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

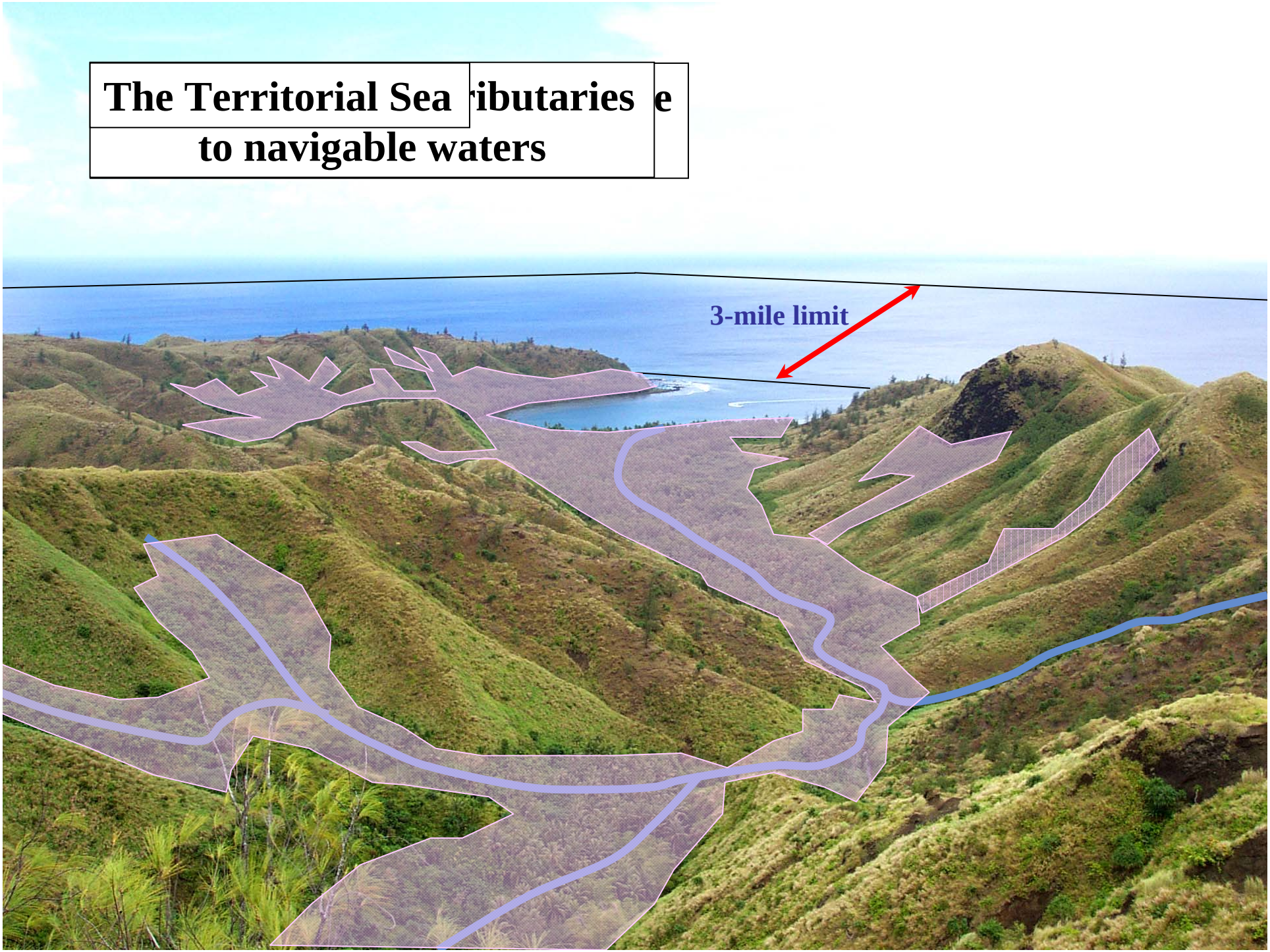
According to §404 of the Clean Water Act:

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

The Territorial Sea ributaries e to navigable waters



The Army Corps of Engineers is the permitting authority.

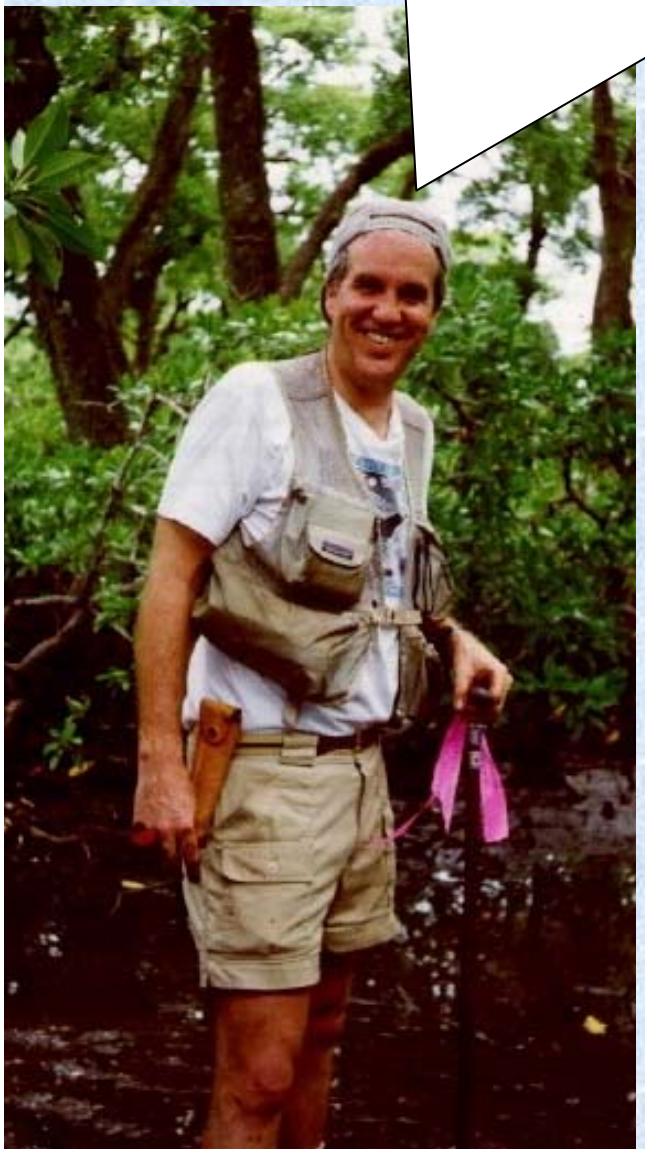
EPA and the Corps jointly manage various aspects of the 404 program.

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 <u>404 (b)(1) Guidelines</u> (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 <u>and</u> 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/