

# Coordinating Aquatic Resource Permitting with HCPs

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# Why CWA 404 with HCP?

- Many listed species in CA are aquatic
- CWA 404 identified as critical
- Corps' wetland expertise
- Corps required to consult under ESA Section 7
- Reduce permit decision timeframes
- No funding for Special Area Management Plans

## Challenges:

- New concept
- Constraints/opportunities in laws, regulations, policies
- Resourcing



# Benefits of CWA 404 Integration with HCP

- **Regional approach**
  - ▶ Identification of aquatic resources, by type/quality
  - ▶ Watersheds and “what’s best”
  - ▶ Alternatives
  - ▶ Compensatory mitigation
- **NEPA**
  - ▶ “Programmatic” EIS – tier from EIS to make permit decisions
  - ▶ Use process to vet Corps permit strategy
- **Better decisions and aquatic resource protection**
  - ▶ Move away from case-by-case decisions
  - ▶ Federal/state/local coordination
  - ▶ Larger mitigation areas
- **Reduce Corps workload and make decisions faster**
  - ▶ Big investment upfront but pays dividends for years
- **Assurances**
  - ▶ Process
  - ▶ Mitigation ratios, fees
  - ▶ Compliance



## Conceptual Section 404 CWA Permitting Strategy for HCPs

### Programmatic General Permit

- For activities under the HCP with minimal individual and cumulative impacts on aquatic resources covered by a local aquatic resource protection program, like a County ordinance.
  - Corps prepares one decision document for the PGP, tiering from the HCP EIS.
  - PGP is covered by a Programmatic 401 water quality certification.
  - PGP is valid for 5 years and may be reauthorized by the Corps if the County is in compliance with the permit.
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- Each applicant submits a notice to the County to fill aquatic resources for a specific activity.
  - County determines consistency with HCP and approves activity under the ordinance in 30 days or less.
  - County reports to the Corps at regular intervals on activities it has approved under the ordinance/PGP.

### Regional General Permit

- For activities under the HCP with minimal individual and cumulative impacts on aquatic resources NOT covered by a local aquatic resource protection program.
  - Corps prepares one decision document for the RGP, tiering from the HCP EIS.
  - RGP is covered by a Programmatic 401 water quality certification
  - RGP is valid for 5 years and may be reauthorized by the Corps.
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- Each applicant submits a request for verification under the RGP to the Corps to fill aquatic resources for a specific activity, along with an HCP consistency determination by the County,.
  - Corps reviews and verifies the activity under the RGP in 30 days or less.
  - Each activity-specific RGP verification is valid for 5 years.

### Letter of Permission Procedure

- For activities under the HCP with more than minimal (but less than significant) impacts on aquatic resources.
  - Corps prepares a decision document to establish the LOP procedure, tiering from the HCP EIS.
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- Each applicant submits a permit application to the Corps to fill aquatic resources for a specific activity, along with an HCP consistency determination by the County.
  - Applicant will need to obtain 401 water quality certification for the specific activity.
  - Corps follows the LOP procedure, which includes notification to agencies, preparing a decision document, and making a decision in 60 days or less.
  - Each activity-specific LOP is valid for up to 5 years and may be extended if the permittee is in compliance with the LOP.

### Standard Permit

- For activities under the HCP with more than minimal (and potentially significant) impacts on aquatic resources.
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- Each applicant submits a permit application, to the Corps, along with an HCP consistency determination by the County.
  - For NEPA, the Corps will normally require an EA. For activities with potentially significant effects, an EIS will be prepared. The NEPA document will tier from the HCP EIS.
  - Corps follows the standard permit process, including a 15-day public notice, prepares a decision document, and makes a permit decision in 120 days or less (unless an EIS is required).
  - Each activity-specific SP will be valid for 5 years and may be extended if the permittee is in compliance with the permit.



# HCP/NCCP Permit Process Relationships

