US Army Corps of Engineers and Stream Restoration Permitting

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Presentation Overview

- Corps Regulatory Authorities
- Types of Permits
- Restoration Project Permitting
- Recommendations & Current Efforts

Regulatory Permit Sections

U.S. Army Corps of Engineers - Baltimore District

Authorities

- Section 10 of the Rivers and Harbors Act of 1899
  - Dredging activities, construction of structures, aerial or subaqueous utility lines, etc. in or over *navigable waters of the U.S.*

Authorities

- Section 404 of the Clean Water Act
  - Regulates discharge of dredged or fill material into *all waters of the U.S.,* including jurisdictional wetlands
  - Goal of the Clean Water Act: to *restore* and maintain the physical, chemical, and biological integrity of the nation's waters

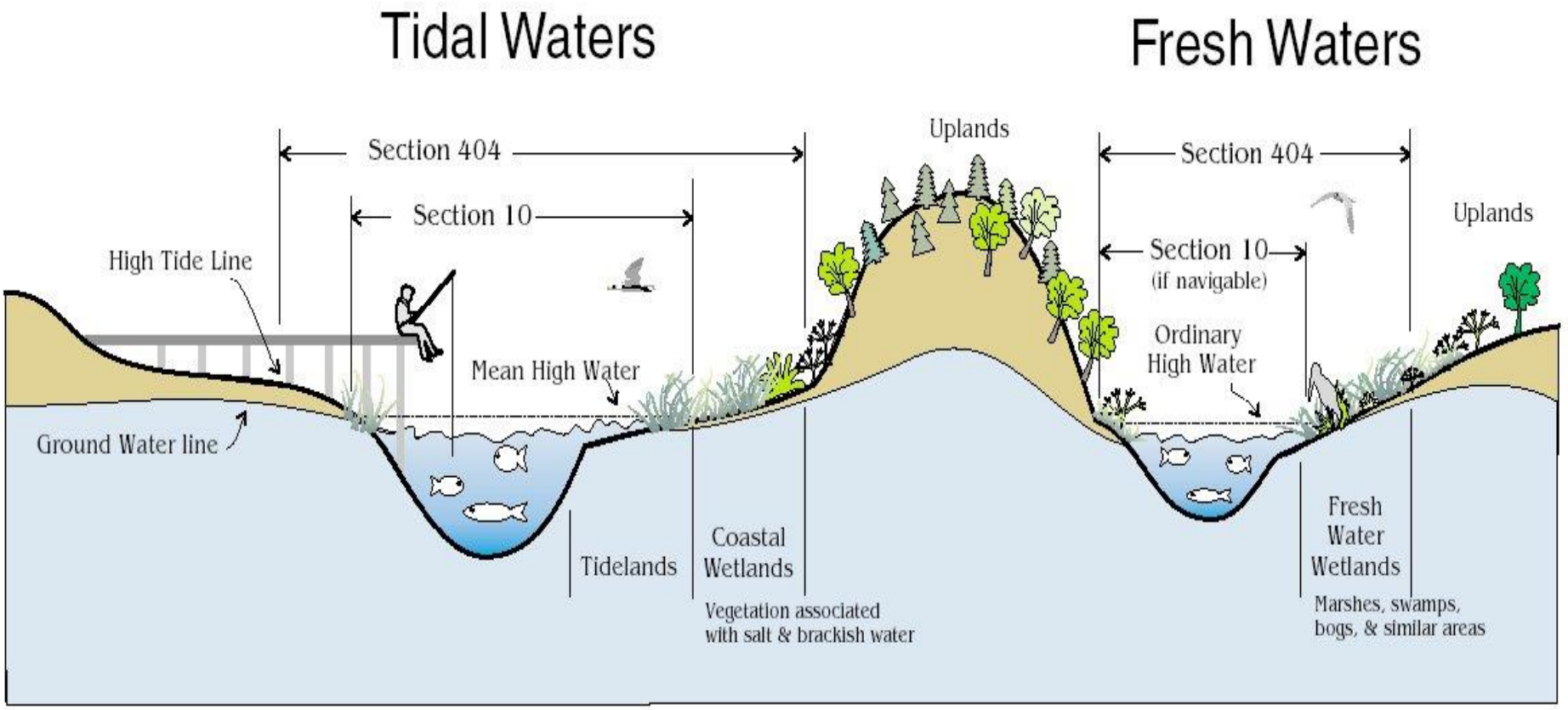
Clean Water Act Section 404

- Permit required from the Corps to discharge dredged or fill material into waters of the US
- Stream restoration, TMDL, or SWM projects in *perennial, intermittent, and ephemeral streams, and jurisdictional wetlands:* DA permit required
- Corps level of involvement in project review is commensurate with the degree of impact

Clean Water Act Section 404

- *Alternatives analysis* is the centerpiece of the 404 review
- Identify the *practicable* alternative which has the least adverse impact on the aquatic ecosystem (e.g., wetland/waters)
- *Practicable* means available and capable of being done taking into consideration cost, existing technology, and logistics in light of overall project purposes

CORPS OF ENGINEERS REGULATORY JURISDICTION



	Section 103 Ocean Discharge of Dredged Material	**Section 404** Disposal of Dredged or Fill Material (all waters of the U.S.)	**Section 10** All Structures and Work (navigable waters)
Typical examples of regulated activities	Ocean discharges of dredged material	All filling activities, utility lines, outfall structures, road crossings, beach nourishment, riprap, jetties, some excavation activities, etc.	Dreding, marinas, piers, wharves, floats, intake / outtake pipes, pilings, bulkheads, ramps, fills, overhead transmission lines, etc.

Types of Department of Army (DA) Permits

- **Individual/Standard Permit (IP)**

- **General Permit**
  - **State Programmatic General Permit for Maryland (MDSPGP-4)**
  - **State Programmatic General Permit Pennsylvania (PASPGP-4)**
  - **Nationwide Permits (NWPs)**

Types of DA Permits: Individual Permits

- **Individual Permit (IP)**
  - Large/complex projects exceeding thresholds and conditions of nationwide and general permits
  - Potential for more than minimal impacts
  - Public notice to interested parties, general public, adjacent property owners, agencies
  - Clean Water Act Section 404(b)(1) Guidelines analysis
  - Practicability of on- and off-site alternatives
  - Corps public interest review
  - Corps compliance with NEPA analysis (typically an EA) and Section 401/Water Quality Certification

Types of DA Permits: MDSPGP-4

- **Maryland State Programmatic General Permit-4 (MDSPGP-4)**
  - For Maryland, Federal authorization and expedited permitting for activities with minimal impacts; on-site minimization of impacts
  - NEPA and Section 401 compliance are completed at the beginning of the MDSPGP-4 five year authorization period
  - Most activities are limited to ½ acre and/or 2,000 linear feet of streams and other waters of the U.S. (total of all temporary/permanent impacts)
  - Category A: generally non-reporting to the Corps
  - Category B: reporting to the Corps; coordination w/ resource agencies

Types of DA Permits: Nationwide Permits

- Nationwide Permits
  - Federal authorization on a nationwide basis for commonly recurring activities that have minimal individual, and cumulative adverse impacts to the environment.
  - Many NWPs suspended in Maryland and Pennsylvania since duplicated by the MDSPGP-4 & PASPGP-4; some NWPs retained (e.g., NWP 27)
  - Baltimore District has applied some regional conditions

NWP 27-Aquatic Habitat Restoration, Establishment, & Enhancement Activities

- No acreage limit, but the terms limit the types of activities authorized

- Activities must result in *net increase in aquatic resource functions and services*

- Applicant must demonstrate/document in the permit application and supporting information how the terms and conditions of the NWP are met, including how the project will achieve a net increase in aquatic resource functions and services over the existing conditions

NWP 27-Aquatic Habitat Restoration, Establishment, & Enhancement Activities

- Pre-Construction Notification (PCN) required for *all NWP 27 activities* in the Baltimore District

- Does not *authorize conversion of a stream or wetlands to another aquatic habitat type,* stream channelization, or the relocation or conversion of tidal waters, including tidal wetlands to other aquatic uses (e.g., conversion of tidal wetlands into open water impoundments)

NWP 27 Conversion

- ***Except for the relocation of non-tidal waters on the project site, NWP 27 does not authorize the conversion of a stream or natural wetlands to another aquatic habitat type (e.g., stream to wetland or vice versa) or uplands.*** Changes in wetland plant communities that occur when wetland hydrology is more fully restored during wetland rehabilitation activities are not considered a conversion to another aquatic habitat type.

Loss of Aquatic Resource

- For purposes of determining NWP eligibility for a project, the “loss of waters of the U.S.” results from the permanent adverse effects of filling, flooding, excavation, or drainage caused by the regulated activity. These discharges change an aquatic area to dry (up)land, increase the bottom elevation of a waterbody, or change the use of a waterbody.

- The loss of stream bed includes the linear feet of stream bed that is filled or excavated.

- Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States.

Restoration Projects: What is Causing Delay?

- Inadequate/Incomplete Applications
- Types of Activities Proposed

Permit Application Information

- Complete the Joint Federal/State permit application: applicant name, sponsor, location, address, waterway (signed!)
- Detailed project description including Project Goal(s) and Objectives(s)
- Wetland/stream delineation
- Complete set of plans
- Quantify impacts (temporary and permanent)
- Alternatives analysis (simple vs. rigorous)

Permit Application Information

- Photographs (on-site and aerial)
- Functional Assessment/Baseline site conditions: narrative or report
- Description/documentation for net increases in aquatic resources functions and services
- Maintenance plan
- Monitoring plan
- Commitment to submit as-built drawings

Types of Activity Proposed

- New approaches
- Site Selection
- Unresolved resource agency concerns
- No net increase in aquatic resource functions and services
- Conversion of aquatic resources
- In-stream stormwater management
- In-stream impoundments and dams
- Blocking aquatic organism/fish passage
- Loss/conversion of high quality aquatic resources

Recommendations

- If practicable, move as far upstream in the watershed and avoid impacts to waters of the U.S.
- Focus site selection on degraded systems, not on relatively stable streams with (mature) forested floodplains and adjacent wetlands
- Utilize existing resources
  - NWP 27 checklist http://www.nab.usace.army.mil/Portals/63/docs/Regulatory/Pubs/NWP%2027%20checklist%20rev_21%20Mar%202013.pdf

Recommendations

- Document evaluation/analysis associated with site selection, project goals/objects and project design.

- Invite the permitting (and resource) agencies participation early through the Pre-application process (e.g., during site selection)

Pre-Application Consultation

- Expedites the permit process
- Cost and time savings to applicants
- Time well spent by applicants and agencies

Pre-Application Consultation

- Agencies meet with the applicant *in advance of a permit application*
- Agencies offer input at the *planning stages* of a project (field/office meeting): site selection & alternatives
- We can provide guidance and a preliminary signal regarding the permittability of a project

Pre-Application Consultation

- Contact the Corps and/or state to schedule a pre-application meeting (both regulatory agencies should be present)
- MDE/DEP pre-application form
- Background information: location, waterway, delineation, impacts, baseline data on resource, proposed improvements, concept plans

Pre-Application Consultation

- Monthly Interagency Joint Evaluation (JE) Meetings in Annapolis, Maryland – last Wednesday of the month
- Federal/State agencies participate in JE
- Great venue for pre-application with all the resource agencies

Current Efforts

- Public Outreach through conferences and workshops
- Corps is supportive of function based assessments
- Establish an internal “Stream” Group to focus on our restoration permit process and handle new applications
- NWP 27 Checklist of application requirements.

Current Efforts

- On-going pre-application consultation with Anne Arundel County and MD SHA
- Corps is working with the EPA Chesapeake Bay Program and EPA Region III Regulatory to explore options for addressing concerns and improving the permit process
- Preparing a draft TMDL Regional General Permit for public comment (later this month) – June 19, 2014 DA Public Hearing

Additional Information

- Visit the US Army Corps of Engineers - Baltimore District Regulatory web site at:

  www.nab.usace.army.mil/Regulatory/


Thank You