

# Dredging/Permitting 101 and the USACE

April 8, 2015

AAPA Port Admin. & Legal Issues Seminar

# Permitting 101 for Ports

- ▶ Regulations
- ▶ Types of Permits
- ▶ Permit Applications





# Permitting Regulations

- » Section 10
- Sections 404 and 401
- Sections 102 and 103

# Section 10 Rivers and Harbors Act of 1899

- ▶ Federal Permitting Nexus
- ▶ USACE permit
- ▶ Applies to any work in, over, or under waters of the United States



# Federal Coordination/Consultation

- ▶ ESA Section 7 – Endangered Species Act –
- ▶ NHPA Section 106 – Historic Preservation
- ▶ Interagency Sediment Management Programs
- ▶ Coastal Zone Management Act of 1972
- ▶ CERCLA Coordination
- ▶ Tribes



Source: FisheryNation.com

# Section 404 Clean Water Act

- ▶ USACE Permit – day-to-day program administration
- ▶ EPA – policy oversight, ultimate veto
- ▶ Applies to discharge of dredge or fill material
- ▶ Not applicable for upland dredged material disposal with no return water
- ▶ Incidental dredging fallback is **NOT** *discharge of dredge material*



# Section 401 Clean Water Act

- ▶ States and authorized tribes
- ▶ Water Quality Certification
- ▶ Work complies with:
  - EPA–approved water quality standards
  - Applicable State or Tribal effluent limitations and water quality standards
- ▶ Standards can vary between states & between state and tribe

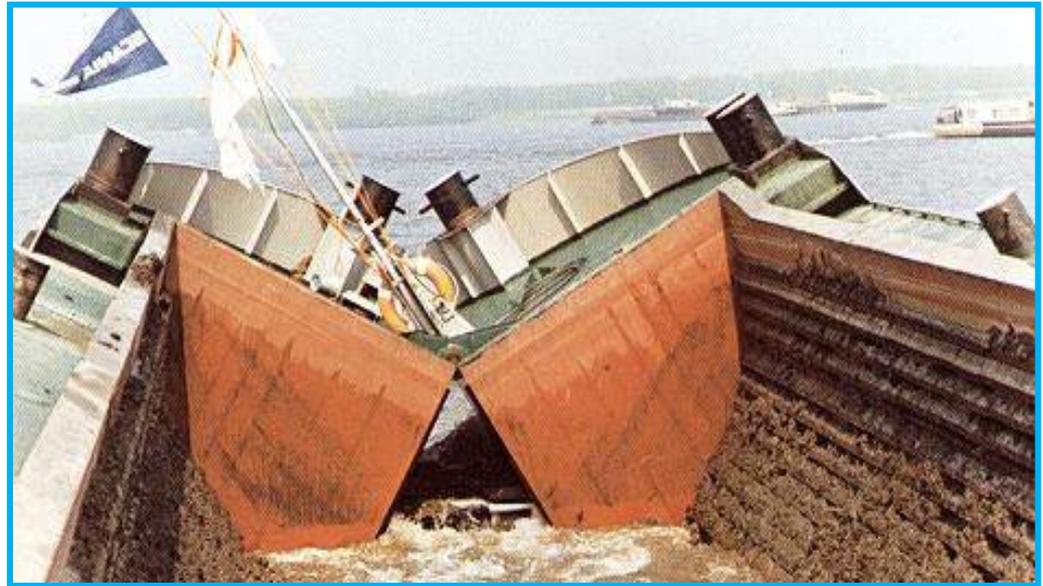
# Sections 102 & 103

Marine Protection, Research and Sanctuaries Act of 1972

- ▶ Applies to Ocean Disposal of “Waste”
- ▶ USACE permit (Section 103: dredged material only)
  - EPA designated or approved site (under Section 102(c))
  - Characterized dredged material complies with regulations
- ▶ EPA permit (Section 102: all “waste” except dredged material)

# Sections 103 MPRSA

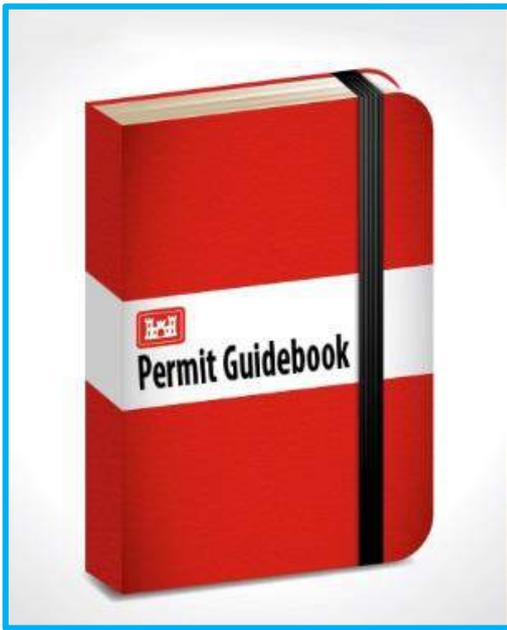
- ▶ Ocean Disposal
- ▶ USACE Permit
  - If no Section 102(c) site available
  - Public Notice
  - Opportunity for Public Hearings
  - Apply criteria for EPA designated site
  - Apply criteria for EPA designated site to location
- ▶ EPA concurs or denies
- ▶ If proposed dumping fail criteria, USACE can request a waiver
  - EPA can grant or deny waiver



Source: IHC Holland

# Other Permits / Approvals

- ▶ State
- ▶ Vary by location
- ▶ SEPA – State equivalent of NEPA
- ▶ State Shoreline Management Act/Statute
- ▶ Hydraulic Permit Approval (Washington State)
- ▶ City Grading Permit
- ▶ Others



# Types of USACE Permits

- » Standard Individual Permits
- Letter of Permission
- Nationwide Permits
- Regional General Permits

# Nationwide Permit (NWP)

- ▶ Issued by USACE on National Basis every 5 years
- ▶ Current version: 2012
- ▶ Streamline USACE authorization of some projects
- ▶ Agency coordination for the NWP conditions has been conducted in most cases
- ▶ Many times completed application is required
- ▶ State permit(s) still required

# Useful NWP

- ▶ NWP 3 – Repair and Maintenance
  - Repair, rehabilitation or replacement of any previously permitted structure or fill
  - Structure or fill currently serviceable
  - Cannot change function/use of structure or fill
- ▶ NWP 6 – Survey Activities & Sampling
  - Sediment sampling and sediment cores



# Useful NWP

- ▶ NWP 16 – Return Water from Upland Contained Disposal Areas
  - Satisfies technical requirement for Section 404 permit
  - Section 401 Certification still required
  - Is not a dredging permit
- ▶ NWP 38 – Cleanup of Hazardous and Toxic Waste
  - Performed, Ordered, or Sponsored by Government Agency with established legal or regulatory authority
  - Court ordered remedial action plans or related settlements
  - Does not authorize the establishment of new disposal sites

# Regional General Permit

- ▶ Issued for a specific geographic area by individual Corps Districts
- ▶ Similar to NWP on regional basis
- ▶ Authorize activities that
  - Are similar in nature
  - Cause only minimal adverse environmental impacts, separately or cumulative

# Standard Individual Permit

- ▶ Activities that do not meet guidelines for NWP or Regional permits
- ▶ Activities that have more than minimal impacts
- ▶ Require project-specific public review
- ▶ 4–6 months to process but complex projects may take longer



# Letter of Permission (LOP)

- ▶ Individual permit issued with abbreviated procedures
- ▶ May apply to Section 10 work in Navigable Waters if work:
  - Is minor
  - Has no significant individual or cumulative environmental impacts
  - Will not encounter appreciable opposition
- ▶ Work subject to Section 404, Section 7 ESA, Section 106 NHPA



# WASHINGTON STATE Joint Aquatic Resources Permit Application (JARPA) Form <sup>1,2</sup>

USE BLACK OR BLUE INK TO ENTER ANSWERS IN THE WHITE SPACES BELOW.



AGENCY USE ONLY

Date received: \_\_\_\_\_

Agency reference #: \_\_\_\_\_

Tax Parcel #(s): \_\_\_\_\_

## Part 1—Project Identification

1. Project Name (A name for your project that you create. Examples: Smith's Dock or Seabrook Lane Development) [\[help\]](#)

## Part 2—Applicant

The person and/or organization responsible for the project. [\[help\]](#)

2a. Name (Last, First, Middle)

# Permit Applications



# Permit Applications

- ▶ Accurately describe the project
- ▶ Accurately reflect equipment capabilities
- ▶ Consider Advance Maintenance
- ▶ Use programmatic maintenance dredging permits

# OVERDEPTH

- ▶ Dredging Overdepth –
  - Anticipated material removed as a result of inherent excavation inaccuracies in the dredging process
  - Contract limit: 1 to 2 feet
  - Permit limit: 2 feet
- ▶ Incidental Overdepth –
  - Material removed as a result of unanticipated variation in substrate, removal of submerged/buried obstructions, wind/wave adversely affect precision
  - Permit limit: determine based on
    - Sediment
    - Equipment
    - Project



ERDC/TN EEDP-04-37

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## **Overdepth Dredging and Characterization Depth Recommendations**

*by John F. Tavolaro, Joseph R. Wilson, Timothy L. Welp,  
James E. Clausner, and Angela Y. Premo*

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- ▶ Describes the accuracy of various dredges under different project conditions
- ▶ Identifies the maximum depth to which material can be reasonably expected to be removed intentionally or otherwise

# Questions

