

Definitions

The Regulatory Program, like most specialized governmental programs, is rich in terminology and abbreviations. While people who work within the program understand the terms and their definitions, the general public may not. This list is intended to provide some assistance in understanding the terms commonly used. The following definitions are to be used as a convenient, general reference document. Where precise meaning is important, always refer to the pertinent original source. The applicable source is listed in parentheses following each definition. We would like to thank the Charleston District Regulatory District for assembling this set of definitions.

Adjacent - means bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are adjacent wetlands. (33 CFR 328)

Artificial reef - means a structure which is constructed or placed in navigable waters of the United States or in the waters overlying the outer continental shelf for the purpose of enhancing fishery resources and commercial and recreational fishing opportunities. The term does not include activities or structures such as wing deflectors, bank stabilization, grade stabilization structures, or low flow key ways. (33 CFR 322)

Baseline - Generally, where the shore directly contacts the open sea, the line on the shore reached by the ordinary low tides comprises the baseline from which the distance of three geographic miles is measured. The baseline has significance for both domestic and international law and is subject to precise definitions. When offshore rocks, islands, or other bodies exist, the baseline may have to be drawn seaward of such bodies. (33 CFR 329)

Brush - means scrub vegetation. (Webster)

Clear - means to remove unwanted growth or items. Clearing - means the act or process of making or becoming clear. (Webster)

Compensatory mitigation - means compensating for the impact by replacing or providing substitute resources or environments. (40 CFR 1508)

Contaminant - means a chemical or biological substance in a form that can be incorporated into, onto, or be ingested by and that harms aquatic organisms, consumers of aquatic organisms, or users of the aquatic environment, and includes but is not limited to the substances on the 307(a)(1) list of toxic pollutants. (40 CFR 230)

Cultivating - means physical methods of soil treatment employed within established farming, ranching and silviculture lands on farm, ranch, or forest crops to aid and improve their growth, quality or yield. (33 CFR 323)

De minimis - means of, affecting, or concerning a very small or trifling matter. The de minimis doctrine states that the law does not concern itself with very small or trifling matters. (Black's and Webster)

Denial without prejudice - means that there is no prejudice to the right of the applicant to reinstate processing of the Army permit application if subsequent approval is received from the appropriate Federal, state and/or local agency on a previously denied authorization and/or certification. Even if official certification and/or authorization is not required by state or federal law, but a state, regional, or local agency having jurisdiction or interest over the particular activity comments on the application, due consideration shall be given to those official views as a reflection of local factors of the public interest. (33 CFR 320)

Dike or dam - means any impoundment structure that completely spans a navigable water of the United States and that may obstruct interstate waterborne commerce. The term does not include a weir. (33 CFR 321)

Discharge of dredged material - means any addition of dredged material into U.S. waters. The term includes, without limitation, the addition of dredged material to a specified discharge site located in U. S. waters and the runoff or overflow from a contained land or water disposal area. Discharges of pollutants into U. S. waters resulting from the onshore subsequent processing of dredged material that is extracted for any commercial use (other than fill) are not included within this term and are subject to section 402 of the Clean water Act even though the extraction and deposit of such material may require a DA permit. The term does not include plowing, cultivating, seeding and harvesting for the production of food, fiber, and forest products. The term does not include de minimis, incidental soil movement occurring during normal dredging operations. (33 CFR 323)

Discharge of fill material - means the addition of fill material into U. S. waters. The term does not include plowing, cultivating, seeding and harvesting for the production of food, fiber, and forest products. The term generally includes, without limitation, the following activities:

- a. placement of fill that is necessary for the construction of any structure in U. S. waters;
- b. building any structure or impoundment requiring rock, sand, dirt, or other material for construction;
- c. site-development fills for recreational, industrial, commercial, residential, and other uses;
- d. causeways or road fills;
- e. dams and dikes;
- f. artificial islands;
- g. property protection or reclamation devices such as riprap, groins, seawalls, breakwaters, revetments;
- h. beach nourishment;
- i. levees;
- j. artificial reefs; and

- k. fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and subaqueous utility lines. (33 CFR 323)

Discharge point - means the point within the disposal site at which the dredged or fill material is released. (40 CFR 230)

Disposal site - means that portion of U. S. waters where specific disposal activities are permitted and consist of a bottom surface area and any overlying volume of water. In the case of wetlands on which surface water is not present, the disposal site consists of the wetland surface area. (40 CFR 230)

Dredged material - means material that is excavated or dredged from U. S. waters. (33 CFR 323)

Emergency - means a situation which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures. Division Engineers are authorized to approve special processing procedures in emergency situations. (33 CFR 325)

Enforcement - means the policy of regulating the waters of the United States by discouraging activities that have not been properly authorized and by requiring corrective measures, where appropriate, to ensure those waters are not misused and to maintain the integrity of the regulatory program. (33 CFR 326)

Excavate - means to dig out and remove or to form a cavity or hole. (Webster)

Federal project - means a Corps of Engineers project (work or activity of any nature for any purpose which is to be performed by the Chief of Engineers pursuant to Congressional authorizations) involving the discharge of dredged or fill material into waters of the United States or transportation of dredged material for the purpose of dumping it in ocean waters subject to section 404 of the Clean Water Act, or section 103 of the MPRSA. (33 CFR 327)

Fill material - means any material used for the primary purpose of replacing an aquatic area with dry land or of changing the bottom elevation of a waterbody. The term does not include any pollutant discharged into the water primarily to dispose of waste. (33 CFR 323)

Forested - means covered with trees and underbrush. (Webster)

General permit - means a DA authorization that is issued on a nationwide or regional basis for a category or categories of activities. This refers to both those regional permits issued by District or Division Engineers on a regional basis and to nationwide permits which are issued by the Chief of Engineers through publication in the Federal Register. (33 CFR 325)

Grassland - means land on which the dominant plant forms are grasses and herbs. (Webster)

Harvesting - means physical measures employed directly upon farm, forest, or ranch crops within established agricultural and silvicultural lands to bring about their removal from farm, forest, or ranch land, but does not include the construction of farm, forest, or ranch roads. (33 CFR 323)

Headwaters - means the point on a non-tidal stream above which the average annual flow is less than five cubic feet per second (cfs). The district engineer may estimate this point from available data by using the mean annual area precipitation, area drainage basin maps, and the average runoff coefficient, or by similar means. For streams that are dry for long periods of the year, district engineers may establish the headwaters as that point on the stream where a flow of 5 cfs is equaled or exceeded 50% of the time. (33 CFR 330)

Herb - means a seed producing plant that does not develop persistent woody vegetation but dies down at the end of a growing season. (Webster)

Herbaceous - means having little or no woody tissue and persisting usually for a single growing season. (Webster)

Herbage - means the succulent parts of herbaceous plants. (Webster)

High tide line - means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds. (33 CFR 328)

Historic properties - means any property listed or eligible for listing in the National Register of Historic Places. (33 CFR 325)

Individual permit - means a DA authorization that is issued following a case-by-case evaluation of a specific project in accordance with the procedures of the applicable regulation and 33 CFR Part 325, and a determination that the proposed structure or work is in the public interest pursuant to 33 CFR Part 320. (33 CFR 322)

Joint procedures - means those procedures developed jointly with states and other Federal agencies with ongoing permit programs for activities also regulated by the Department of the Army. Such procedures may be substituted for the procedures in 33 CFR Part 325.2, paragraphs (a)(1) through (a)(5) provided that the substantive requirements of those sections are maintained. (33 CFR 325)

Jurisdiction - bays and estuaries. Section 10 jurisdiction extends to the entire surface and bed of all waterbodies subject to tidal action. Jurisdiction thus extends to the edge of all such waterbodies,

even though portions may be extremely shallow, or obstructed by shoals, vegetation, or other barriers. Marshlands and similar areas are considered navigable in law, but only so far as they are subject to inundation by the mean high waters. (33 CFR 329)

Jurisdiction - lateral limits. Waters of the United States may be divided into three categories of jurisdiction. The categories are the territorial seas, tidal waters, and non-tidal waters. Jurisdictions are defined as follows:

- A. **Territorial Seas.** The limit of jurisdiction in the territorial seas is measured from the baseline in a seaward direction a distance of three nautical miles.
- B. **Tidal Waters of the United States.** The landward limits of jurisdiction in tidal waters extend:
 - 1. to the high tide line; or
 - 2. when adjacent non-tidal waters of the United States are present, to the limits for the non-tidal waters.
- C. **Non-Tidal Waters of the United States.** The limits of jurisdiction in non-tidal waters extend:
 - 1. in the absence of adjacent wetlands, to the ordinary high water mark; or
 - 2. when adjacent wetlands are present, beyond the high water mark to the limit of the adjacent wetlands; or
 - 3. when the water of the United States consists only of wetlands, to the limit of the wetland. (33 CFR 328)

Jurisdiction - oceanic and tidal waters. The navigable waters of the United States over which jurisdiction extends include all ocean and coastal waters within a zone three geographic (nautical) miles seaward from the baseline. Wider zones are recognized for special regulatory powers exercised over the outer continental shelf. (33 CFR 329)

Jurisdiction - rivers, lakes, and marshlands. Section 10 jurisdiction extends laterally to the entire water surface and bed of a navigable waterbody, which includes all the land and waters below the ordinary high water mark. Jurisdiction thus extends to the edge of all such waterbodies, even though portions of the waterbody may be extremely shallow, or obstructed by shoals, vegetation or other barriers. Marshlands and similar areas are thus considered navigable in law, but only so far as the area is subject to inundation by the ordinary high waters. Ownership of a river or lake bed or of the lands between high and low water marks will vary according to state law; however, private ownership of the underlying lands has no bearing on the existence or extent of the dominant Federal jurisdiction over a navigable waterbody. (33 CFR 329)

Jurisdiction - shifting boundaries. Permanent changes of the shoreline configuration result in similar alterations of the boundaries of the navigable waters of the United States. Gradual changes which are due to natural causes constitute changes in the bed of a waterbody which also change the shoreline boundaries of the navigable waters of the United States. However, an area will remain navigable in law, even though no longer covered with water, whenever the change has occurred suddenly, or was caused by artificial forces intended to produce that change. (33 CFR 329)

Jurisdiction - shoreward limit. Section 10 jurisdiction in coastal areas extends to the line on the shore reached by the plane of the mean (average) high water. Where precise determination of the actual location of the line becomes necessary, it must be established by survey with reference to the available tidal datum, preferably averaged over a period of 18.6 years. Less precise methods, such as observation of the apparent shoreline which is determined by reference to physical markings, lines of vegetation, or changes in type of vegetation, may be used only where an estimate is needed of the line reached by the mean high water. (33 CFR 329)

Lake - means a standing body of open water that occurs in a natural depression fed by one or more streams from which a stream may flow, that occurs due to the widening or natural blockage or cutoff of a river or stream, or that occurs in an isolated natural depression that is not a part of a surface river or stream. The term also includes a standing body of open water created by artificially blocking or restricting the flow of a river, stream, or tidal area. The term does not include artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water for such purposes as stock watering, irrigation, settling basins, cooling, or rice growing. (33 CFR 323)

Land - means the surface of the earth and all its natural resources. (Webster)

Letters of permission - a type of individual 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. (33 CFR 325)

Mean high water - the average (arithmetic mean) position of the high water mark. (Webster)

Mechanized - means to provide with mechanical power. (Webster)

Mechanical - means produced or operated by a machine or tool. (Webster)

Minor drainage in waters of the United States - Drainage which is limited to drainage within areas that are part of an established farming or silviculture operation. It does not include drainage associated with the immediate or gradual conversion of a wetland to a non-wetland, or conversion from one wetland use to another (for example, silviculture to farming). In addition, minor drainage does not include the construction of any canal, ditch, dike or other waterway or structure which drains or otherwise significantly modifies a stream, lake, swamp, bog or any other wetland or aquatic area constituting waters of the United States.

Minor Drainage - means the discharge of dredged or fill material:

- A. incidental to connecting upland drainage facilities to waters of the United States, adequate to effect the removal of excess soil moisture from upland croplands;
- B. for the purpose of installing ditching or other such water control facilities incidental to planting, cultivating, protecting, or harvesting of rice, cranberries or other wetland crop

- species, where these activities and the discharge occur in waters of the United States which are in established use for such agricultural and silvicultural wetland crop production;
- C. for the purpose of manipulating the water levels of, or regulating the flow or distribution of water within, existing impoundments which have been constructed in accordance with applicable requirements of CWA, and which are in established use for the production of rice, cranberries, or other wetland crop species;
 - D. incidental to the emergency removal of sandbars, gravel bars, or other similar blockages which are formed during flood flows or other events, where such blockages close or constrict previously existing drainageways and, if not promptly removed, would result in damage to or loss of existing crops or would impair or prevent the plowing, seeding, harvesting or cultivating of crops on land in established use for crop production. Such removal does not include enlarging or extending the dimensions of, or changing the bottom elevations of, the affected drainageway as it existed prior to the formation of the blockage. Removal must be accomplished within one year of discovery of such blockages in order to be eligible for exemption. (33 CFR 323)

Minor road crossing fill - is defined as a crossing that involves the discharge of less than 200 cubic yards of fill material below the plane of ordinary high water. The crossing may require a permit from the U.S. Coast Guard if located in navigable waters of the United States. (33 CFR 330)

Modification - means that, as determined by the District Engineer (DE), the public interest requires a modification of the terms or conditions of the permit. A modification may be initiated upon request by the permittee or, as a result of reevaluation of the circumstances and conditions of a permit. The DE shall consult with resource agencies before modifying any terms or conditions, that would result in greater impacts, for a project about which that agency expressed a significant interest in the term, condition, or feature being modified prior to permit issuance. (33 CFR 325)

Mowing - means cutting or knocking down the standing herbage. (Webster)

Nationwide permits - are a type of general permit and represent DA authorizations that have been issued by the regulation for certain specified activities nationwide. If certain conditions are met, the specified activities can take place without the need for an individual or regional permit. (33 CFR 330)

Navigable waters of the United States - are those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. A determination of navigability, once made, applies laterally over the entire surface of the waterbody, and is not extinguished by later actions or events which impede or destroy navigable capacity. Precise definitions of navigable waters of the United States or navigability are ultimately dependent on judicial interpretation and cannot be made conclusively by administrative agencies. (33 CFR 329)

Ocean waters - means those waters of the open seas lying seaward of the base line from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone. (33 CFR 324)

Ordinary high water mark - means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as:

- A. a clear, natural line impressed on the bank;
- B. shelving;
- C. changes in the character of soil;
- D. destruction of terrestrial vegetation;
- E. the presence of litter and debris; or
- F. other appropriate means that consider the characteristics of the surrounding areas. (33 CFR 328 and 329)

Permit action - means the evaluation of and decision on an application for a DA permit pursuant to sections 9 or 10 of the Rivers and Harbors Act of 1899, section 404 of the Clean Water Act, or section 103 of the MPRSA, as amended, or the modification, suspension or revocation of any DA permit. (33 CFR 327)

Plowing - means all forms of primary tillage, including moldboard, chisel, or wide-blade plowing, discing, harrowing and similar physical means utilized on farm, forest or ranch land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. It does not include the redistribution of soil, rock, sand, or other surficial materials in a manner which changes any area of the waters of the United States to dry land. (33 CFR 323)

Pollutant - means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials not covered by the Atomic Energy Act, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. (40 CFR 230)

Pollution - means the man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of an aquatic ecosystem. (40 CFR 230)

Practicable - means possible to practise or perform, i.e., feasible. Federal regulations further state it means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. (Webster and 40 CFR 231)

Programmatic permits - are a type of general permit founded on an existing state, local or other Federal agency program and designed to avoid duplication with that program. (33 CFR 325)

Public hearing - means a public proceeding conducted for the purpose of acquiring information or evidence which will be considered in evaluating a proposed DA permit action, or Federal project,

and which affords the public an opportunity to present their views, opinions, and information on such permit actions or Federal projects. (33 CFR 327)

Public notice - is the primary method of advising all interested parties of the proposed activity for which a permit is sought and of soliciting comments and information necessary to evaluate the probable impact on the public interest. The notice must, therefore, include sufficient information to give a clear understanding of the nature and magnitude of the activity to generate meaningful comment. (33 CFR 325)

Publicity - The (DE) will establish and maintain a program to assure that potential applicants for permits are informed of the requirements of 33 CFR and of the steps required to obtain permits for activities in waters of the United States or ocean waters. Whenever the DE becomes aware of plans being developed by either private or public entities which might require permits for implementation, he should advise the potential applicant in writing of the statutory requirements and the provisions of this regulation. Whenever the DE is aware of changes in Corps of Engineers regulatory jurisdiction, he will issue appropriate public notices. (33 CFR 325)

Regional permits - are a type of general permit. They may be issued by a Division or District Engineer. The issuing authority will determine and add appropriate conditions to protect the public interest. When the issuing authority determines on a case-by-case basis that the concerns for the aquatic environment so indicate, he may exercise discretionary authority to override the regional permit and require an individual application and review. No regional permit shall be issued for a period of more than five years. (33 CFR 325)

Scrub - means a stunted tree or shrub. (Webster)

Section 10 - means Section 10 of the Rivers and Harbors Act. (33 CFR 320)

Section 404 - means Section 404 of the Clean Water Act. (33 CFR 320)

Seeding - means the sowing of seed and placement of seedlings to produce farm, ranch, or forest crops and includes the placement of soil beds for seeds or seedlings on established farm and forest lands. (33 CFR 323)

Shrub - means a low, usually several stemmed, woody plant. (Webster)

Standard permit - means a permit which has been processed through the public interest review procedures, including public notice and receipt of comments. (33 CFR 325)

Structure - shall include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other obstacle or obstruction. (33 CFR 322)

Tidal waters - means those waters that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by hydrologic, wind, or other effects. (33 CFR 328)

Transport or transportation - refers to the conveyance and related handling of dredged material by a vessel or vehicle. (33 CFR 324)

Upper limit of navigability - The character of a river will, at some point along its length, change from navigable to non-navigable. Very often that point will be at a major fall or rapids, or other place where there is a marked decrease in the navigable capacity of the river. The upper limit will therefore often be the same point traditionally recognized as the head of navigation, but may be at some point yet farther upstream. (33 CFR 329)

Unacceptable adverse impact - means impact on an aquatic or wetland ecosystem which is likely to result in significant degradation of municipal water supplies (including surface or ground water), or significant loss of or damage to fisheries, shellfishing, or wildlife habitat or recreation areas. (40 CFR 231)

Utility line - means any pipe or pipeline for the transportation of any gaseous, liquid, liquefiable, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone and telegraph messages, and radio and television communication. (33 CFR 330)

Waters of the United States include the following -

- A. All 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.
- B. All interstate waters including interstate wetlands.
- C. All 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:
 1. which are or could be used by interstate or foreign travelers for recreational or other purposes; or
 2. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 3. which are used or could be used for industrial purpose by industries in interstate commerce.
- D. All impoundments of waters otherwise defined as waters of the United States under the definition.
- E. Tributaries of waters identified in paragraphs 1-4 above.
- F. The territorial seas.

- G. Wetlands adjacent to waters (other than wetlands) identified in paragraphs 1-6 above.
- H. EPA has clarified that waters of the United States also include the following waters:
 - 1. which are or would be used as habitat by birds protected by Migratory Bird Treaties; or
 - 2. which are or would be used as habitat by other migratory birds which cross state lines; or
 - 3. which are or would be used as habitat for endangered species; or
 - 4. used to irrigate crops sold in interstate commerce.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA (other than cooling ponds as defined in 40 CFR 123.11(m) which also meet the criteria of this definition) are not waters of the United States. It should be noted that we generally do not consider the following waters to be Waters of the United States. However, the Corps and EPA reserve the right on a case-by-case basis to determine that a particular waterbody within these categories of waters is a water of the United States.

- A. Non-tidal drainage and irrigation ditches excavated on dry land.
- B. Artificially irrigated areas which would revert to upland if the irrigation ceased.
- C. Artificial lakes created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
- D. Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
- E. Waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States. (33 CFR 328 and Supplementary Information)

Wetlands - means those areas that are inundated 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. Wetlands generally include swamps, marshes, and bogs. For official determination whether or not an area is classified as a wetland contact the Army Corps of Engineers. (33 CFR 328)

Work - shall include, without limitation, any dredging or disposal of dredged material, excavation, filling, or other modification of a navigable water of the United States. (33 CFR 322)