



US Army Corps
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The U.S. Army Corps of Engineers Regulatory Program - Update



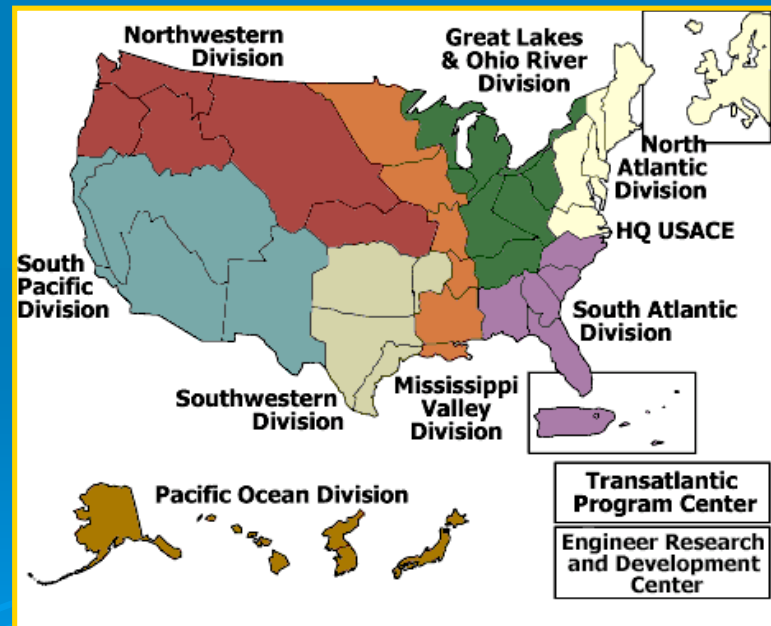


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U. S. Army Corps of Engineers



- Established June 16, 1775
- 35,000 people
- Worldwide organization --- 9 divisions, 41 districts
- Civil Works
- Military Construction
- Support for Others





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Texas Districts

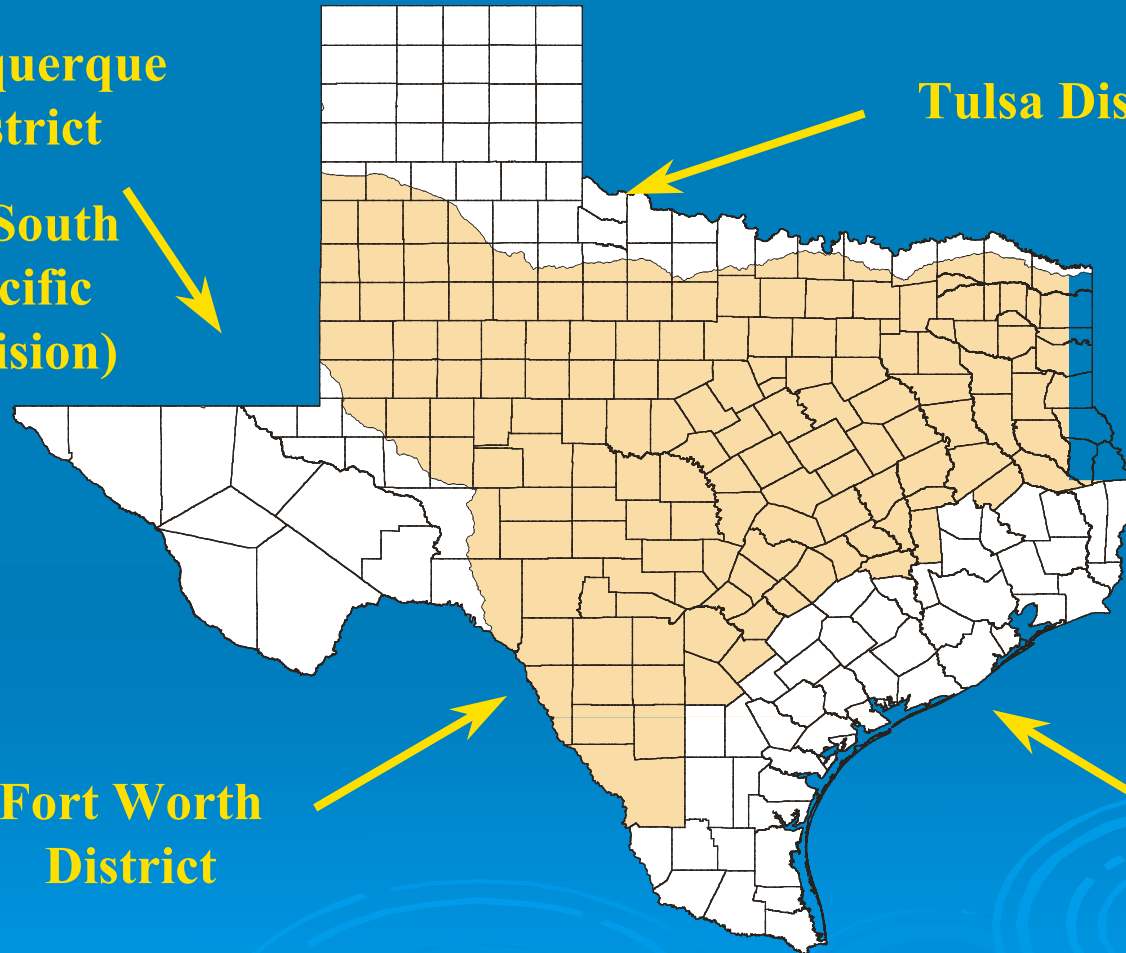
**Albuquerque
District**

**(in South
Pacific
Division)**

Tulsa District

**Fort Worth
District**

**Galveston
District**





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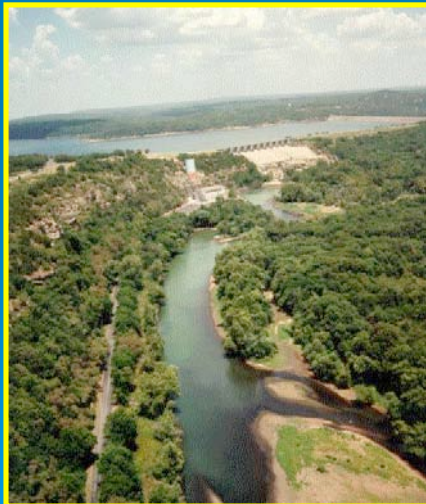
Regulatory Program Goals



**Protect the Nation's overall aquatic
environment**

**Make fair and reasonable decisions
for the regulated public**

**Continually enhance the efficiency
of the program**





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Regulatory Program Authorities

- **Protect Navigation:** Sections 9 and 10 of the Rivers and Harbors Act of 1899
- **Restore and maintain the physical, chemical and biological integrity of the Nation's waters:** Section 404 of the Clean Water Act
- **Protect marine resources associated with ocean disposal of dredged material:** Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972



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Rivers and Harbors Act of 1899



- **Section 10 - Requires permit from the Corps for structures or work in, or affecting, the course, location, or condition of a navigable water of the United States**



Clean Water Act

Section 404- Requires authorization from the U.S. Army Corps of Engineers to discharge dredged or fill material into waters of the United States (rivers, lakes, streams, adjacent wetlands, tidal waters)

(33 CFR Part 323)

Fill Example





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Dredged Material



- Definition at 33 CFR 323.2(c)
- Material that is excavated or dredged from waters of the United States

Fill Material

Any material which is used to replace an aquatic area with dry land or change the bottom contours of a waterbody

The background of the slide is a solid blue color. In the lower right quadrant, there are several faint, concentric white circles that resemble ripples on water, adding a decorative touch to the design.

Fill Material

- **Rock, Sand, Soil, Clay, Plastics (excludes trash or garbage)**
- **Construction debris, wood chips**
- **Overburden from mining or other excavation activities,**
- **May include mechanized land clearing**

Does not include pollutants discharged primarily to dispose of waste (Section 402 of the CWA)

Dredging and Fill Example



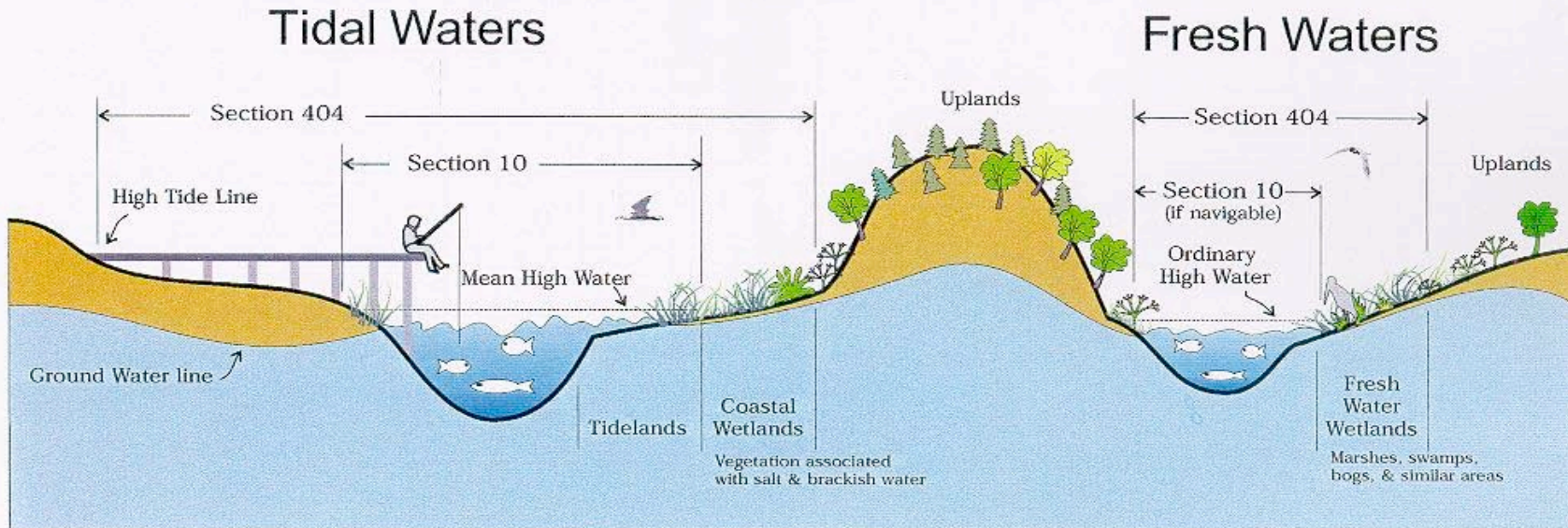


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Geographic Extent of Corps Jurisdiction



CORPS OF ENGINEERS REGULATORY JURISDICTION



Typical examples
of regulated activities

Section 103
Ocean Discharge
of Dredged Material

Ocean discharges of
dredged material

Section 404
Disposal of Dredged or Fill Material
(all waters of the U.S.)

All filling activities, utility lines, outfall structures,
road crossings, beach nourishment, riprap,
jetties, some excavation activities, etc.

Section 10
All Structures and Work

Dredging, marinas, piers, wharves,
floats, intake / outtake pipes,
pilings, bulkheads, ramps, fills,
overhead transmission lines, etc.



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Definition of Waters of the U.S.

- The presence of waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
- The presence of interstate waters including interstate wetlands.
- The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:
 - (i) Which are or could be used for interstate or foreign travelers for recreational or other purposes; or
 - (ii) From which fish and shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (iii) Which are used or could be used for industrial purpose by industries in interstate commerce.



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Definition of Waters of the U.S. cont.



- The presence of impoundments of waters otherwise defined as waters of the United States under the definition.
- The presence of tributaries of waters identified in 33 CFR 328.3(a)(1-4).
- The presence of territorial seas.
- The presence of wetlands adjacent to waters (other than waters that are themselves wetlands) identified in 33 CFR 328.3(a)(1-6).

Definition of Wetlands

Areas inundated and or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions



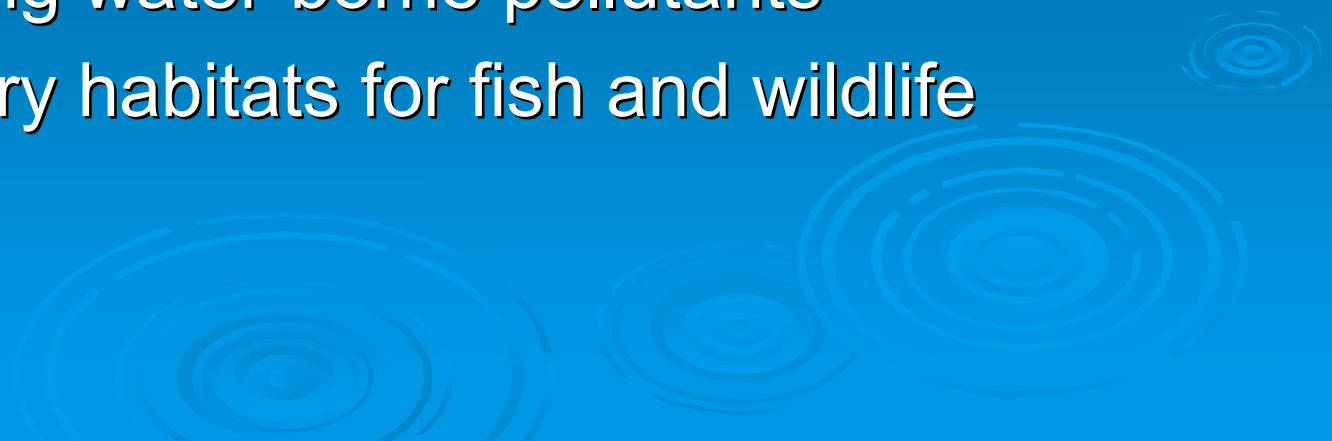
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What Makes A Wetland?

- Hydrology (Water)
- Dominance of Hydrophytic Plants (Plants Adapted for Wet Conditions)
- Hydric (Wet) Soils

Wetland Functions

- Moderating effects of floods by absorbing water
 - Improving water quality
 - Erosion protection
 - Filtering water-borne pollutants
 - Nursery habitats for fish and wildlife
- 





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Evaluation Priorities



- Timely decisions
- Maximize use of lowest form of authorization (RGP, NWP)
- Documentation is concise and minimal
- Ensure scope of analysis is properly defined
- Project Purpose/alternatives are commensurate with project impacts



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Permitting Mechanisms



- **General Permits**
 - **Nationwide**
 - **Regional**
- **Individual Permits**
 - **Letter of permission**
 - **Standard**



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Nationwide Permits (NWP) & Regional General Permits (RGP)



- Authorizes Section 10 and Section 404 actions
- A type of general permit used to authorize specific types of activities
- Minimal impact to aquatic environment
- Expedite permit review process
- Valid for 5 years
 - Verification is only valid for 2 years
- 49 different NWPs
 - 28 general conditions
- 20 different RGPs
- Regional conditions developed by District/State
- Mitigation may be required



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Individual Permit - Letter of Permission

- Authorizes Section 10 Actions ONLY
- For minor work that has no significant individual or cumulative environmental impact and no appreciable opposition
- Abbreviated evaluation procedure
 - Coordination with federal and state fish and wildlife agencies
 - Public interest evaluation, but no public notice



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Individual Permit- Standard Permit

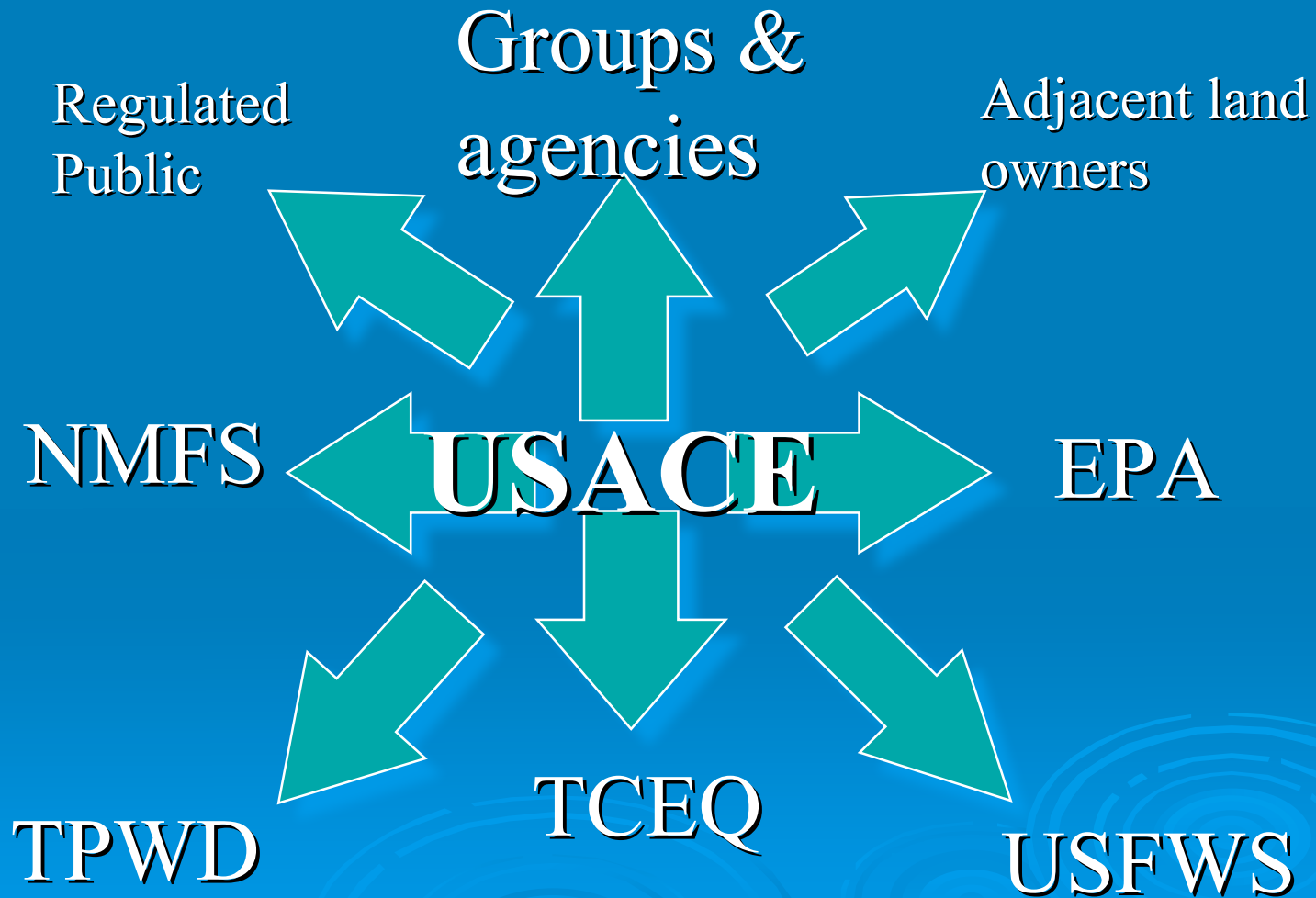


- Authorizes Section 10 and Section 404 Actions
- When an activity cannot be authorized by general permit or LOP, a standard individual permit is required
- Must submit application form (Eng Form 4345) with the following information about the proposed activity:
 - A complete description, including necessary maps drawings, sketches, and plans sufficient for the Corps to issue a public notice
 - Location, purpose, and need
 - Scheduling



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Permit Evaluation Process





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Public Interest Review Factors



- Conservation
- Economics
- Aesthetics
- General Environment
- Wetlands
- Cultural Values
- Fish & Wildlife Values
- Land Use
- Flood Hazards
- Property Ownership
- Flood Plain Values
- Navigation
- Recreation
- Shore Erosion & Accretion
- Water Supply / Water Quality
- Energy Needs
- Safety
- Mineral Needs
- Food & Fiber production
- Needs & Welfare of People

The Mitigation Process



Avoidance, Minimization
THEN Compensation





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Compensatory Mitigation



Types

- **Mitigation Banks**
- **Creation (On-Site & Off-Site)**
- **Preservation**
- **Enhancement/Restoration**
- **In-Lieu Fee**
- **Other**



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REGULATORY HIGHLIGHTS 2007



- Database transition
- New performance measures
- Rapanos guidance on jurisdiction issued
- New RGPs (Lake Livingston, Texas Bays, Pier GP)
- Assisted Galveston Permit Service Center start-up
- Great Plains Region supplement to delineation manual trial phase
- NWP regional conditions developed (Lead District Initiative)
- Mitigation Banks being evaluated
- Riverine Forested HGM Regional Guidebook in development
- Public education seminars required in settlement agreements



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MAJOR PROJECTS



PF 225 Customs & Border Patrol Tactical
Infrastructure

Navigation Projects:

- Freeport Channel Widening
- Matagorda Ship Channel Improvement Project

Energy Projects:

- 2 proposed projects (Port Arthur LNG and Calhoun County LNG)
- 3 proposed project amendments (Sabine Pass LNG, Golden Pass LNG-Sempra, and Freeport LNG)
- Wind Farms
- Nuclear Power Plants



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Delineation Manual Supplement



- Galveston District - Atlantic and Gulf Coastal Plains Supplement
- One-year interim trial period in 2008
- Methods will remain in 1987 Wetland Delineation Manual
- Supplement will cover regional indicators
- Most changes in hydrology and hydric soils
- New data sheets



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Corps/EPA Guidance

- In response to Rapanos decision
- Coordination required with the EPA and Corps HQ on some waters
- JD sheet required for each aquatic resource
- New definitions
 - Traditional Navigable Waters (TNWs)
 - Relatively Permanent Waters (RPWs)



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Corps/EPA Guidance



- **Aquatic resources not coordinated with EPA**
 - Traditional navigable waters (TNWs)
 - Wetlands adjacent to TNWs
 - Relatively permanent waters (RPWs)
 - Wetlands abutting RPWs

- **Aquatic resources coordinated with EPA**
 - Tributaries above RPWs
 - Wetlands adjacent but not abutting RPWs
 - Isolated wetlands



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New Regional General Permits

Three new RGPs were developed in 2007

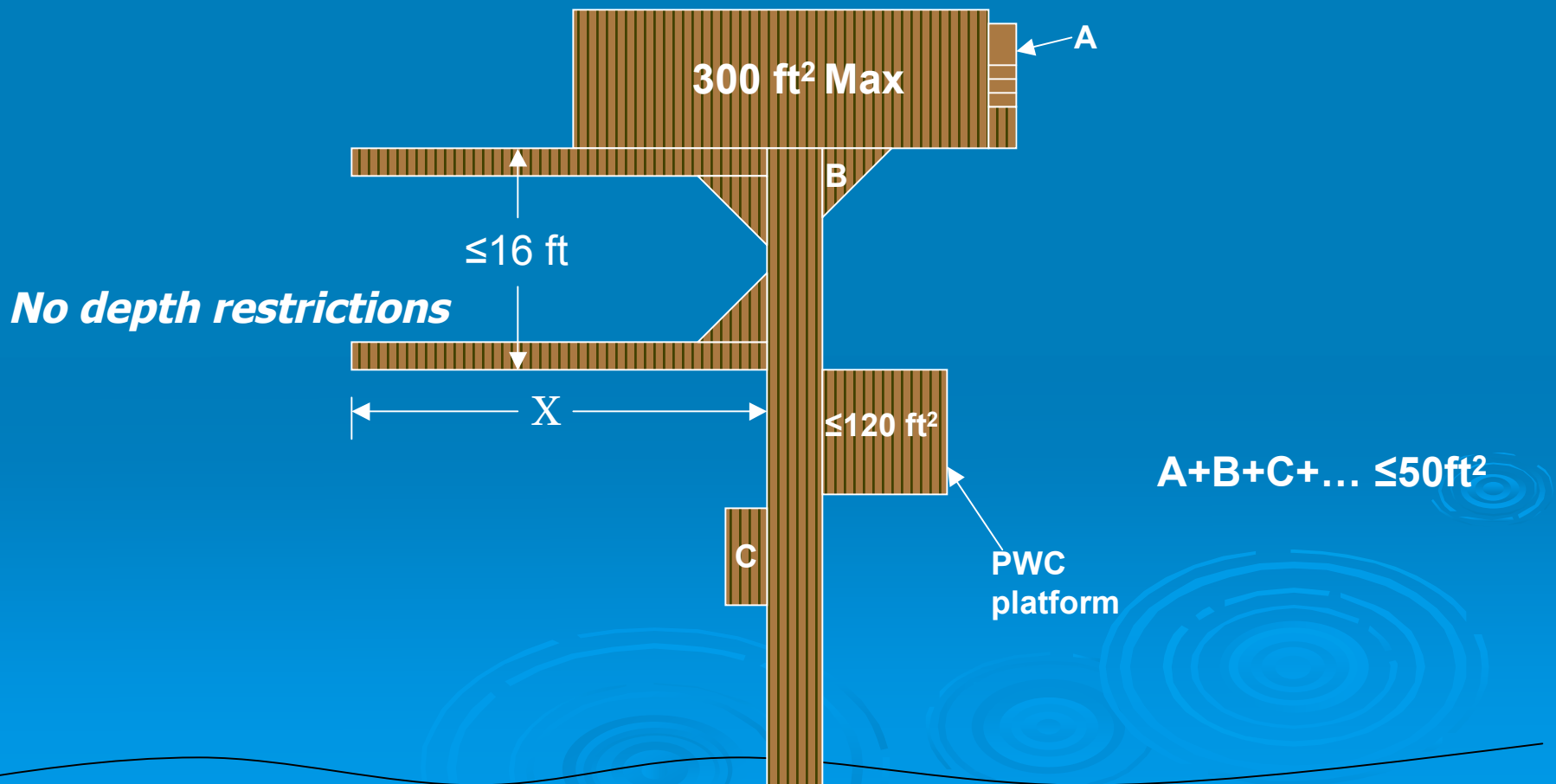
- Lake Livingston
- Pier GP
- Texas Bays Oil Field Development GP



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Pier Permit Example





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Texas Bays RGP



- Inter-agency Team
- Main problem was lack of detailed information
- Applicants submit all information needed for review
- Expedited review process developed



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Mitigation Banking News

- Several new bank prospectus are being developed in the Galveston District
Mill Creek, Pineywoods, Rattlesnake Ranch, Lavaca River Ranch & Forestar
- New mitigation rules are now in effect.



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Regulatory Program Websites



National Regulatory Home Page:

www.usace.army.mil/inet/functions/cw/cecwo/reg/

Federal Register (Government Printing Office):

www.access.gpo.gov/su_docs/

Corps District Website:

www.swg.usace.army.mil/reg

