

Chapter 3: Additional Regulatory Guidelines

Purpose

Fire management project proponents are typically required to obtain environmental regulatory permits when the proposed project will affect a stream, river, lake, or tidal waters; riparian habitat and/or wetlands adjacent to streams and rivers; other habitat that can be used by sensitive species; and/or those species themselves.

The purpose of this chapter is assist project proponents in determining which permits they may need when doing certain types of work. For those of you who think you may need a permit from a federal or state agency, this chapter provides a brief summary of the process, timelines for obtaining permits, and additional contact information. You are encouraged to contact regulatory agencies early on in the project planning process to determine if your project requires a permit. This information is only relevant if your project is federally funded or you will be conducting the following types of activities¹:

- Disturbing habitat that may be used by federally protected species that cannot be avoided with implementation of BMPs in this guidebook.
- Removing riparian or other aquatic vegetation.
- Placing materials or a structure in a creek, stream, or aquatic habitat, for example, placing a culvert for a fire road that crosses a stream.
- Removing invasive species, applying chemical control on invasive species, or conducting other restoration activities within a riparian area, creek, stream, or aquatic habitat.
- Placing temporary structures across creeks, streams, or aquatic habitat to access a fire management area.

This chapter is intended to be used by proponents of larger fire management projects (eg. public land managers, fire management groups, coordinated resource management plan organizations, cities, counties, or other public agencies, etc.). However, the chapter will also be useful for private landowners and other resource management organizations within the Contra Costa County area.

Disclaimers

This chapter discusses regulatory permits as they apply to the Contra Costa County area only. While certain permits are issued by federal agencies, and the general process for applying for those permits is uniform throughout the United States, each regional district of these federal regulatory agencies also enforces regional conditions and permit requirements with some individual

¹ Please note that this is not a complete list of activities that might trigger the need for a permit

variations. The same can be said of the regional districts of state regulatory agencies regarding their issuance of statewide permit programs.

This chapter only covers federal and state regulatory permits for biological resources such as protected species and water resources, except for water quality permits such as the National Pollution Discharge Elimination System Permit from RWQCB and other stormwater related permits. Local permits (e.g., permits from local flood districts, reclamation districts, local and municipal governments, etc.) are not covered in this permit guide due to the number of local agencies and the breadth of permits required by those agencies within the Contra Costa County area. This permit guide should not be interpreted as all-inclusive for all regulatory requirements. If your project has a federal nexus (funding or permit), the federal agency must determine compliance with federal laws such as the Endangered Species Act and the Migratory Bird Treaty Act.

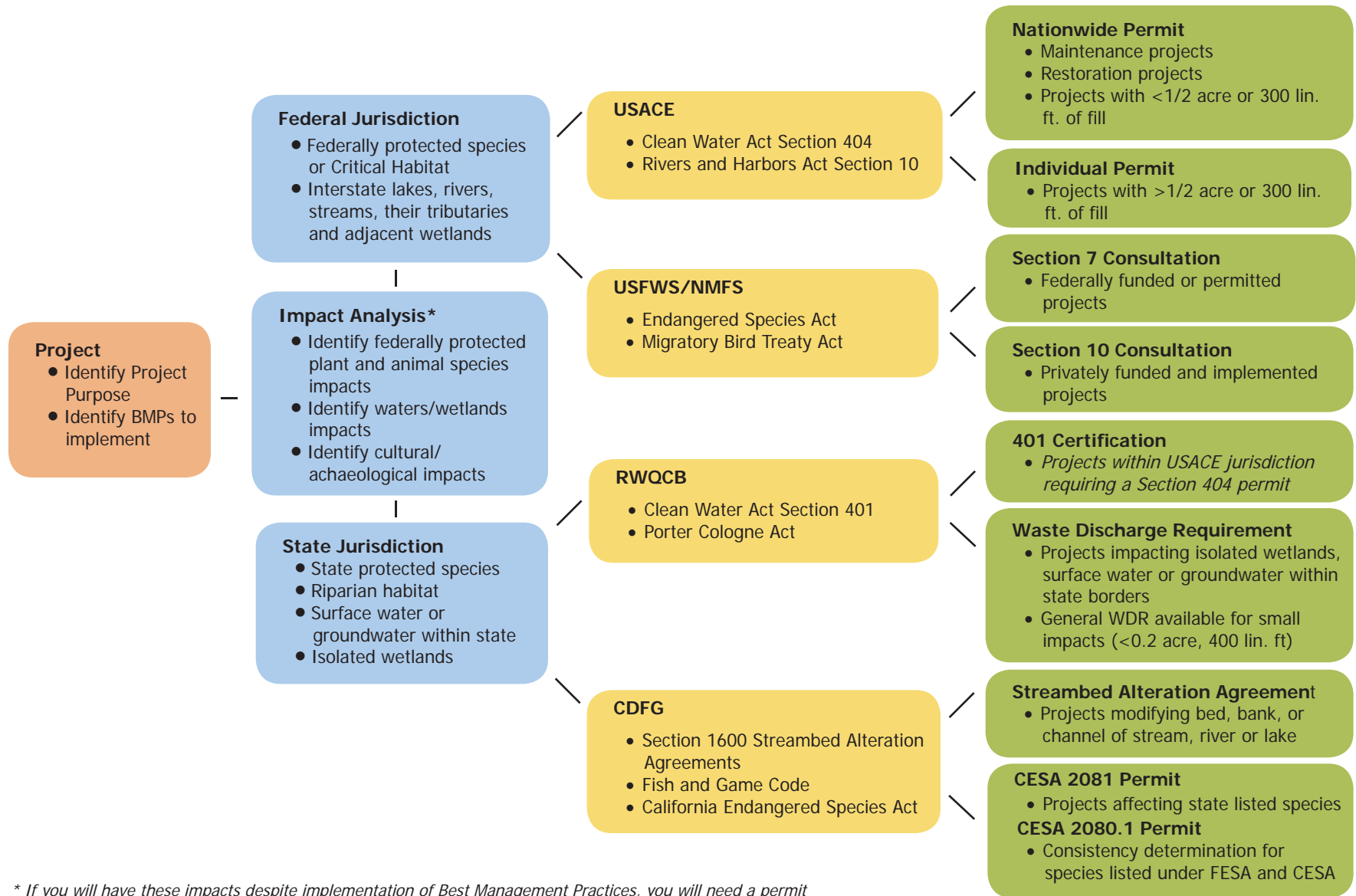
How to Use This Chapter

To assist you in identifying your permitting needs, this chapter first presents an overview flowchart of the permitting process and identifies the triggers for regulatory review and permits. Second, this chapter presents a matrix of typical **Project Action Types** for project proponents who know the type of work they would like to conduct. This matrix lists common project actions undertaken by fire management proponents that would take place within the bed, bank, channel or floodways of streams, rivers and other regulated aquatic resources, or within habitat potentially used by federally protected species. Using this matrix, project proponents can select the project actions they intend to conduct, which will lead them to the types of regulatory permits typically associated with the project actions as identified in the final column of the matrix.

Third, this chapter presents a graphic of **Site Types** for project proponents who know generally where they would like to work, but do not know what type of project actions they will conduct or what permits to acquire. Using this graphic, select the area you wish to work within to see which permits would apply to the area you chose. Fourth, once you determine the permit you need based on **Action Type** or **Site Type**, go to the page with a detailed description of that **Permit Type**. The **Permit Type** pages are also for project proponents who have an idea of the type of permit they need, but are unsure of the process and steps required to apply for the permit. These pages present flowcharts of the permit process, identify key items needed for a permit application package, and provide additional contact information. Finally, this chapter presents an **estimated timeline** for completion of the permitting process. Please note that many terms are defined in the glossary in Chapter 4.



Permitting Overview Flowchart



* If you will have these impacts despite implementation of Best Management Practices, you will need a permit

Project Action Types

Project Type	Typical Actions	Regulatory Trigger	Permit Type Required
Mechanical Labor	Grading, mowing, disking, grubbing, crushing, or other use of heavy machinery to maintain vegetation, remove dead materials, or construct firebreaks, trails, or access roads	If a Section 404 Permit is required	Section 401 Water Quality Certification (RWQCB)
		If mechanical equipment will be used to remove riparian vegetation within the riparian zone of a stream	Waste Discharge Requirement (RWQCB) and Streambed Alteration Agreement (CDFG)
		If these activities will result in discharge of waste, dredging, or placement of any substance that is liquid, solid, or gaseous into surface waters, groundwater, or isolated wetlands	Waste Discharge Requirement (RWQCB)
		If these activities will: <ul style="list-style-type: none"> Result in construction of a trail or road that will substantially divert or obstruct the flow of a river, stream or lake; Require use of mechanical equipment that will change the bed, channel or bank of a river, stream or lake; or Deposit debris, waste or other materials where it can pass into a river, stream or lake 	Streambed Alteration Agreement (CDFG)
		If these activities will occur within grassland, chaparral, woodlands or other habitat used by federally protected terrestrial plant, animal, or freshwater aquatic species	Consultation under FESA with USFWS
		If these activities will occur within or near tidal, marine, or aquatic habitats used by federally protected anadromous fish or marine species	Consultation under FESA with NMFS
		If these activities will occur in habitat used by state protected species	Consultation under CESA with CDFG
		If these activities will occur near active nesting birds	Compliance with MBTA and CDFG Fish and Game Code

Table 19. Permit information for Mechanical Labor

Project Type	Typical Actions	Regulatory Trigger	Permit Type Required
Vegetation Management	Vegetation removal, pruning, limbing using hand labor, mechanical equipment, or chemical treatments	If these activities will result in placement of dead materials, debris, waste, tree limbs, wood chips, etc. within lakes, rivers, streams, their tributaries or adjacent wetlands.	Section 404 Permit (USACE)
		If a Section 404 Permit is required	Section 401 Water Quality Certification (RWQCB)
		If mechanical equipment will be used to remove, prune or chemically treat riparian vegetation within the riparian zone of a stream	Waste Discharge Requirement (RWQCB) and Streambed Alteration Agreement (CDFG)
		If these activities will result in discharge of waste, dredging (such as dragging fallen logs), or placement of any substance that is liquid (such as chemical treatments), solid, or gaseous into surface waters, groundwater, or isolated wetlands	Waste Discharge Requirement (RWQCB)
		If these activities will: <ul style="list-style-type: none"> Require use of mechanical equipment that will change the bed, channel or bank of a river, stream or lake; or Deposit debris, waste or other materials where it can pass into a river, stream or lake 	Streambed Alteration Agreement (CDFG)
		If these activities will occur within grassland, chaparral, woodlands or other habitat used by federally protected terrestrial plant, animal, or freshwater aquatic species	Consultation under FESA with USFWS
		If these activities will occur within or near tidal, marine, or aquatic habitats used by federally protected anadromous fish or marine species	Consultation under FESA with NMFS
		If these activities will occur in habitat used by state protected species	Consultation under CESA with CDFG
		If these activities will occur near active nesting birds	Compliance with MBTA and CDFG Fish and Game Code

Table 20. Permit information for Vegetation Management

Project Type	Typical Actions	Regulatory Trigger	Permit Type Required
Chemical Treatment	Use of herbicides to kill plants or prevent their growth	If chemicals will be discharged, or result in placement of any substance that is liquid, solid, or gaseous into surface waters, groundwater, or isolated wetlands	Waste Discharge Requirement (RWQCB)
		If these activities will result in deposit of chemicals, debris, waste or other materials where it can pass into a river, stream or lake	Streambed Alteration Agreement (CDFG)
		If these activities will occur within grassland, chaparral, woodlands or other habitat used by federally protected terrestrial plant, animal, or freshwater aquatic species	Consultation under FESA with USFWS
		If these activities will occur within or near tidal, marine, or aquatic habitats used by federally protected anadromous fish or marine species	Consultation under FESA with NMFS
		If these activities will occur in habitat used by state protected species	Consultation under CESA with CDFG
		If these activities will occur near active nesting birds	Compliance with MBTA and CDFG Fish and Game Code

Table 21. Permit information for Chemical Treatments

Project Type	Typical Actions	Regulatory Trigger	Permit Type Required
Prescribed Burning	Controlled burns to reduce volume of fuel and used to burn piles of cut brush or over a designated prepared area	If these activities will require construction of a firebreak that will <ul style="list-style-type: none"> Result in placement of fill materials (eg. soil, rock, stabilization materials, or mechanical equipment), even if temporary, Result in discharge through grading, excavation or dredging, or Within lakes, rivers, streams, their tributaries or adjacent wetlands.	Section 404 Permit (USACE)
		If a Section 404 Permit is required	Section 401 Water Quality Certification (RWQCB)
		If burns will occur within the riparian zone of a stream	Waste Discharge Requirement (RWQCB) and Streambed Alteration Agreement (CDFG)
		If these activities will require construction of a firebreak that result in discharge of waste, dredging, or placement of any substance that is liquid, solid, or gaseous into surface waters, groundwater, or isolated wetlands	Waste Discharge Requirement (RWQCB)
		If these activities will: <ul style="list-style-type: none"> Require use of mechanical equipment to create firebreaks that will change the bed, channel or bank of a river, stream or lake; or Deposit debris, waste or other materials where it can pass into a river, stream or lake 	Streambed Alteration Agreement (CDFG)
		If burns will occur within grassland, chaparral, woodlands or other habitat used by federally protected terrestrial plant, animal, or freshwater aquatic species	Consultation under FESA with USFWS
		If burns will occur in habitat used by state protected species	Consultation under CESA with CDFG
		If burns will occur near active nesting birds	Compliance with MBTA and CDFG Fish and Game Code

Table 22. Permit information for Prescribed Burning

Project Type	Typical Actions	Regulatory Trigger	Permit Type Required
Invasive Plant Removal	Removal of invasive plant species such as French broom, Arrundo and tamarisk	If invasive plants will be removed using heavy machinery, a flail mower, or masticator within lakes, rivers, streams, their tributaries or adjacent wetlands. If these activities will result in placement of dead materials, debris, waste, etc. within lakes, rivers, streams, their tributaries or adjacent wetlands.	Section 404 Permit (USACE)
		If a Section 404 Permit is required	Section 401 Water Quality Certification (RWQCB)
		If mechanical equipment will be used to remove, prune or chemically treat riparian vegetation, including invasive plants, within the riparian zone of a stream	Waste Discharge Requirement (RWQCB) and Streambed Alteration Agreement (CDFG)
		If these activities will result in discharge of pesticides, waste, dredging, or placement of any substance that is liquid, solid, or gaseous into surface waters, groundwater, or isolated wetlands	Waste Discharge Requirement (RWQCB)
		If these activities will: <ul style="list-style-type: none"> Require use of mechanical equipment that will change the bed, channel or bank of a river, stream or lake; or Deposit debris, waste or other materials where it can pass into a river, stream or lake 	Streambed Alteration Agreement (CDFG)
		If these activities will occur within grassland, chaparral, woodlands or other habitat used by federally protected terrestrial plant, animal, or freshwater aquatic species	Consultation under FESA with USFWS
		If these activities will occur within or near tidal, marine, or aquatic habitats used by federally protected anadromous fish or marine species	Consultation under FESA with NMFS
		If these activities will occur in habitat used by state protected species	Consultation under CESA with CDFG
If these activities will occur near active nesting birds	Compliance with MBTA and CDFG Fish and Game Code		

Table 23. Permit information for Invasive Plant Removal

Project Type	Typical Actions	Regulatory Trigger	Permit Type Required
Temporary Stream Crossing	Temporarily crossing a streambed or channel without permanent placement of materials or construction of permanent structures for access to fire management area	If these activities will: <ul style="list-style-type: none"> Result in placement of fill materials (eg. soil, rock, stabilization materials, or mechanical equipment), even if temporary, Result in discharge through grading, excavation or dredging, or Result in dewatering or construction of a dam, even if temporary, Within lakes, rivers, streams, their tributaries or adjacent wetlands.	Section 404 Permit (USACE)
		If a Section 404 Permit is required	Section 401 Water Quality Certification (RWQCB)
		If the stream in which these activities take place is subject to the ebb and flow of the tide (i.e. navigable waters) and structure will be placed in it	Section 10 Permit (USACE)
		If these activities will result in discharge of waste, dredging, or placement of any substance that is liquid, solid, or gaseous into surface waters, groundwater, or isolated wetlands	Waste Discharge Requirement (RWQCB)
		If these activities will: <ul style="list-style-type: none"> Result in construction of a crossing or cofferdam (even if temporary) that will substantially divert or obstruct the flow of a river, stream or lake; Require use of mechanical equipment that will change the bed, channel or bank of a river, stream or lake; or Deposit debris, waste or other materials where it can pass into a river, stream or lake 	Streambed Alteration Agreement (CDFG)
		If these activities will occur within grassland, chaparral, woodlands or other habitat used by federally protected terrestrial plant, animal, or freshwater aquatic species	Consultation under FESA with USFWS
		If these activities will occur within or near tidal, marine, or aquatic habitats used by federally protected anadromous fish or marine species	Consultation under FESA with NMFS
		If these activities will occur in habitat used by state protected species	Consultation under CESA with CDFG
If these activities will occur near active nesting birds	Compliance with MBTA and CDFG Fish and Game Code		

Table 24. Permit information for Temporary Stream Crossing

Project Type	Typical Actions	Regulatory Trigger	Permit Type Required
Permanent Stream Crossing	Construction of permanent structure or placement of permanent materials in a streambed or channel for construction of permanent fire road, trail, or access to fire management area	If these activities will: <ul style="list-style-type: none"> Result in placement of fill materials (eg. soil, rock, stabilization materials, or mechanical equipment), Result in discharge through grading, excavation or dredging, or Result in dewatering or construction of a dam, Within lakes, rivers, streams, their tributaries or adjacent wetlands.	Section 404 Permit (USACE)
		If a Section 404 Permit is required	Section 401 Water Quality Certification (RWQCB)
		If the stream in which these activities take place is subject to the ebb and flow of the tide (i.e. navigable waters) and structure will be placed in it	Section 10 Permit (USACE)
		If these activities will result in discharge of waste, dredging, or placement of any substance that is liquid, solid, or gaseous into surface waters, groundwater, or isolated wetlands	Waste Discharge Requirement (RWQCB)
		If these activities will: <ul style="list-style-type: none"> Result in construction of a crossing or cofferdam that will substantially divert or obstruct the flow of a river, stream or lake; Require use of mechanical equipment that will change the bed, channel or bank of a river, stream or lake; or Deposit debris, waste or other materials where it can pass into a river, stream or lake 	Streambed Alteration Agreement (CDFG)
		Even if these activities will not result in placement of a structure directly within a surface water, but will shade or cover riparian vegetation within a riparian zone of a stream	Waste Discharge Requirement (RWQCB) and Streambed Alteration Agreement (CDFG)
		If these activities will occur within grassland, chaparral, woodlands or other habitat used by federally protected terrestrial plant, animal, or freshwater aquatic species	Consultation under FESA with USFWS
		If these activities will occur within or near tidal, marine, or aquatic habitats used by federally protected anadromous fish or marine species	Consultation under FESA with NMFS
		If these activities will occur in habitat used by state protected species	Consultation under CESA with CDFG
If these activities will occur near active nesting birds	Compliance with MBTA and CDFG Fish and Game Code		

Table 25. Permit information for Permanent Stream Crossing

Site Type

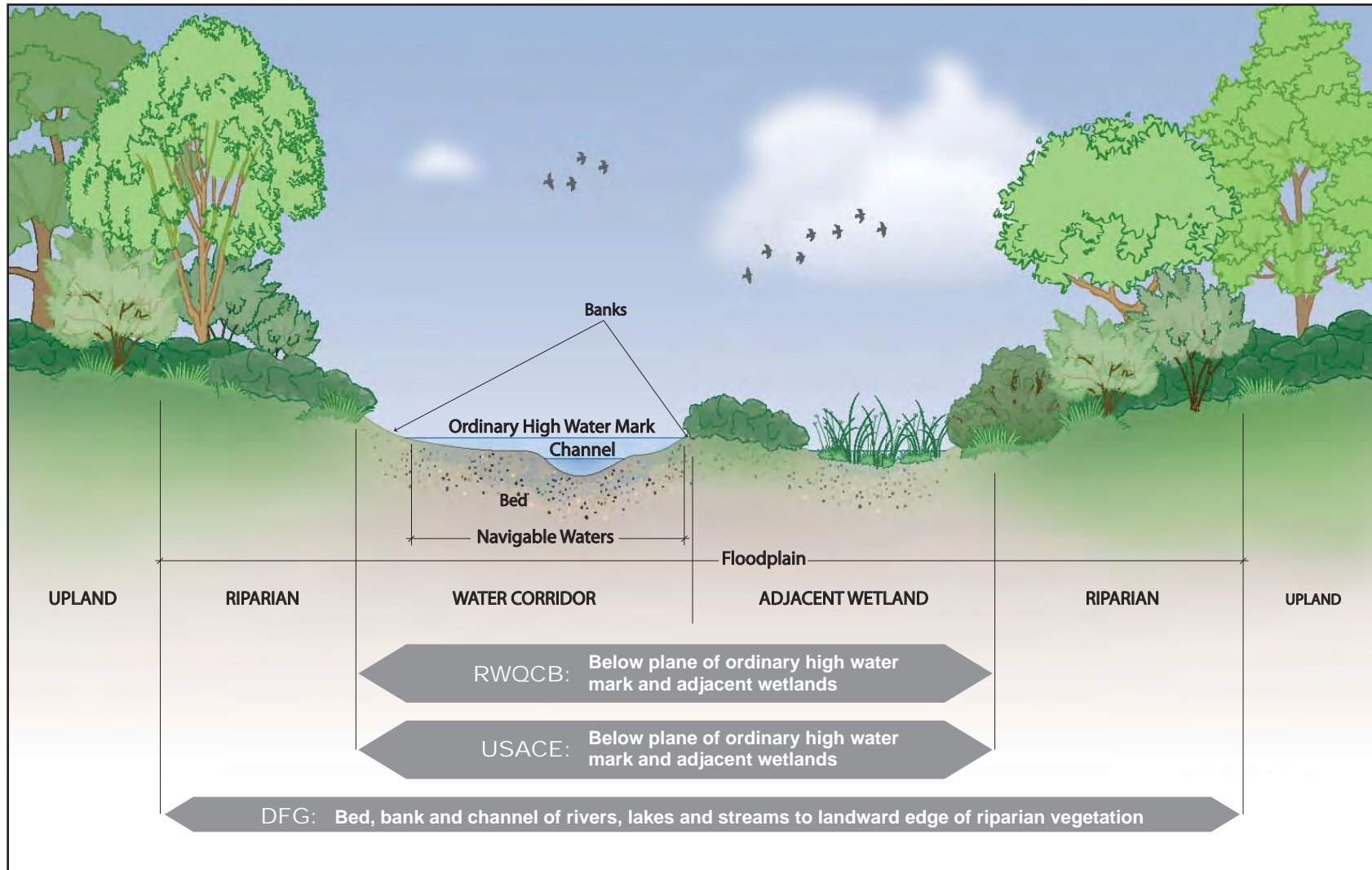


Figure 6. Diagram of jurisdictional boundaries based on project site location. The location of hazardous fuel treatments will help determine permit needs

Permit Types

U.S. Army Corps of Engineers Section 404 Permits

Defining USACE Jurisdiction

- Section 404 of the Clean Water Act regulates activities that result in the discharge of dredged or fill materials into navigable waters (waters of the United States) including adjacent wetlands.
- Waters of the United States are fully defined in the glossary, but generally include interstate lakes, rivers, streams, their tributaries and their adjacent wetlands.
- Wetlands are fully defined in the glossary, but generally include swamps, marshes, bogs, and similar areas. Isolated wetlands are excluded.
- Defining USACE jurisdiction can be very complicated, so it is recommended that you contact a wetland specialist or environmental consultant to conduct a wetland delineation and jurisdictional determination for you.



Permit Types

USACE has “pre-approved” Nationwide Permits (NWP) for activities that have minor impacts to USACE jurisdictional waters. See Chapter 4 for a table summary of the NWPs available. Some of the more common NWPs that may be used for fire management projects include:

- Permit No. 3 (Maintenance)
- Permit No. 27 (Aquatic Habitat Restoration, Establishment and Enhancement Activities)
- Permit No. 33 (Temporary Construction, Access, and Dewatering)

Although there are no acreage limits for maintenance and restoration projects, for all other project types, if the impacts to USACE jurisdictional waters will generally be greater than ½ acre or 300 linear feet, then an Individual Permit will be required. The Individual Permit process is lengthier, requiring an Alternatives Analysis and public review, so it is beneficial to try to avoid or reduce impacts to be able to obtain a Nationwide Permit.

Required Items for the Application Package

- Pre-construction Notification Form for Nationwide Permits
- Form 4345 and Section 404(b)(1) Alternatives Analysis for Individual Permits
- Complete project description (existing conditions, proposed activities, analysis of impacts, proposals for avoidance, minimization and/or mitigation)
- Conceptual engineering plans
- Wetland delineation with map
- Amount and type of discharge/fill into waters of the United States
- Cultural resources assessment, if available
- Biological Assessment, if available
- Mitigation and monitoring plan, or restoration/revegetation plan

Who Do I Contact?

West County

- <http://www.spn.usace.army.mil/regulatory/>
- Mark D'Avignon, South Branch Chief, (415) 503-6773, mark.r.d'avignon@usace.army.mil

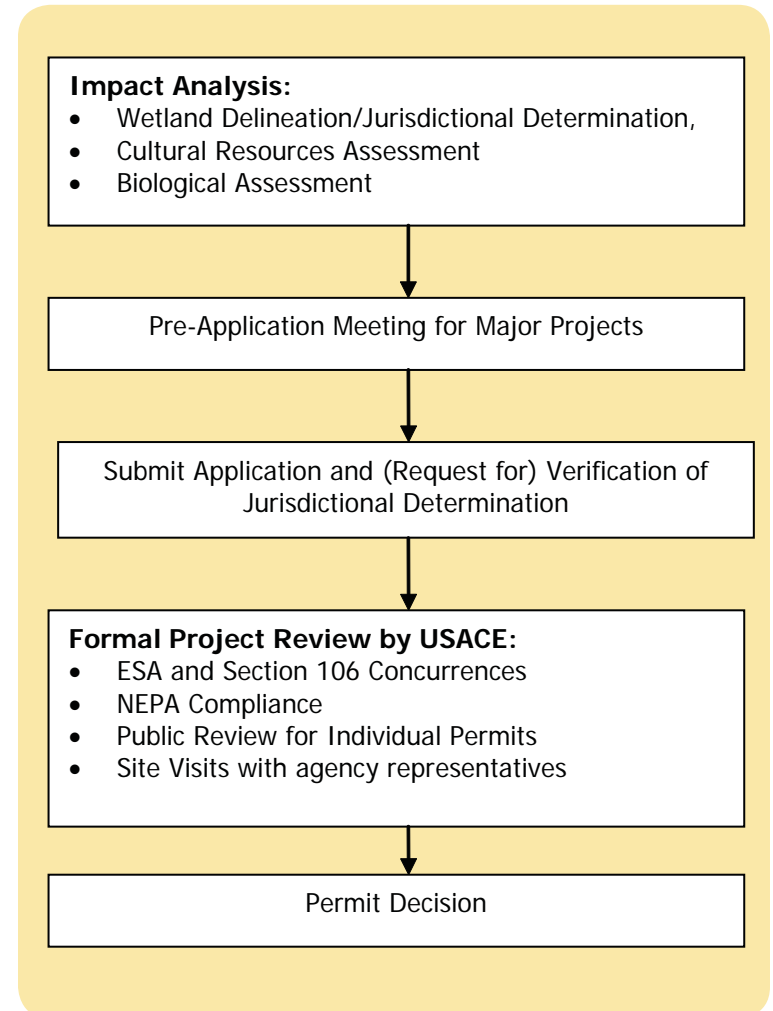
East County

- <http://www.spk.usace.army.mil/organizations/cespk-co/regulatory/>,
- William Guthrie, Office Chief, (916) 557-5269, William.H.Guthrie@usace.army.mil

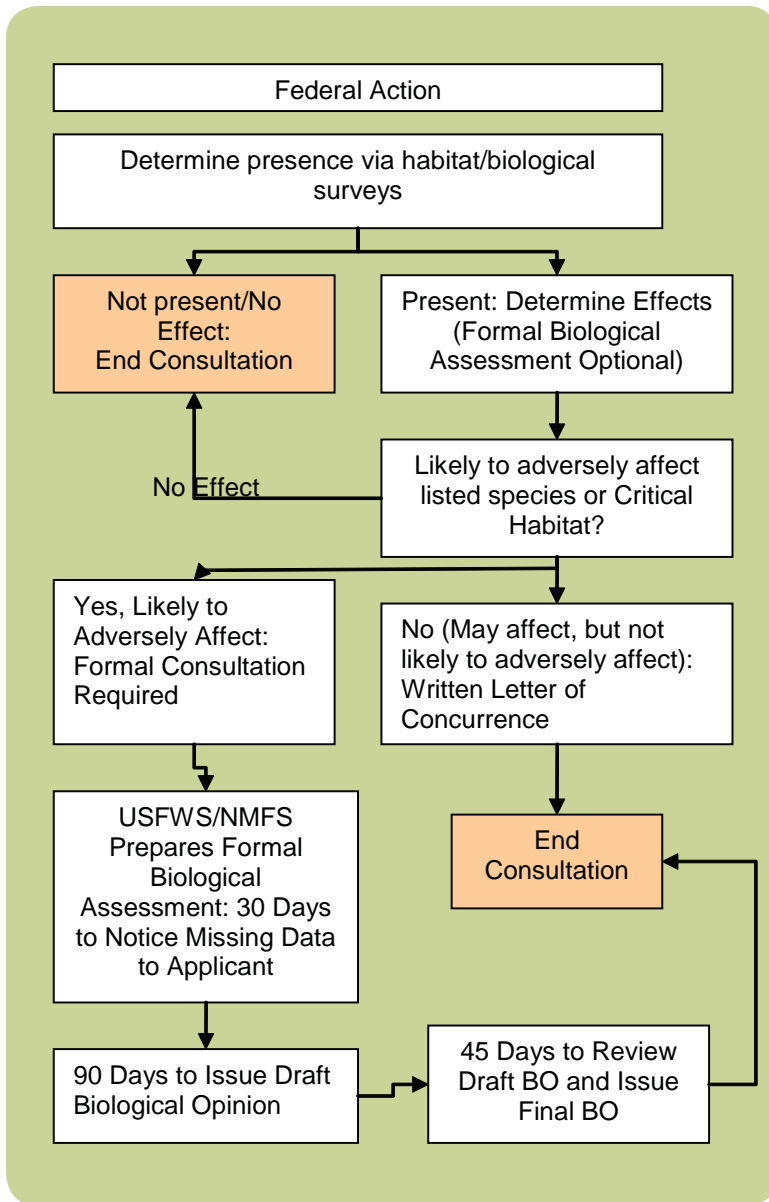
Federal Endangered Species Act Section 7 Consultation with U.S. Fish and Wildlife Service and/or National Marine Fisheries Service

Defining USFWS and NMFS Jurisdiction

- Activities subject to this type of permit include any federally funded or permitted activity that may adversely affect federally-listed species or Critical



Process for U.S. Army Corps of Engineers Section 404 Permits



Process for Federal Endangered Species Act Section 7 Consultation with U.S. Fish and Wildlife Service and/or National Marine Fisheries Service

Habitat. USFWS has jurisdiction over terrestrial wildlife, freshwater aquatic species, and plant species, and NMFS has jurisdiction over marine and anadromous aquatic species.

- To determine whether a project has the potential to adversely affect federally-listed species, speak to a professional biological consultant or USFWS biologist. You can also look for federally-listed species information in the other chapters of this guidebook.
- An incidental take permit from USFWS/NMFS is required when take of an endangered animal species may occur.
- Prohibits removal or damage of endangered plant species on federal lands or anywhere else if in knowing violation of federal law.

Permit Types

- No Effect, Technical Assistance Letter: This is available for projects that have been determined to have no effect on federally protected species or habitats, or when federally protected species or habitat are determined not present in the action area.
- May Affect, But Not Likely to Adversely Affect, Letter of Concurrence: This is available for projects that are determined to have a potential to affect federally protected species or habitat, but with implementation of avoidance and minimization measures, the project is not likely to adversely affect the species or habitat. The Services will issue a Letter of Concurrence stating the project may move forward with implementation of the measures.
- Likely to Adversely Affect, Biological Opinion and Incidental Take Permit: USFWS or NMFS will require a biological opinion and incidental take permit when it determines that a project is likely to adversely affect and listed species or habitat.

Required Items for the Application Package

- Complete project description (existing conditions, proposed activities, analysis of impacts, proposals for avoidance, minimization and/or mitigation)
- Description of action area
- Conceptual engineering plans
- Maps of species and habitats in project area
- Biological Assessment
- Impacts analysis: direct effects, indirect effects, cumulative effects

Who Do I Contact?

- USFWS: <http://www.fws.gov/sacramento/es/default.htm>
- Sacramento Fish and Wildlife Office, USFWS: (916) 414-6600
- NMFS: http://www.nmfs.noaa.gov/pr/permits/esa_permits.htm
- Santa Rosa Southwest Regional Office, NMFS: (707) 575-6050

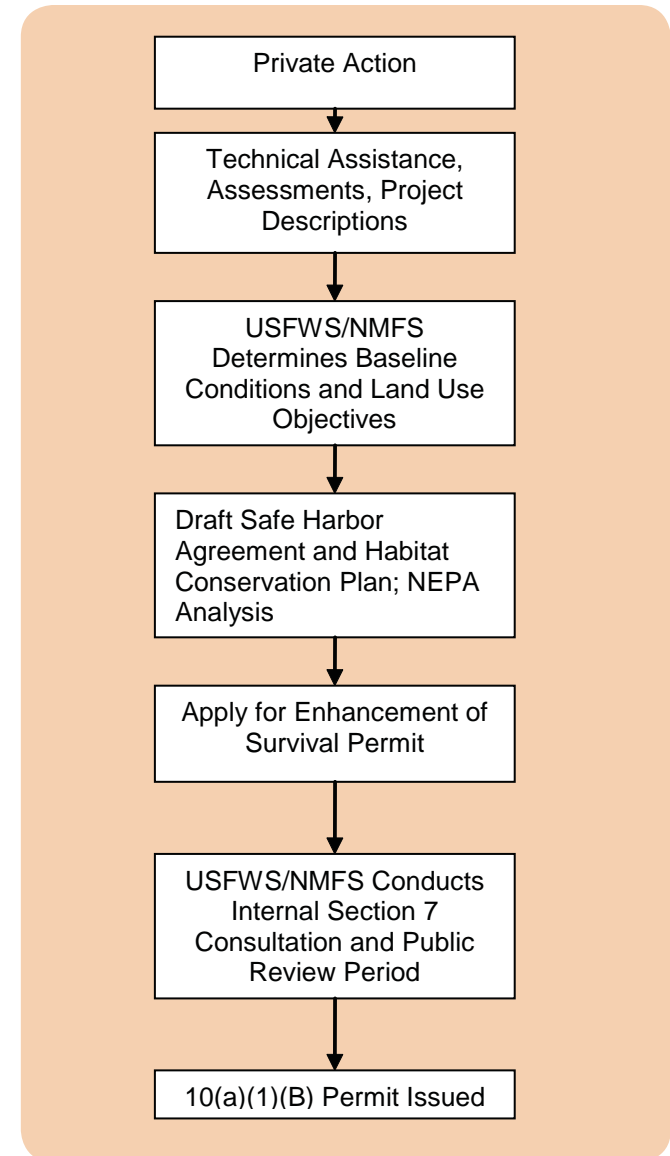
Federal Endangered Species Act Section 10 Consultation with U.S. Fish and Wildlife Service and/or National Marine Fisheries Service

Defining USFWS and NMFS Jurisdiction

- Activities subject to this type of permit include any private activity occurring on private land that may adversely affect federally-listed species or Critical Habitat. USFWS has jurisdiction over terrestrial wildlife, freshwater aquatic species, and plant species, and NMFS has jurisdiction over marine and anadromous aquatic species.
- To determine whether a project has the potential to adversely affect federally-listed species, speak to a professional biological consultant or USFWS biologist. You can also look for federally-listed species information in other chapters of this guidebook.
- The Section 10 process can be very lengthy and complicated. If it is possible to obtain federal funding or other federal approval for your project, it is advisable to do so to avoid the Section 10 process.

Permit Types

Prior to even applying for a permit, the Applicant will be required to work with USFWS/ NMFS to develop project descriptions, determine baseline conditions of the site, and develop land use objectives. The Section 10 process then requires the applicant to design a Habitat Conservation Plan (HCP) and provide a long-term commitment to species conservation. The no surprises clause assures the Applicant that if unforeseen circumstances arise, USFWS/NMFS will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water or other natural resources beyond the level otherwise agreed to in the HCP without the consent of the Applicant and as long as the HCP conditions have been met. It is only after development of the HCP and the Safe Harbor Agreement that the Application finally applies for the Incidental Take Permit under Section 10, which is called the "Enhancement of Survival Permit." A public review period can then occur USFWS and NMFS will then



Process for Federal Endangered Species Act Section 10 Consultation with U.S. Fish and Wildlife Service and/or National Marine Fisheries Service

conduct their own internal Section 7 Consultation process (see the Section 7 Consultation Process above) and a public review period. Upon completion, a 10(a)(1)(B) permit will be issued.

Required Items for the Application Package

- Complete project description (existing conditions, proposed activities, analysis of impacts, proposals for avoidance, minimization and/or mitigation)
- Proposed management activities and monitoring program of management practices
- Maps of species and habitats in project area
- Biological Assessment
- Impacts analysis: direct effects, indirect effects, cumulative effects
- Habitat Conservation Plan
- Enhancement of survival application form

Who Do I Contact?

- USFWS: <http://www.fws.gov/sacramento/es/default.htm>
- Sacramento Fish and Wildlife Office, USFWS: (916) 414-6600
- NMFS: http://www.nmfs.noaa.gov/pr/permits/esa_permits.htm
- Santa Rosa Southwest Regional Office, NMFS: (707) 575-6050

Regional Water Quality Control Board Section 401 Water Quality Certification and/or Waste Discharge Requirement

Defining RWQCB Jurisdiction

Section 401 Clean Water Act: Any applicant for a federal license or permit must obtain a certification from the State that any discharge will comply with Clean Water Act effluent limitations and State water quality standards. The most common project requiring 401 Certification is one that discharges dredge or fill materials in waters of the United States, (i.e. a project requiring a 404 permit).

Porter-Cologne Act: The Regional Boards regulate the discharge of waste that could affect the quality of waters of the State, defined broadly as any surface water or groundwater, including saline waters, within the boundaries of the State. This includes isolated wetlands and riparian zones.



Permit Types

- Section 401 Certification required for any 404 Permit
- Waste Discharge Requirement (WDR) under the Porter-Cologne Act
- General WDR for Dredged or Fill to Waters Deemed by USACE to be Outside Federal Jurisdiction is available for projects discharging less than 0.2 acre and/or under 400 linear feet of state waters (for fill/excavation) or less than 50 cubic yards (for dredging)

Required Items for the Application Package

- 401 Certification application form and/or Form 200 for WDRs
- Fee calculator form and check made out to RWQCB
- Complete project description (existing conditions, proposed activities, analysis of impacts, proposals for avoidance, minimization and/or mitigation)
- Conceptual engineering plans
- Wetland delineation with map
- Amount and type of discharge/fill into waters of the United States and Waters of the State
- Hydrological/geotechnical analysis, if available
- Biological Assessment, if available
- Notice of determination showing CEQA compliance
- Mitigation and monitoring plan, or restoration/revegetation plan

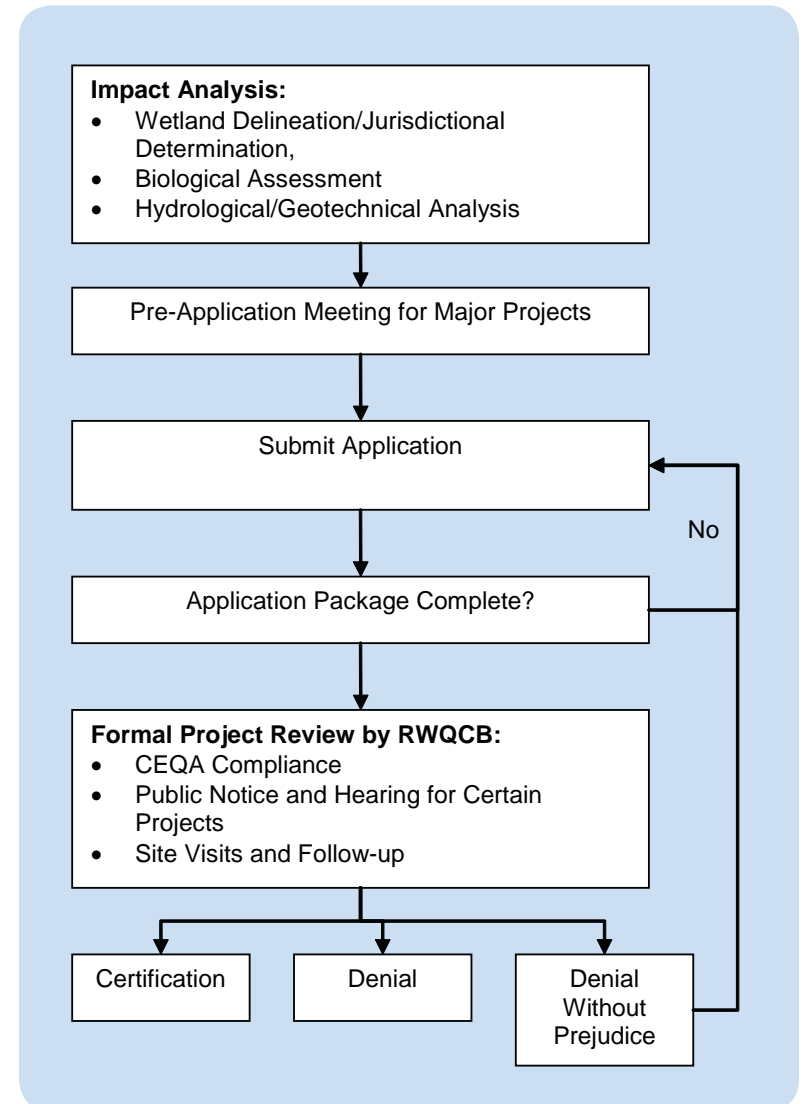
Who Do I Contact?

West County

- <http://www.waterboards.ca.gov/sanfranciscobay/>
- 401 Certification Program: <http://www.waterboards.ca.gov/sanfranciscobay/certs.shtml>
- Contra Costa County Contacts are Katie Hart, (510) 622-2356 and Matt Gaul, (510) 622-2381

East County

- <http://www.waterboards.ca.gov/centralvalley/>
- 401 Certification program: http://www.waterboards.ca.gov/centralvalley/water_issues/water_quality_certification/index.shtml
- Contra Costa County Contacts are Pat Gillum, (916) 464-4709, pgillum@waterboards.ca.gov and Greg Vaughn at (916) 464-4742, gvaughn@waterboards.ca.gov



Process for the Regional Water Quality Control Board Section 401 Water Quality Certification and/or Waste Discharge Requirement Permits

California Department of Fish and Game Streambed Alteration Agreement

Defining CDFG Jurisdiction

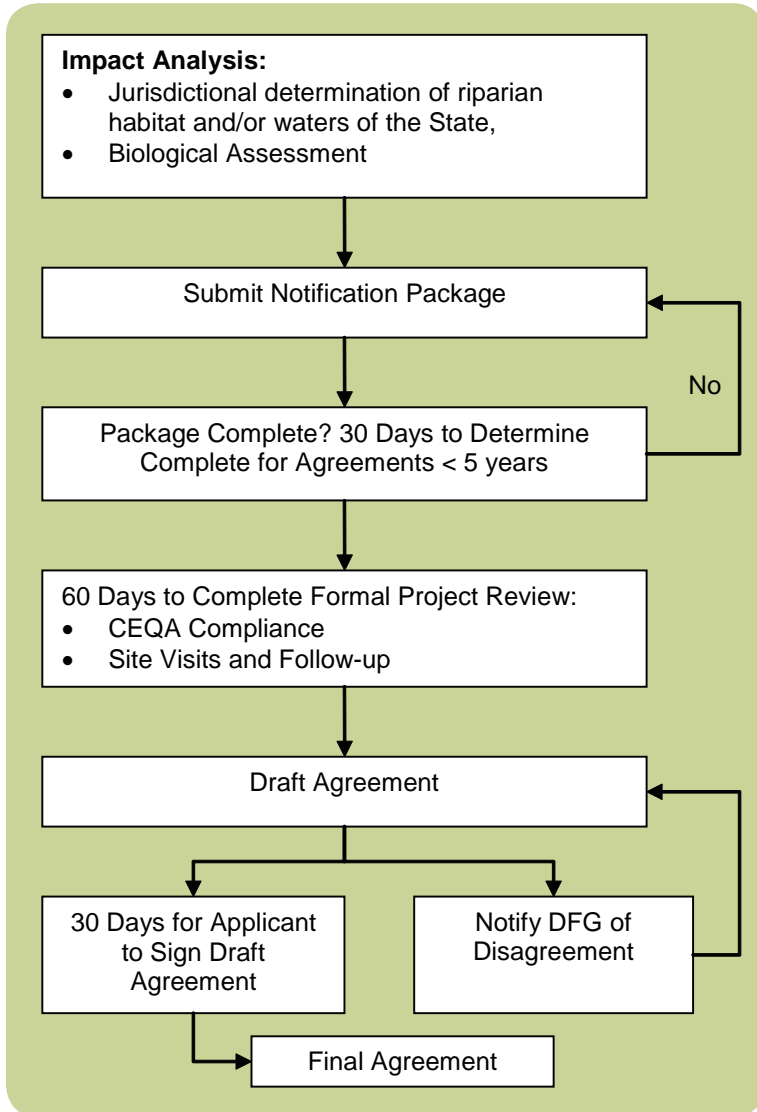
- Any person, state or local agency, or public utility must notify DFG before planning to:
 - Substantially obstruct or divert the natural flow of a river, stream, or lake; or
 - Substantially change or use any materials from the bed, channel, or bank of a river, stream, or lake; or
 - Deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it can pass into a river, stream, or lake.
- DFG jurisdiction applies to all perennial, intermittent, and ephemeral rivers, streams, and lakes in the state.

Permit Types

- Standard Agreement: Activities expected to take place within a 5-year timeframe.
- Standard Long-Term: Activities expected to continue past a 5-year timeframe.
- Master Agreement: An agreement for a duration longer than 5 years duration that is similar to a programmatic agreement. This agreement would cover a large, multi-phased project consisting of smaller specific projects for which detailed project plans are not prepared at the time of application for the permit.

Required Items for the Application Package

- Notification of Streambed Alteration Agreement Form
- Fee; Check made out to DFG
- Complete Project Description (existing conditions, proposed activities, analysis of impacts, proposals for avoidance, minimization and/or mitigation)
- Conceptual engineering plans
- Maps delineating DFG jurisdiction (riparian habitats and waters of the State) are useful
- Amount and type of impact to riparian area, including approximate number of trees removed (if applicable), and to waters of the State.



Process for the California Department of Fish and Game Streambed Alteration Agreement Permits

- Biological Resources Assessment with protected species included, if available
- Notice of determination showing CEQA compliance and copy of receipt of DFG filing fee
- Mitigation and monitoring plan, or restoration/revegetation plan

Who Do I Contact?

- <http://www.dfg.ca.gov/habcon/1600/>
- The Bay Delta Branch in Yountville, CA covers Contra Costa County
- Main Office: (707) 944-4005
- Lake or Streambed Alteration Program: (707) 944-5520

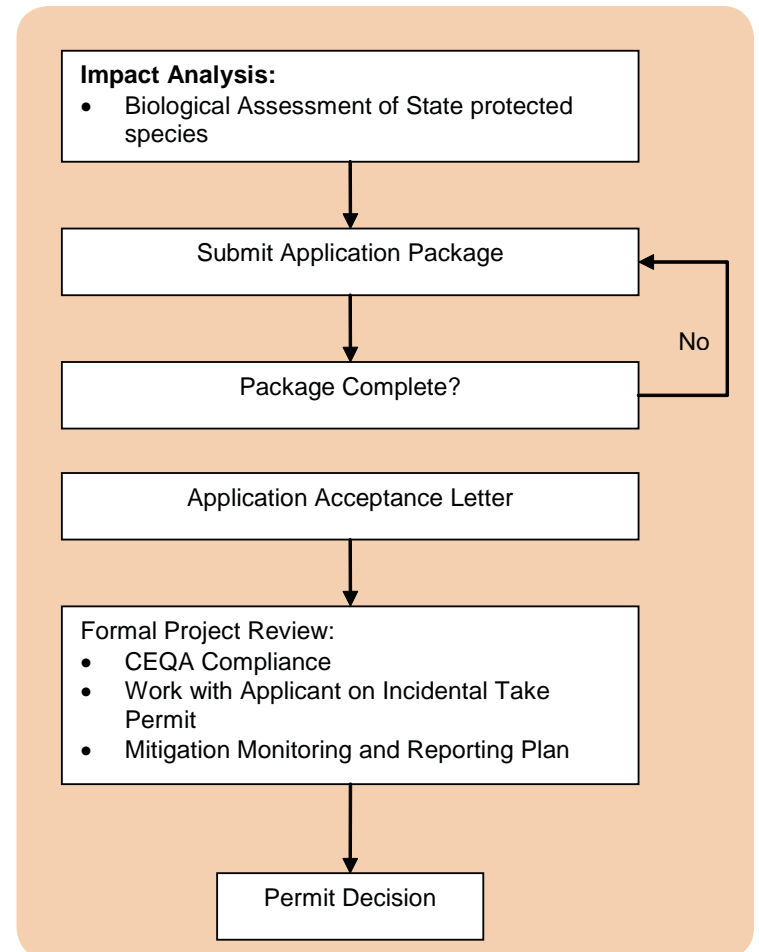
California Department of Fish and Game California Endangered Species Act Compliance

Defining CDFG Jurisdiction

- CESA prohibits take of any species determined to be an endangered or threatened species.
- Section 86 of the Fish and Game Code defines take as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.”
- State endangered and threatened species lists are available on the DFG website (see below).

Permit Types

Section 2080.1 Consistency Determination: This permit is available when the project would affect species that are both federally and state listed (e.g., giant garter snake, winter-run and spring-run chinook salmon). In this case, you would submit a letter to DFG describing the project, species potentially affected, proposed avoidance and minimization measures for the species, a biological opinion or letter of concurrence from USFWS or NMFS (if available), and request concurrence that the project would not result in take of state listed species. Ultimately it is DFG’s responsibility to determine whether take of the species will occur or not. If DFG determines that take will not occur, their letter of concurrence will function as their CESA determination. If DFG determines that take will occur, then a consistency determination (pursuant to Fish and Game Code 2080.1) or application for a take



Process for the California Department of Fish and Game Endangered Species Act Compliance

permit (pursuant to Fish and Game Code 2081) will be required.

Incidental Take Permit (Section 2081): This permit is available when the project would affect species that are state listed only. Under this consultation, an incidental take permit from DFG (pursuant to Fish and Game Code Section 2081) would be required if the project may result in take of a state-listed species.

Required Items for the Application Package

- Complete project description (existing conditions, proposed activities, analysis of impacts, proposals for avoidance, minimization and/or mitigation)
- Conceptual engineering plans
- Species and habitat maps from the California Natural Diversity Database
- Biological/habitat assessment of state listed species
- Take analysis of impacts
- Proposed avoidance, minimization and mitigation measures with a monitoring plan and description of funding sources for mitigation
- Notice of determination showing CEQA compliance



The California clapper rail & California least tern are protected by the Migratory Bird Treat Act & the Federal Endangered Species Act

Who Do I Contact?

- http://www.dfg.ca.gov/habcon/cesa/incidental/cesa_policy_law.html
- Bay Delta Branch, Main Office: (707) 944-4005

Migratory Bird Treaty Act

USFWS Jurisdiction

Section 703¹ of the MBTA prohibits taking any migratory bird, part, nest or eggs. Take is defined as “to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or any attempt to carry out these activities.” A take does not include habitat destruction or alteration, as long as there is not a direct taking of birds, nests, eggs, or parts thereof. Birds protected under the act include all common songbirds, waterfowl, shorebirds, hawks, owls, eagles, ravens, crows, native doves and pigeons, swifts, martins, swallows and others, including their body parts (feathers, plumes etc),

¹ The full text stipulates, “Unless and except as permitted by regulations made as hereinafter provided in this subchapter, it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or eggs of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof.”

nests, and eggs. A complete list of protected species is found at 50 CFR 10.13.

Activities related to fire management which are most likely to result in take of migratory birds include, but are not limited to, clearing or grubbing, tree pruning or limbing, prescribed burning, and vegetation removal in migratory bird nesting habitat during the nesting season when eggs or young are likely to be present. See the BMPs in Chapter 2 of this guidebook to avoid impacts to migratory birds. Removal of inactive nests of migratory birds should not be accomplished prior to consultation with a qualified biologist.

Permit Types

Incidental Take Permit: Projects that are likely to result in take of birds protected under the MBTA will require the issuance of take permits from the local FWS jurisdiction. A permit may be required for removal of inactive nests. Application for a take permit is made on FWS application form 3-200. Permits for take are issued in accordance with regulations at 50 CFR 21.

Depredation Permit: Depredation permits are issued to allow the take of migratory birds which are causing serious damage to public or private property, pose a health or safety hazard, or are damaging agricultural crops or wildlife. Should it be necessary to apply for a permit to kill a limited number of birds, documentation from their office that they have offered advice in the non-lethal control of birds is required as part of our application information. No permit is required merely to scare or herd depredate migratory birds other than endangered or threatened species or bald and golden eagles.

Who Do I Contact?

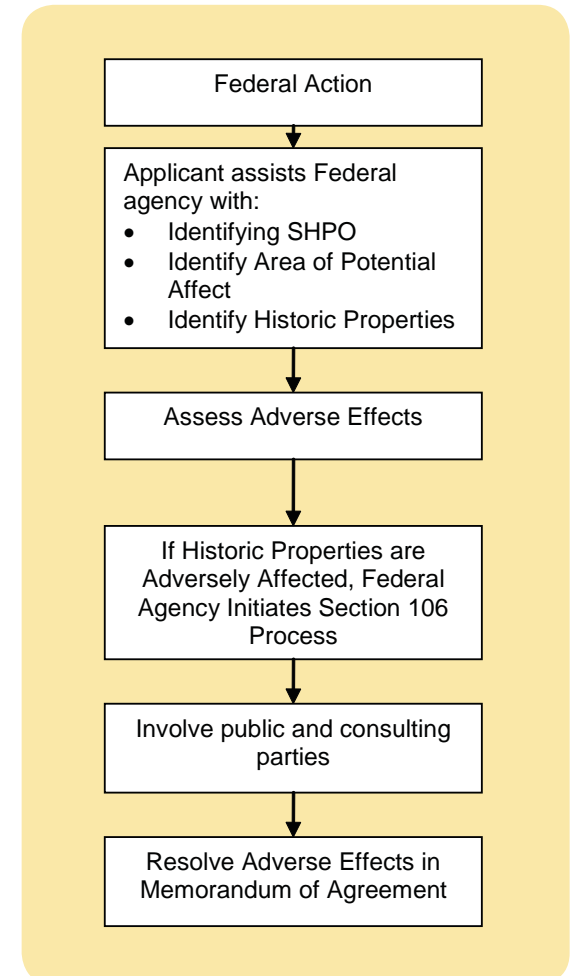
Please see: <http://www.fws.gov/pacific/migratorybirds/permits.htm> for more information on obtaining permits.

National Historic Preservation Act (Advisory Council on Historic Preservation and State Historic Preservation Office)

ACHP and SHPO Jurisdiction

The National Historic Preservation Act created the Advisory Council on Historic Preservation (ACHP), an independent Federal agency, which is authorized to review and comment on all actions licensed by the Federal government which will have an effect on properties listed in the National Register of Historic Places, or eligible for such listing.

Any project involving a federal action must seek ACHP comments and complete Section 106 review (16 U.S.C. 470(f)). The Federal agency involved in the proposed project or activity is



Process for the National Historic Preservation Act Permits

responsible for initiating and completing the review process. The agency must confer with the State Historic Preservation Officer (an official appointed in each State or territory to administer the National Historic Program) and the NHPA.

The National Register is an inventory of the United States' historic resources and is maintained by the National Park Service. The inventory includes buildings, structures, objects, sites, districts, and archeological resources. As mentioned above, Section 106 also encompasses significant properties which have not yet been listed, but are determined to be eligible for listing.

Permit Types

The agency consults to resolve adverse effects with the SHPO/THPO* and others, who may include Indian tribes and Native Hawaiian organizations, local governments, permit or license applicants, and members of the public. ACHP may participate in consultation when there are substantial impacts to important historic properties, when a case presents important questions of policy or interpretation, when there is a potential for procedural problems, or when there are issues of concern to Indian tribes or Native Hawaiian organizations.

Consultation usually results in a Memorandum of Agreement (MOA), which outlines agreed-upon measures that the agency will take to avoid, minimize, or mitigate the adverse effects. In some cases, the consulting parties may agree that no such measures are possible, but that the adverse effects must be accepted in the public interest.

Required Items for the Application Package

- Complete project description (existing conditions, proposed activities, analysis of impacts, proposals for avoidance, minimization and/or mitigation)
- Area of potential effect map
- Assessment of historic properties significance
- Apply criteria of adverse effect
- Proposed avoidance, minimization and mitigation measures

Who Do I Contact?

- ACHP: <http://www.achp.gov/nhpa.html>
- SHPOL <http://ohp.parks.ca.gov/>
- Contact: calshpo@parks.ca.gov or call 916-653-6624



Archeological resources are protected under the National Historic Preservation Act

Estimated timeline for permit issuance after application

Permit Type	Day 1 to 30	Day 31 to 60	Day 61 to 90	Day 91 to 120	Day 121 to 150	Day 151 to 180
§ 7 Consultation with U.S. Fish and Wildlife Service*			Consultation must be concluded within 90 days, unless an extension is granted (16 USC § 1536(b)(1)(A)).		USFWS has a maximum of 150 days to conclude consultation without obtaining consent of the permittee (16 USC § 1536(b)(1)(B)).	May extend the consultation past 150 days with the approval of the permittee. If an approval is obtained from the permittee, there is no maximum time limit, unless expressly stated in the approval (16 USC § 1536(b)(1)(B)).
California Endangered Species Act Incidental Take (CDFG is CEQA responsible agency)	CDFG has 30 days to conduct an initial review and to determine if the application is complete (14 CCR § 783.5).		CDFG has 90 days to process the application, unless an extension is granted. An extension may be granted up to 60 days (14 CCR § 783.5).		CDFG has an absolute maximum of 150 days to complete the application (14 CCR § 783.5(c)).	
California Endangered Species Act Incidental Take (CDFG is CEQA lead agency)	CDFG has 30 days for an initial review and to determine if the application is complete (14 CCR § 783.5).			CDFG has 120 days to process the application, unless an extension is granted. An extension may be granted for an additional 60 days (14 CCR § 783.5(d)).		CDFG has an absolute maximum of 180 days to complete application (14 CCR § 783.5(d)).
Consistency Determination (Fish and Game Code § 2080.1)	CDFG shall make a determination within 30 days whether a federal incidental take permit or federal incidental take statement is consistent with California Endangered Species Act (Fish and Game Code § 2080.1).					

*Section 10 Consultation does not have a statutory timeframe. It has been known to take 2-10 years to complete.

Permit Type	Day 1 to 30	Day 31 to 60	Day 61 to 90	Notes
Clean Water Act 404 Nationwide Permit	The district engineer must determine if the Pre-Construction Notification package is complete within 30 calendar date of the date of receipt and, as a general rule, will request additional information necessary to make the PCN complete only once.	If the district engineer has determined the notification complete and the Applicant has not received a notice to proceed within 45 calendar days, the project may move forward, unless Section 7 Consultation pursuant to the Federal ESA is required.		Issuance of a USACE Nationwide Permit is usually delayed because of the Section 7 Consultation process with USFWS or NMFS. However, USACE has instituted timelines for responding to USACE and NMFS (between 30 and 45 calendar days) in an attempt to speed the process.
Clean Water Act 404 Individual Permit	District Engineer has 15 days to determine if the application is complete and issue a public notice. Comment period for a public notice is usually between 15 and 30 days, unless an extension is granted for a maximum of 30 days (33 CFR § 325.2(a)(2)).	District Engineer has 60 days to make a determination for all applications, unless a time extension has been granted for the following reasons: need to conduct a site visit (30 day extension); comment period is extended (up to 30 days); case is referred to a higher authority; or additional information is needed to make a determination (application process is suspended) (33 CFR § 325.2(d)(3)(i)-(vi)).		Issuance of a USACE Individual Permit usually takes longer than the statutory timelines because USACE has to wait until USFWS/ NMFS completed the ESA process, SHPO completes the Section 106 NHPA process, and NEPA analysis is complete.
401 Water Quality Certification	RWQCB will determine if application package is complete.	RWQCB must issue a permit or grant a waiver within 60 days. RWQCB and District Engineer may reasonably require a period of time longer than 60 days, but cannot exceed 1 year (33 CFR § 325.2(b)(ii)).		Note: Issuance of a Section 401 Water Quality Certification usually takes longer than the statutory timelines because applications are often deemed incomplete, which re-starts the clock.
Waste Discharge Requirements	RWQCB has 30 days to review application for completeness and may request additional information from the permittee.	RWQCB determines whether to adopt WDRs, prohibit the discharge, or waive the WDRs. If WDRs should be issued, then RWQCB will propose WDRs and distribute them to persons and public agencies with known interest in the project for a minimum 30 day comment period.	RWQCB will then hold a public hearing with at least a 30 day public notification. Entire process generally takes about 3 months to complete.	
Lake and Streambed Alteration Agreement		CDFG must either issue a draft agreement to the permittee or make a determination that no agreement is required within 60 days (Fish and Game Code § 1602) unless an extension is requested.	After 60 days, an operation of law is in effect unless extension was granted. The permittee may proceed with the project without a Lake or Streambed Alteration Agreement, but the permittee is limited to the work described in the notification (Fish and Game Code § 1602).	This permit is usually the only one that is consistently “on-time” in terms of the statutory timeline requirements. However, extensions area often requested for larger, more complex projects.

Table 26: Estimated timeline for permit issuance after application submittal (continued)



