Clean Water Act (1972)

- “Restore and maintain the chemical, physical, and biological integrity of the nation's waters by preventing point and nonpoint pollution sources…”

- Section 404
  - Discharge of dredged or fill material
  - All waters of the United States
Clean Water Act Section 404(b)(1) Guidelines

• Least Environmentally Damaging Practicable Alternative
• Comply with Coastal Zone Management Act, State water quality standards, Endangered Species Act
• May not cause significant degradation of ecosystem
• Mitigation for adverse impacts is required
• Federal responsibility is with U.S. Army Corps of Engineers and U.S. Environmental Protection Agency
USACE Jurisdictional Boundaries

Tidal Waters
- High Tide Line
- Mean High Water
- Section 404
- Section 10
- Tidelands
- Coastal Wetlands
- Vegetation associated with salt & brackish water

Fresh Waters
- Uplands
- Section 404
- Section 10 (if navigable)
- Ordinary High Water
- Fresh Water Wetlands
- Marshes, swamps, bogs, & similar areas

Ground Water line
Placement below the Mean High Water (MHW)
Clean Water Act (CWA) 401 Water Quality Certification

- Provides States and authorized tribes the opportunity to address aquatic resource impacts of federally issued permits and licenses

- Under Section 401, a federal agency cannot issue a permit or license for an activity that may result in a discharge to waters of the U.S. until the State or tribe where the discharge would originate has granted or waived a 401 certification
State of Hawaii, Department of Health, Clean Water Branch

- Clean Water Act Section 401 Water Quality Certification
- National Pollutant Discharge Elimination System (NPDES) permit
Section 401 Typical Application Elements

- Application Forms & Project Description
- BMP plan
- Figures/drawings
- Marine biological assessment
- Coastal processes analysis
- Applicable monitoring & assessment plan (Water Quality)
- Soil/sediment sampling & analysis plan
Case Study: Hawaii Kai Marina
Fill Areas
Offshore Disposal: South Oahu Ocean Dredged Material Disposal Site (SOODMDS)
Beach Nourishment at Portlock Beach
Marine Biological & Water Quality Resources Evaluation

- Describe existing marine biological resources
- Describe water quality within project site and surrounding area
Best Management Practices (BMP) Plan

Figure A-1
Breach Nourishment
Conceptual Erosion Control and Best Management Practices Plan
Hawai‘i Kai Marina and Entrance Channel Maintenance Dredging
Applicable Monitoring & Assessment Plan (AMAP)

- Describe proposed means and methods of water quality monitoring (pre-, during, and post-construction)
- Describe means and methods of controlling pollutants
- Narrative describing how monitoring results will be used to demonstrate compliance with State WQ Standards
Historical Shoreline Changes

University of Hawaii
Coastal Geology Group
Hawaii Kai Marina Section 401 WQ Certification - Process Timeline

- **January 2011**: Initial application submittal
- **August 2011**: First round of comments back from DOH
- **September 2011**: Re-submittal per DOH comments
- **December 2011**: 2nd round of comments from DOH
- **January 2012**: 3rd submittal per DOH comments
- **April 2012**: Receipt of 401 WQ Certification

**15 month process AFTER completion of required application components. Total time = 1.5-2 years**
Case Study:

Wailuku-Kahului Wastewater Reclamation Facility
Maui WWRF Section 401 WQ Certification

- Initial application submittal: February 2013
- First round of comments back from DOH: June 2013
- Re-submittal per DOH comments: December 2013
- Permit still pending: October 2014

**19 month process and still counting....**
Maui WWRF Section 401 WQ Certification

- Project funding deadline
- Compartmentalization to allow some activities to begin
- Contractor on site, delay costs
- DOH unresponsive
Maui WWRF Section 401 WQ Certification

• Meeting with DOH (major milestone)
• Addition of silt fence along MHW line, between beach sand and beach sand
• $300,000 in water quality monitoring
Case Study:

Kaelepulu Stream (Kailua)
California

- 401 Water Quality Certification
- Programmatic Permits
- Permit Streamlining Act
Section 401 WQ Certification in California: Regional Water Quality Control Board

- Agency is generally supportive of beach restoration/nourishment projects
- Schedule is fairly consistent with US Army Corps of Engineers processing time
- Agency staff participate in regional dredged material management teams to evaluate sediment proposed for beach nourishment
Step-wise Approach to Water Quality Monitoring may be used:

1. Qualitative
2. Identify any exceedances from background beyond ½ mile from fill area
3. If exceedances persist for more than 3 days, begin quantitative water quality measurements and ensure consistency with permit conditions
Sand Compatibility and Opportunistic Use Program (SCOUP)

- Establish a process approved by regulatory agencies for environmentally-responsible use of opportunistic materials to nourish a pre-established receiver site(s) when those materials become available.

- Promote a clear vision of the type of testing and monitoring needed before, during, and after construction of opportunistic programs.
California – Permit Streamlining Act

- Requires public agencies to follow standardized time limits and procedures for specified types of projects/land uses.

- Upon receipt of a project application, an agency has 30 calendar days to notify the applicant, in writing, of whether or not the project application is complete for processing.

- If incomplete, resubmittal of the application begins a new 30-day review period.

- If the agency fails to notify the applicant of completeness within either of the 30-day periods, the application is deemed to be complete.
North Carolina

- CAMA Permit process
- Programmatic Permits
- Section 933
North Carolina Section 401 WQ Certification

- 401 WQ Certs Administered by State Department of Environment and Natural Resources (NCDENR), Division of Water Resources
- Covered under Coastal Area Management Act (CAMA) Permit: Streamlined Process
- CAMA Major Permits are necessary for activities that require other State or Federal permits
- Applications for Major Permits are reviewed by 10 State and four Federal agencies before a decision is made.
- Concurrent permit processing by State and Federal agencies
Carteret County - Programmatic Permit: Bogue Banks Master Beach Nourishment Plan
Bogue Banks Master Beach Nourishment Plan

- Engineering Report
  - Historical Evaluations
    - Data Review
    - Analytical/Numerical Modeling
    - Sediment Source Evaluation
  - Determine Beach Design
    - Develop/Screen Alternatives
    - Determine Equivalent Island-wide Optimal Protection Level
    - Determine Protection Triggers
    - Finalize Alternatives
- NEPA/SEPA
  - Scoping Purpose & Need
  - Supplemental Documentation
    - Prepare Alternatives Analysis
- Permitting
  - Submit Draft EIS Public Hearing
  - Final EIS Public Review ROD
Morehead City Harbor - Section 933

- Dredged material from Morehead City Harbor being disposed offshore
- Offshore disposal is least expensive alternative and USACE had no authorization to expend additional funds
- State requests Section 933 study
Morehead City Harbor – Section 933

- Based on the findings in this report, Carteret County is eligible for 65% Federal and 35% non-Federal sponsor cost sharing for the added cost of depositing dredged navigation material on the beaches.

- Beach nourishment now incorporated into the federal project; does not require independent Section 401 WQ Certifications for routine dredging/nourishment.
“Legislature finds it is in the public interest to replicate the natural drift of sand which is interrupted or altered by inlets...”

The Department shall ensure that any disposal of the beach-quality sand from Federal projects in this State which involve dredging for the purpose of navigation is on, or in the nearshore area of, adjacent eroding beaches.
Hawaii Department of Health - Clean Water Branch

- Responsiveness
- Requests for Meetings
- Clarity of Expectations and Jurisdiction
- Permit processing times
Possibilities for Improvement

- Programmatic permits (e.g., Small-Scale Beach Nourishment Program)
- Routine stream maintenance with beach placement
- Defined schedule for DOH response and permit processing
- Process for pre-application meetings / early consultations
Harbor Dredging / Beneficial Reuse

- Hawaii DLNR- Division of Boating and Ocean Recreation (DOBOR) Small Boat Harbors
- Hawaii Department of Transportation – Harbors Division
- US Army Corps of Engineers – Federal Navigation Projects
Localized Beach Management & Shore Protection

- Hawaii DLNR Office of Conservation and Coastal Lands
- City and County – Parks
- Department of Transportation – Highways
- Regional Sediment Management
- Sand-pushing / beach scraping
Thank you!

Robert Walker
rwalker@anchorqea.com