

# 2019-2020 FEDERAL RULE- MAKING & NAVIGATION

Tori White  
Chief, Operations & Regulatory  
South Pacific Division  
12 November 2020



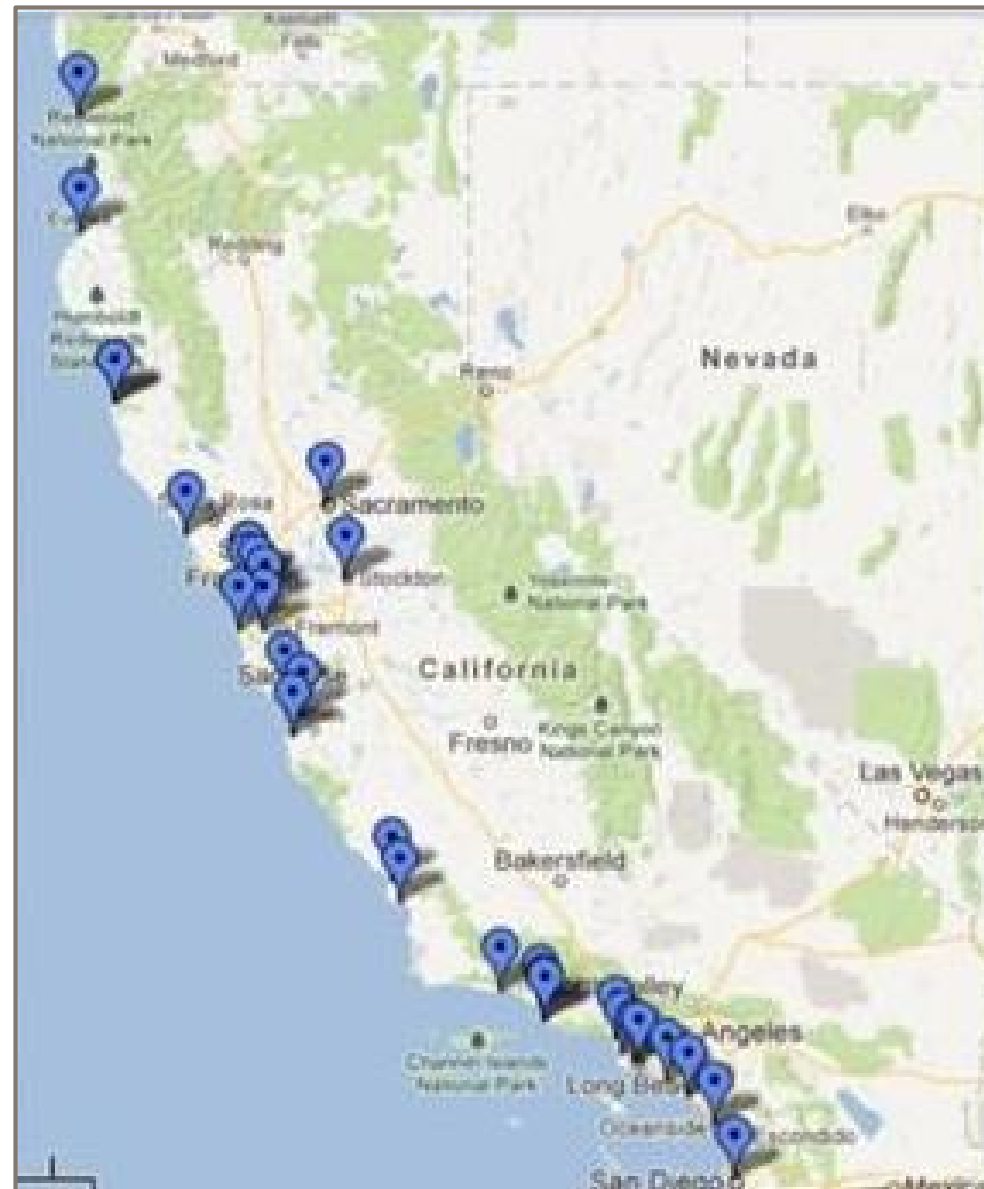
US Army Corps  
of Engineers®



# SPD COASTAL NAVIGATION PROGRAM



- Approximately \$149M program annually
- 27 CA Ports and Harbor
  - 4 Donor Ports (LA, LB, Port Hueneme, San Diego)
  - 5 National Strategic Ports (Oakland, LB, SD, MOTCO, Port Hueneme)
- 429 miles of Navigation Channels
- 35 miles of Coastal Navigation Structures
- 3 Large Debris Control Dams (2 are multi-purpose)
- Approximately 10 M cubic yards dredged annually
- Removing ~1200 tons of debris/year from SF Bay





# ENVIRONMENTAL OPERATING PRINCIPLES

- Foster sustainability as a way of life throughout the organization.
- Proactively consider environmental consequences of all Corps activities and act accordingly.
- Create mutually supporting economic and environmentally sustainable solutions.
- Continue to meet our corporate responsibility and accountability under the law for activities undertaken by the Corps, which may impact human and natural environments.
- Consider the environment in employing a risk management and systems approach throughout the life cycles of projects and programs.
- Leverage scientific, economic and social knowledge to understand the environmental context and effects of Corps actions in a collaborative manner.
- Employ an open, transparent process that respects views of individuals and groups interested in Corps activities.



# ENVIRONMENTAL CHALLENGES



### SPL FY21 Dredging Schedule

PROJECT	District	Adv - Open Bids	2020			2021											
			OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Morre Bay Harbor	SPL / NW7	N/A								YACUINA							
Santa Barbara Harbor (Suction Cutterhead)	SPL	N/A															
Channel Islands Harbor (Suction Cutterhead)	SPL	N/A															
Fort Huernme O&M & Deepening (Suction Cutterhead & Mechanical)	SPL	N/A															
Ventura Harbor (Suction Cutterhead)	SPL	N/A															
Los Angeles River Estuary LA-LB Harbor (Mechanical)	SPL	N/A															
Oceanside Harbor (Suction Cutterhead)	SPL	N/A															



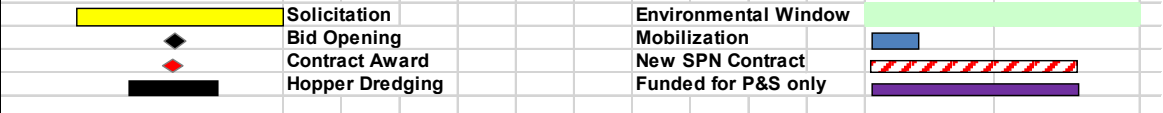
### SPN FY20 Dredging Schedule

### SUMMARY OF KEY PROJECTS 2020

Project	FY2020												FY2021			Estimated CY	Dredge Type	Contract	
	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC									
Oakland Harbor																	890kcy	Clam Shell	Contract
Richmond Inner Harbor (Port of Stockton)																	223kcy	Clam Shell	Contract
San Joaquin River																	285kcy	Pipeline	Contract
Suisun Bay Channel																	74kcy	Clam Shell	Contract
SF Main Ship Channel																	33kcy	Hopper	Govt
Richmond Outer Harbor																	350kcy	Hopper	Govt
Humboldt Bar & Entrance Channels																	250kcy	Hopper	Contract
Humboldt Interior Channels																	1100kcy	Hopper	Contract

### Workplan Funded Projects in Order of Award Date

Noyo River and Harbor																	22kcy	Pipeline	Contract
Sacramento River (30 Foot Project)																	145kcy	Pipeline	Contract
Crescent City Harbor																	20kcy	Hydraulic/Pipeline	Contract
Petaluma River																	200kcy	Clam Shell/Pipeline	Contract
Moss Landing Harbor																	85kcy	Hopper/Clam Shell w/Pipe	Contract
San Rafael Creek (P&S only)																	TBD	TBD	TBD



\* Program execution is based on the FY20 Workplan plus FY19 Carryover. Date of Last Update:

- Reinforcing USACE regulations and policies (incl. Federal Standard).
- Coastal Consistency Determinations, Water Quality, Air Board Certifications
- Environmental window impacts on dredging and placement/disposal – feasibility and cost.
- Resource Agency perception of impacts due to dredging action and placement/disposal.



# IMPROVING REGULATORY PROCESSES



- E.O. 12866, Regulatory and Planning, 30 Sep 1993
- E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, 30 Jan 2017 (ESA)
  - Two regulations eliminated for everyone issued
  - USACE Regs and recommendations have been reviewed by DoD
- E.O. 13788, Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the Waters of the United States Rule, Feb 2017
- E.O. 13783, Promoting Energy Independence and Economic Growth, Mar 2017 (NWPs)
- E.O. 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Process, 15 Aug 2017 (NWPR, NEPA)
- Legislative Outline for Rebuilding Infrastructure in America, Part 3 Infrastructure Permit Improvement , 15 Feb 2018
  - Revisions to CEQ NEPA Regulations – effective 14 Sep 2020
  - Eliminate redundancies with Environmental Impact Statement reviews
  - Elimination of Interagency Review Team for Mitigation Banking – USACE drafting proposed rule
  - CWA 401 Certifications – effective 11 Sep 2020; USACE 2019 RGL undergoing revisions
  - Permit Timeframes –USACE RGL under review
  - Synchronization with 408 and 404/10 Permissions – 2018 USACE EC and DPM



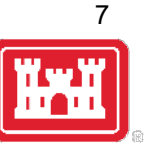
# WHAT'S NEW AFFECTING NAVIGATION?



1. USFWS/NMFS Endangered Species Act section 7 coordination – 84 *FR* 44976-45018, effective 26 Oct 2019
2. EPA/USACE Navigable Waters Protection Rule (Clean Water Act jurisdiction) – 85 *FR* 22250-22342, effective 22 Jun 2020
3. EPA 401 CWA Water Quality Certification – 85 *FR* 42210-42287, effective 11 Sep 2020 – COVERED BY JOE WILSON
4. CEQ National Environmental Policy Act implementation – 85 *FR* 43304-43376, effective 14 Sep 2020
5. USACE 2020 Nationwide Permits reissuance – draft published 15 Sep 2020



# ENDANGERED SPECIES ACT



- ESA Section 7 Regulations revisions finalized 27 Aug 2019 and effective 28 Oct 2019, aimed at implementing EO 13771, reducing regulatory burdens on citizens and promoting innovation.
- Section 7 of the Act provides requirements for Federal agency cooperation and consultation procedures. Implementation regulations at 50 CFR 402.
- Changes to 50 CFR 424 for listing, delisting, or reclassifying species; and criteria for designating critical habitat.
- Changes to 50 CFR 402 revised definitions of “destruction or adverse modification” and “effects of the action”.
- Changes to 50 CFR 402.13 Informal consultation, addition of 60-day timeline for concurrence letters.
- Establishes a standalone definition for environmental baseline.



# ENDANGERED SPECIES ACT

- Previously, this definition was described within the effects of the action. Moving it to a stand-alone definition clarifies that the environmental baseline is a separate consideration that sets the stage for analyzing the effects of the proposed action on the list of species and critical habitat within the action area by providing the foundation upon which to build the analysis of the effects of the action under consultation.
- The new definition clarifies that ***consequences to listed species or designated critical habitat from ongoing agency activities or existing agency facilities that are not within agency's discretion to modify are part of the environmental baseline.***

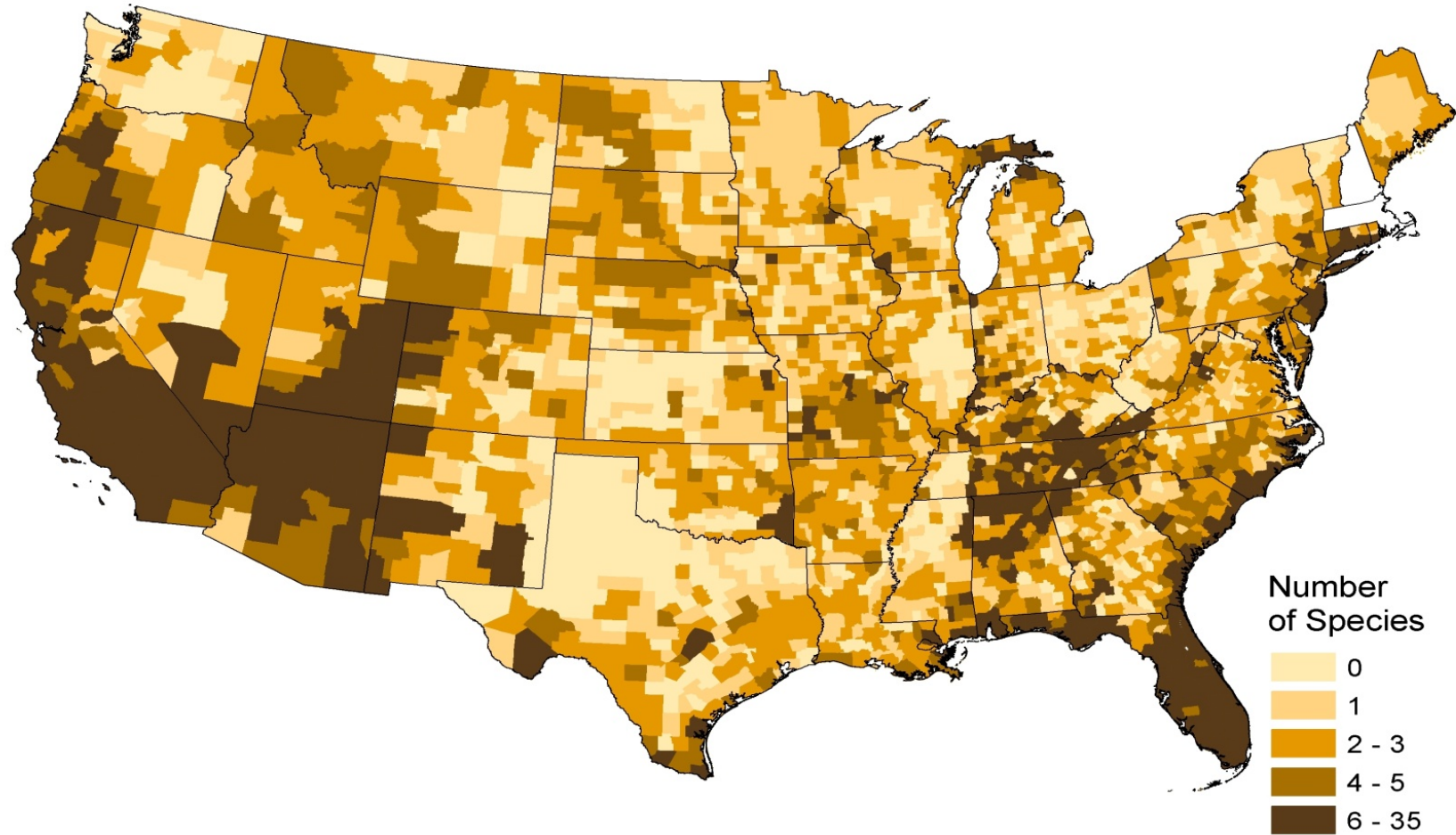




# ENDANGERED SPECIES ACT



## Threatened and Endangered Species





# NAVIGABLE WATERS PROTECTION RULE

The Navigable Waters Protection Rule: Definition of “Waters of the United States” became effective on 22 Jun 2020.

Currently in effect nationwide (including U.S. territories) except for Colorado due to litigation.

Extensive pending litigation challenging the NWPR.

The NWPR reduced the scope of geographic jurisdiction under the Clean Water Act relative to prior rules (1986 regs or 2015 Clean Water Rule).



# NAVIGABLE WATERS PROTECTION RULE

4 categories of “Waters of the United States”:

(1) The territorial seas, and waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including waters which are subject to the ebb and flow of the tide;

(2) Tributaries;

(3) Lakes and ponds, and impoundments of jurisdictional waters; and

(4) Adjacent wetlands.

12 categories of excluded waters (i.e., non-jurisdictional waters).



# NATIONAL ENVIRONMENTAL POLICY ACT

“Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act” (also known as the NEPA Modernization Rule) went into effect on 14 Sep 2020.

NEPA applies to a broad range of Federal agency actions, including Federally-funded construction projects, plans to manage and develop Federal lands, and Federal authorizations of non-Federal activities such as licenses and permits.

Per CEQ, the purpose of the update to NEPA regulations is to “simplify and clarify requirements...reflect current technologies and agency practices, eliminate obsolete provisions, improve the format and readability of the regulations...and accelerate the environmental review and permitting processes.”



# NATIONAL ENVIRONMENTAL POLICY ACT

## Summary of NEPA Modernization Rule

- Time Limits of 1 year to complete an Environmental Assessment (EA) and 2 years to complete an EIS.
- Page Limits – 75 pages for an EA and 150 pages for an EIS (not inclusive of all sections or appendices)
- When multiple Fed agencies are involved, requires a joint schedule, single EIS, and joint Record of Decision, where appropriate
- Allows Fed agencies to adopt each others' Categorical Exclusions, where appropriate
- Eliminated definition of cumulative effects
- Must track costs for an EIS



# USACE 2020 NATIONWIDE PERMITS

Currenting re-authorizing the Nationwide permits

Published in the Federal Register 15 Sep 2020; comments due 16 Nov 2020

## OBJECTIVES OF THE PROPOSED CHANGES

- Under E.O. 13783, reduce regulatory burdens on the production, distribution and use of energy, while maintaining environmental incentives and protections provided by the NWP's
- Seek comment on ways to reduce duplication with federal agencies that use the NWP's
- Simplify the terms and conditions of the NWP's so that they can be implemented more consistently, with lower costs, and with no decline in environmental protection
- The NWP's will continue to provide incentives to minimize impacts to aquatic resources, to qualify for a streamlined permit process



# QUESTIONS?

Tori White  
SPD, Chief of Operations & Regulatory  
[Tori.K.White@usace.army.mil](mailto:Tori.K.White@usace.army.mil)  
415-416-0329





# CWA 401 WATER QUALITY CERTIFICATION RULE



“Clean Water Act Section 401 Certification Rule” went into effect on 11 Sep 2020.

## **Section 401 of the Clean Water Act (CWA) requires that:**

1. Any applicant for a federal license or permit
2. Which MAY result in a discharge into waters of the United States
3. Must obtain a water quality certification or waiver from the certifying authority
4. The discharge complies with all applicable water quality requirements





# CWA 401 WATER QUALITY CERTIFICATION RULE

## Summary of New 401 Rule

- 401 certifying agency must respond in a “reasonable period of time” as defined by federal
- All project proponents must submit a request for a meeting with 401 agency at least 30 days prior to submitting a certification request.
- The scope of certification is limited to assuring that the discharge from a federally licensed or permitted activity will comply with water quality requirements.
- USACE is responsible for enforcing 401 certification conditions if they have been incorporated into a USACE permit.
- The federal agency (USACE) must notify the USEPA within 5 days of receiving the license or permit application and related certification, for purposes of section 401(a)(2).