



Regulatory Division

U.S. Army Corps of Engineers



ALASKA DISTRICT



Regulatory Division

U.S. Army Corps of Engineers

MISSION STATEMENT

Our mission is to serve the public interest in Alaska, providing responsive, quality service by balancing protection and reasonable use of aquatic resources through professional administration of the Regulatory Program.

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Visit us at any of our
locations, or on the Web:
www.poa.usace.army.mil/reg/



The understanding and support of Alaskans is vital to the success of the program. We must work together to protect Alaska's water resources, ensuring their use and enjoyment for future generations, while enabling responsible development.



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Working together

Every year, Alaskans begin work on numerous construction projects that could potentially impact the state's rivers, streams, wetlands and other aquatic resources. Many of these projects have tremendous value for individuals, communities and the economy.

Through the Regulatory Program, the U.S. Army Corps of Engineers ensures that environmental impacts on aquatic resources from these projects are avoided, minimized and mitigated. The Corps is dedicated to protecting Alaska's waters while allowing reasonable and necessary development to move forward. The Corps asks for your help in spreading the word to others about the permit requirements outlined here and solicits your views on better ways of attaining the goals of this program.

Your comments, questions and suggestions can be sent to your local Regulatory Office.



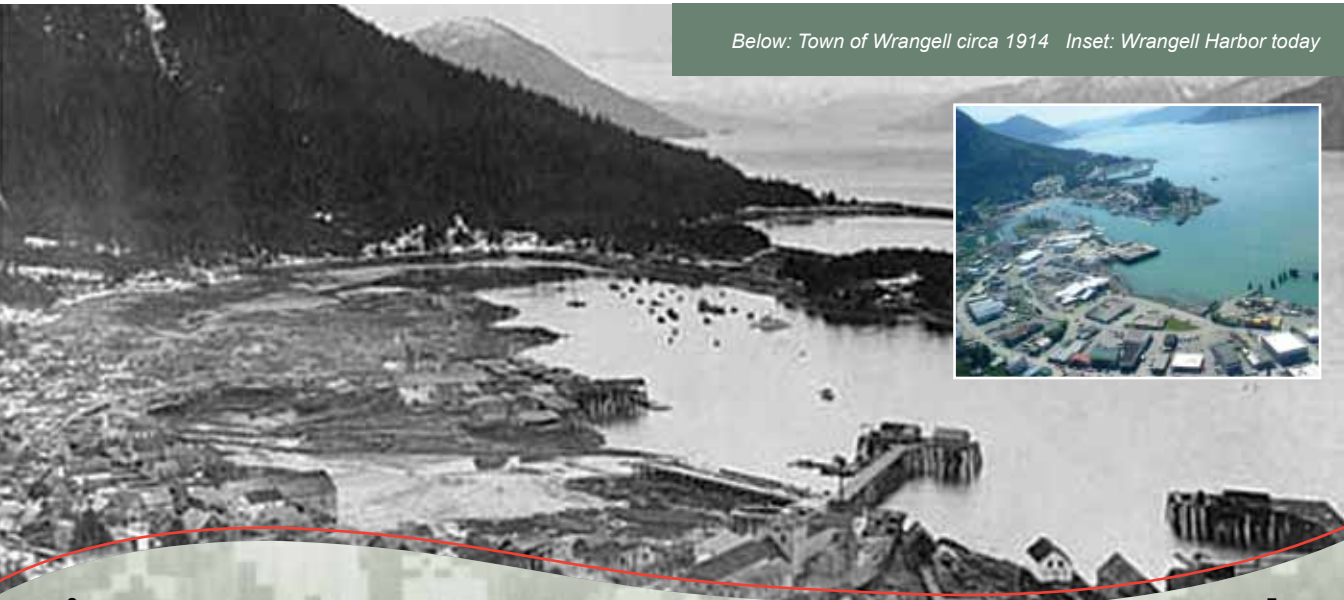


U.S. ARMY CORPS OF ENGINEERS REGULATORY PROGRAM

The Department of the Army Regulatory Program is one of the oldest programs in the federal government. Initially, the Regulatory Division (RD) served a fairly simple, straightforward purpose: to protect and maintain the navigable capacity of the nation's waters, under Section 10 of the Rivers and Harbors Act. In 1972, the Clean Water Act was signed into law, and the

Department of the Army was directed to administer Section 404 of the Act, which regulates the discharge of dredged and/or fill material in waters of the United States. In 1977, the Corps of Engineers' jurisdiction was increased to include wetlands as part of the waters of the U.S.

Below: Town of Wrangell circa 1914 Inset: Wrangell Harbor today





WHAT IS A WETLAND?

The Corps of Engineers and the Environmental Protection Agency (EPA) define wetlands as “areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”

Wetlands generally include swamps, marshes, bogs and similar areas. Some wetlands, such as swamps or marshes, are often obvious, but some wetlands are not easily recognized because they are dry during part of the year or don't appear to be very wet.



Wetlands serve important functions relating to fish, wildlife and people. These include food chain production and habitat for nesting, spawning, rearing and resting sites for aquatic and land species. Wetlands also protect uplands from erosion, provide storage for storm and floodwaters, and perform natural water filtration and purification functions.





How does the Corps determine if an area is a wetland?

Determining whether an area is a wetland under the Corps' authority is an important step. Certain activities in Corps-regulated wetlands and other waters require a permit, which the Regulatory Division realizes adds time and paperwork to projects. Consequently, a scientific process is followed to make wetland determinations. Only if an area exhibits positive criteria for wetland plants, soils and hydrology, is it determined to be a wetland under the Regulatory Program.

A site visit is the most accurate way to determine if an area is a wetland, but the Corps can also utilize additional resources, including existing:

- Soil maps
- Wetland mapping
- Photos provided by applicants, aerial photos, and previous site visits



Links and Resources

National Wetlands Inventory maps produced by the U.S. Fish and Wildlife Service are available at www.fws.gov/wetlands/.

Soil surveys from the Natural Resources Conservation Service can be accessed at www.websoilsurvey.nrcs.usda.gov/app/.



Building activities that may require permits include (but are not limited to):

- Placement of fill material
- Ditching activities when the excavated material is sidecast
- Levee and dike construction
- Mechanized land clearing
- Land leveling
- Most road construction
- Dam construction
- Mining activities
- Suction dredging
- Structures in navigable waters



What types of work require a permit?

Section 10

Section 10 of the Rivers and Harbors Act of 1899 requires approval prior to the accomplishment of any work in, over, or under navigable waters of the United States, or which affects the course, location, condition or capacity of such waters.

Typical activities requiring authorization under Section 10 include:

- Construction of piers, wharves, breakwaters, jetties, weirs, marinas, ramps, floats, intake structures, and cable or pipeline crossings
- Work such as dredging or disposal of dredged material
- Excavation, filling or other modifications to navigable waters of the U.S.

*Corps of Engineers
Regulatory Jurisdiction*

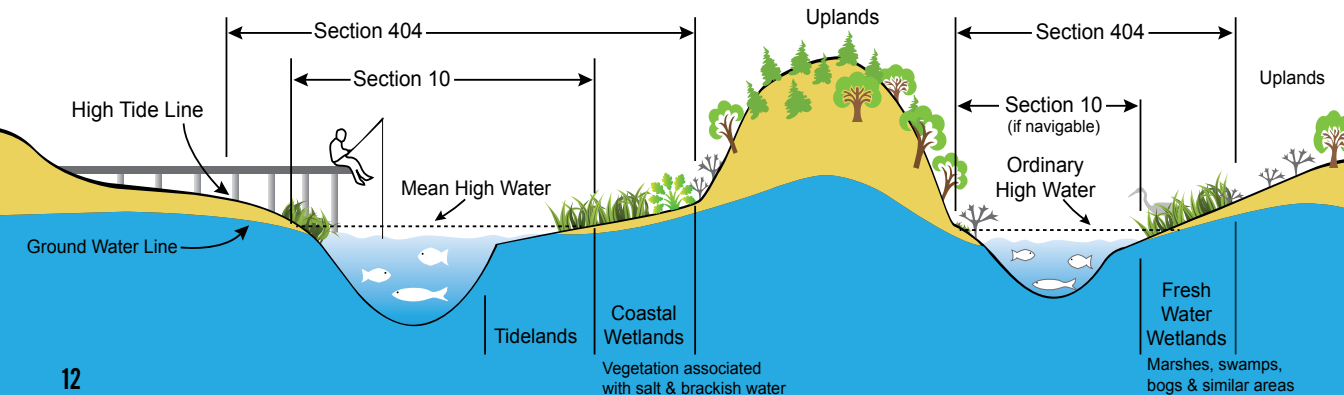
Section 404

Section 404 of the Clean Water Act requires permit authorization to discharge dredged or fill material into the waters of the United States, including wetlands.

Typical activities requiring authorization under Section 404 include:

- Discharging fill or dredged material in waters of the U.S., including wetlands
- Site development fill for residential, commercial or recreational projects, including mechanized land clearing
- Construction of breakwaters, levees, dams, dikes and weirs
- Placement of riprap and road fills

The permit evaluation process balances the need for development with protection of aquatic resources.





Who should obtain a permit?

Any person, firm or agency (including federal, state and local government) planning to place structures or conduct work in navigable waters of the United States, or discharge (dump, place or deposit) dredged or fill material in waters of the U.S. must first obtain a permit from the Corps of Engineers. Other federal, state and local statutes may require additional permits, licenses, variances or similar authorization.

Types of permits

Individual Permits

Individual Permits are issued following a full public interest review of an individual application for a Department of the Army permit. A public notice (usually 30 days in length) is distributed to all known interested persons. The permit decision is generally based on the outcome of a public interest balancing process, where the benefits of the project are weighed against the detriments. A permit will be granted unless the proposal is found to be contrary to the public interest or fails to comply with the EPA's 404(b)(1) Guidelines. The 404(b)(1) Guidelines allow the Corps to permit only the least environmentally damaging practicable alternative.

Processing time usually takes 90 to 120 days, unless a public hearing is required or an Environmental Impact Statement (EIS) must be prepared.

Letters of Permission

Letters of Permission (LOP) are a type of permit issued through an abbreviated processing procedure, which includes coordination with Federal and state fish and wildlife agencies, as required by the Fish and Wildlife Coordination Act, and a public interest evaluation, but without the publishing of an individual public notice.

Regional General Permits

Regional Permits are issued by the Alaska District Engineer for a general category of activities when the activities are similar in nature and cause minimal environmental impact, both individually and cumulatively. Processing time usually takes 30 to 45 days.

Nationwide Permits

Nationwide Permits (NWP) authorize specific activities in areas under Corps' Regulatory jurisdiction (navigable waterways, wetlands, etc.). These activities are minor in scope and must result in no more than minimal adverse impacts, both individually and cumulatively. Individuals wishing to perform work under a NWP must ensure their project meets all applicable terms and conditions, including the regional conditions specific to Alaska. If the conditions cannot be met, a regional general permit or individual permit will be required. Processing time usually takes 30 to 45 days.

Mitigating aquatic resources impacts from necessary development is the central premise of the Corps of Engineers Regulatory Program.





How do I apply for permits?

Visit www.poa.usace.army.mil/reg/ to access application forms and information on completing them.

Fill out and mail to:

2204 3rd Street
P.O. Box 6898
Elmendorf AFB, Alaska
99506

Or fax to:
(907) 753-5567

For more information,
contact us at:

(907) 753-2712
or
(800) 478-2712.

What happens after I apply?

- Regulatory reviews for completeness.
- Jurisdiction is determined. Not all activities are regulated, and some project sites are not within the Corps' jurisdictional authority.
- If a permit is required, a Regulatory Project Manager will determine what type of permit is appropriate and coordinate with other agencies and the public.
- An environmental assessment is prepared, which aids with permit decision-making.
- The permit is issued if in the public interest and in compliance with the 404(b)(1) Guidelines.
- Regulatory staff may visit the site before, during and/or after construction.



The Corps' Regulatory Program evaluation process results in permit decisions that balance the need for proposed development with protection of the nation's aquatic environment.



Mitigation

On April 10, 2008, the United States Army Corps of Engineers and the EPA published a new rule, entitled “Compensatory Mitigation for Losses of Aquatic Resources; Final Rule.” The rule addresses the sequence for mitigating impacts to aquatic resources that result from work authorized by permit under the Corps’ Regulatory Program.

All steps to avoid and/or minimize impacts to aquatic resources must be taken before proposing compensatory mitigation to offset project impacts. The rule establishes standards and criteria for all types of compensatory mitigation, including mitigation banks.

To offset authorized unavoidable impacts to waters of the U.S., permit applicants are required to describe how they will avoid, minimize and compensate for impacts to waters of the U.S. as follows:

Mitigation Sequence

1) Avoid

Describe how, in your project-planning process, you will avoid impacts to waters of the U.S. to the greatest extent practicable. Examples of avoidance measures include site selection, use of alternate routes, and modification of design configurations.

2) Minimize

Describe how your project design will incorporate measures that minimize unavoidable impacts to waters of the U.S. by limiting discharges of fill to the minimum amount/size necessary to achieve the project purpose.

3) Compensatory Mitigation

Once all efforts to avoid and minimize impacts have occurred, remaining impacts may be offset by compensatory mitigation. Describe how your proposed compensatory mitigation would offset unavoidable impacts to waters of the U.S., or alternatively, why compensatory mitigation is not appropriate or practicable for your project. Compensatory mitigation involves actions taken to offset authorized unavoidable adverse impacts to waters of the U.S., including wetlands, streams and other aquatic resources.

Compensatory mitigation tools include credit purchase from mitigation banks, In-lieu Fee mitigation and permittee-responsible mitigation. Refer to page 20 for more information.



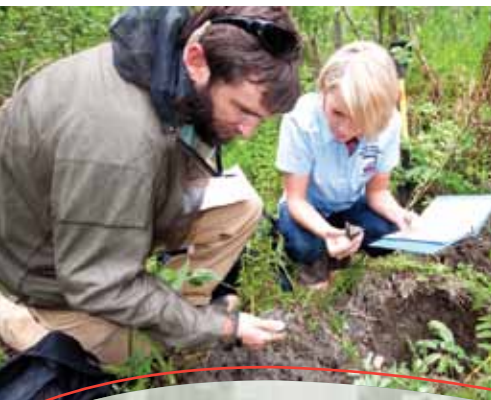


Compensatory Mitigation

A permittee-responsible compensatory mitigation plan should include:

- Objectives
- Site selection criteria
- Site protection instrument
- Baseline information
- Determination of credits
- Mitigation work plan
- Maintenance plan
- Performance standards
- Monitoring requirements
- Long-term management plan
- Adaptive management plan
- Financial Assurances
- Other relevant information

For more on permitting and the permits issued by the Corps, visit our website at www.poa.usace.army.mil/reg/.



What is compensatory mitigation?

For unavoidable impacts, compensatory mitigation is required to replace the loss of wetland, stream and/or other aquatic resource functions. Methods of providing compensatory mitigation include aquatic resource restoration, establishment, enhancement, and in certain circumstances, preservation.



Appeals

The Corps has an administrative appeal process whereby applicants and landowners may appeal denied permits, issued permits that contain requirements that are unacceptable to the applicant, or jurisdictional determinations, which are made by the Alaska District. The request for an appeal of such decisions must be submitted to the Corps within 60 days of the date of the appealable decision. A site visit or an appeal conference or meeting may be conducted during the appeal process. A decision on the merits of the appeal based on the administrative record is normally made in 90 days, by the Pacific Ocean Division office. The Division will either uphold the District decision or remand the case back to the District with direction for reconsideration of the District's initial determination. After re-evaluation the District is to make a final decision. This final decision is not subject to further appeal.

For more on permitting and the permits issued by the Corps, visit our website at www.poa.usace.army.mil/reg/.

The level of evaluation is on par with the level of the environmental impacts, aquatic functions and values involved in a particular area. Impacts to higher ecological value areas will be subject to a more detailed evaluation and a strong focus on avoidance of impacts to the aquatic environment.





Compliance

Once a permit is issued, compliance with all terms and conditions of the permit is required. The Corps may conduct inspections during or after construction to determine if the work is in compliance with the permit. If the Corps determines the work is not in compliance, the permittee may voluntarily bring the violation into compliance, or the Corps may issue a permit modification if appropriate.

In cases where resolution of the violation cannot be reached, the Corps may issue a compliance order. If a permittee fails to comply with the compliance order, the Corps may suspend or revoke the permit and/or initiate administrative penalties up to \$27,500 or take legal action for criminal or civil actions to obtain penalties. Penalties of up to \$50,000 per day and/or imprisonment for up to three years may be imposed for any person who knowingly violates the Clean Water Act.



Enforcement

Performing work in waters of the U.S. without Corps authorization can have serious consequences.

Enforcement is an important part of the Corps' Regulatory program. State and federal agencies, groups and individuals that report suspected violations often aid Corps' surveillance and monitoring activities. The Corps may issue orders requiring corrective action including removal of the unauthorized work and restoration, and/or in certain cases accept an after-the-fact permit application, initiate legal action, or recommend referral to the EPA for administrative, civil, or criminal penalties. The EPA has independent enforcement authority under the Clean Water Act for unauthorized discharges. The Corps works closely with the EPA to coordinate the most effective and efficient resolution of Section 404 Clean Water Act violations.

If you suspect a violation of the Clean Water Act, please contact your local Regulatory Office.

ALASKA DISTRICT

Thank you for your interest in the Regulatory Program. We ask for your help in spreading the word to others about the permit requirements outlined here, and we solicit your views and comments on better ways of attaining the Program goals of restoring and maintaining the physical, chemical and biological integrity of our Nation's waters. Your comments, questions and suggestions can be sent to your local Regulatory Office.

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