purpose – to restore and maintain the chemical, physical, and biological integrity of waters of the U.S. through the control of discharges of dredged or fill material.
- § 404 jurisdiction is determined by the current waters of the U.S. definitions (2023 final rule), or via “approved” or “preliminary” jurisdictional determinations.
- Based on the definitions, waters of the U.S. below HTL are jurisdictional by statute.
- Permits authorized under § 404 must compliance with the 404(b)(1) Guidelines.



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MARINE PROTECTION, RESEARCH AND SANCTUARIES ACT § 103



- Gives USACE authority to regulate transport of dredged material for the purpose of ocean disposal.
- Ocean disposal occurs at EPA-approved disposal sites (i.e., LA 2, LA 3, LA 5).
- Requires EPA concurrence, EPA site use conditions, and a USACE permit.



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§ 10, 404 & 103



- § 10 applies to all dredging operations (the dredge, barges, other support vessels).
- § 404 applies when dredged material is placed from the HTL to three nautical miles offshore.
- § 103 applies when dredged material is transported for the purpose of ocean disposal at LA-2, LA-3, LA-5.



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SOUTHERN CALIFORNIA-DREDGED MATERIAL MANAGEMENT TEAM (SC-DMMT)

History:

- In place since approximately August 2008;
- Modeled after San Francisco Dredged Materials Management Office (DMMO);
- Coordination principles & procedures in place since 2010, updated in 2025.

Rationale:

- Permitting for dredging and disposal is often lengthy and complex, involving several federal and state agencies;
- Increased coordination among agencies decreases redundancy and increases efficiency.

Objective:

- Establish interagency team to complete coordinated review of dredging/disposal projects and dredging policy issues within the Los Angeles District area of responsibility on the coast (San Diego, Orange, Los Angeles, Ventura, Santa Barbara, and San Luis Obispo counties).



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SC-DMMT PARTICIPANTS

Core Member Agencies (have permitting authority over dredging and disposal projects):

- Corps (Civil Works and Regulatory)
- EPA
- California Coastal Commission
- RWQCB (Central Coast, LA, Santa Ana, and San Diego Regions)

---Other regulatory agencies are invited (CDFW, FWS, NMFS)

Non-member Involvement:

- Participation in SC-DMMT meetings limited to agencies, applicants and applicant representatives
- SC-DMMT meetings are not currently open to public.



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SC-DMMT SCOPE

Projects typically reviewed:

- Federal/Corps navigation dredging projects.
- Non-federal dredging projects processed by the Corps Regulatory Division.

Scope of Review:

- Technical issues associated with dredging projects.
- Compliance with Inland Testing Manual and/or Ocean Testing Manual.
- Sediment sampling and analysis plans, sediment test results based on approved plans, and suitability determinations to determine disposal site.
- Policy issues associated with dredging projects, evaluation criteria, disposal suitability determinations, and beneficial reuse.

Frequency of Meetings:

- SC-DMMT meets on the fourth Wednesday of each month between January and October (November and December meeting is combined)



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SC-DMMT AUTHORITY

- It is understood an individual agency's permit decisions will be consistent with positions expressed by that particular agency, as reflected in the final SC-DMMT meeting notes.
- Agency permit decisions and project review for NEPA/CEQA compliance are not restricted by SC-DMMT decisions.
- SC-DMMT has no permit authority, but SC-DMMT decisions inform permit conditions.



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HOW DO I START THE SC-DMMT PROCESS?

The USACE usually starts the review process with receipt of a signed permit application.

- Recommend submitting a permit application form to create a file number (i.e., Engineering Form #4345). **PLEASE submit using RRS (online application portal).**
- **Use** the USEPA / USACE joint guidance to prepare the sampling analysis plan (SAP) and post testing report (SAR) (Guidance dated, 2021). This guidance will direct your sediment testing toward the Inland Testing Manual or the Ocean Testing Manual.
- Your Corps Regulatory Division PM will work with you to put your item on the monthly agenda.
- SAP/R document review occurs in advance of the monthly SC-DMMT meeting and is completed by SC-DMMT agency staff.



BASIC CONTENTS OF A SAP



The USACE/EPA Guidance (2021) provides detailed instructions for SAP contents.

Generally SAPs must include:

- A dredging project description including the need for the dredging.
- A proposed disposal site.
- A plan and map showing all locations of sediment cores.
- A description of sediment core depth, Z-layer.
- A description of compositing cores.
- A description of the analytes to be tested.
- A description of the grain size test to be completed.
- Identification of the qualified laboratory that will complete the grain size and chemical tests, and bioassay tests (if required).

****This is not an exhaustive list of items required for the SAP-consult the 2021 Guidance as you prepare your SAP****



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CONTENTS OF A SAP REPORT

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The USACE/EPA Guidance (2021) provides detailed instructions for SAP Report contents.

Generally SAP Reports must include:

- A detailed summary of the grain size test results with grain size curve exhibits.
- A detailed summary of the chemical test results for composited cores and Z-layer, compared against standard detection limits, hazardous waste criteria/thresholds, ERL and ERM levels.
- A detailed summary of the bioassay test results (if required).
- A discussion of sample collection and/or lab testing problems that may have arose and/or affected the tests.
- A chain of custody document.
- A statement of suitability for the proposed disposal site, based on all test results.

****NOTE: sediment test results are usually only valid for a 3 year period****

****This is not an exhaustive list of items required for the SAP Report-consult the 2021 Guidance as you prepare your SAP Report****



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USACE PERMITTING FOLLOWING SC-DMMT REVIEW

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- If the USACE is processing a permit for your application, all sediment testing has been completed, and a disposal site identified and approved by the SC-DMMT, the Corps will complete the permit process.
- If dredging and disposal would take place in state waters, the State waterboard must issue a section 401 water quality certification prior to permit issuance.
- Similarly, the California Coastal Commission must issue a Coastal Development Permit or otherwise certify the project is compliant with the Federal Coastal Zone Management Act, prior to initiation of dredging.
- If disposal would take place at an EPA-approved ocean disposal site (LA-2, LA-3 or LA-5), the Corps must obtain EPA's concurrence for disposal, and a copy of the EPA site use conditions. EPA's conditions are required, and enforceable by the EPA and USACE permit.



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CAN THE USACE DENY MY PERMIT?

- Yes
- Denial may result if the project does not comply with the § 404(b)(1) Guidelines, would cause significant degradation of aquatic resources, or is determined to not be in the public interest.
- Under § 10, denial is based on the Corps public interest review and determination.
- Permit denial can be appealed (33 CFR 331).
- EPA can veto/override a USACE § 404 permit decision under its § 404(c) authority (i.e., EPA can deny your permit after USACE issues). EPA can deny § 103 concurrence.
- EPA has no authority to veto/override a § 10 permit.
- State waterboards have no authority to deny ocean disposal at an EPA-approved disposal site.



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QUESTIONS??

