

An aerial photograph of a river winding through a dense, green forest. The river is dark blue and flows from the upper left towards the lower right. The surrounding land is covered in thick, lush green trees and vegetation. The text is overlaid on the upper portion of the image.

Stream-Smart Road Crossing Workshops

January 26; February 16 & 24; and March 23, 2012

Stream Crossings and Corps Permits

**U.S. Army Corps of Engineers
New England District**

Jay Clement



PRESENTATION OBJECTIVE

New England District

1. Clarify Corps of Engineers jurisdiction and permit program as it pertains to stream crossings. *“When do I need a Corps permit?”*
2. Review requirements of Maine General Permit (“Maine GP”) as they relate to stream crossings.



PERMIT AUTHORITIES

What triggers Corps jurisdiction?

New England District

Section 10 - Rivers and Harbors Act of 1899

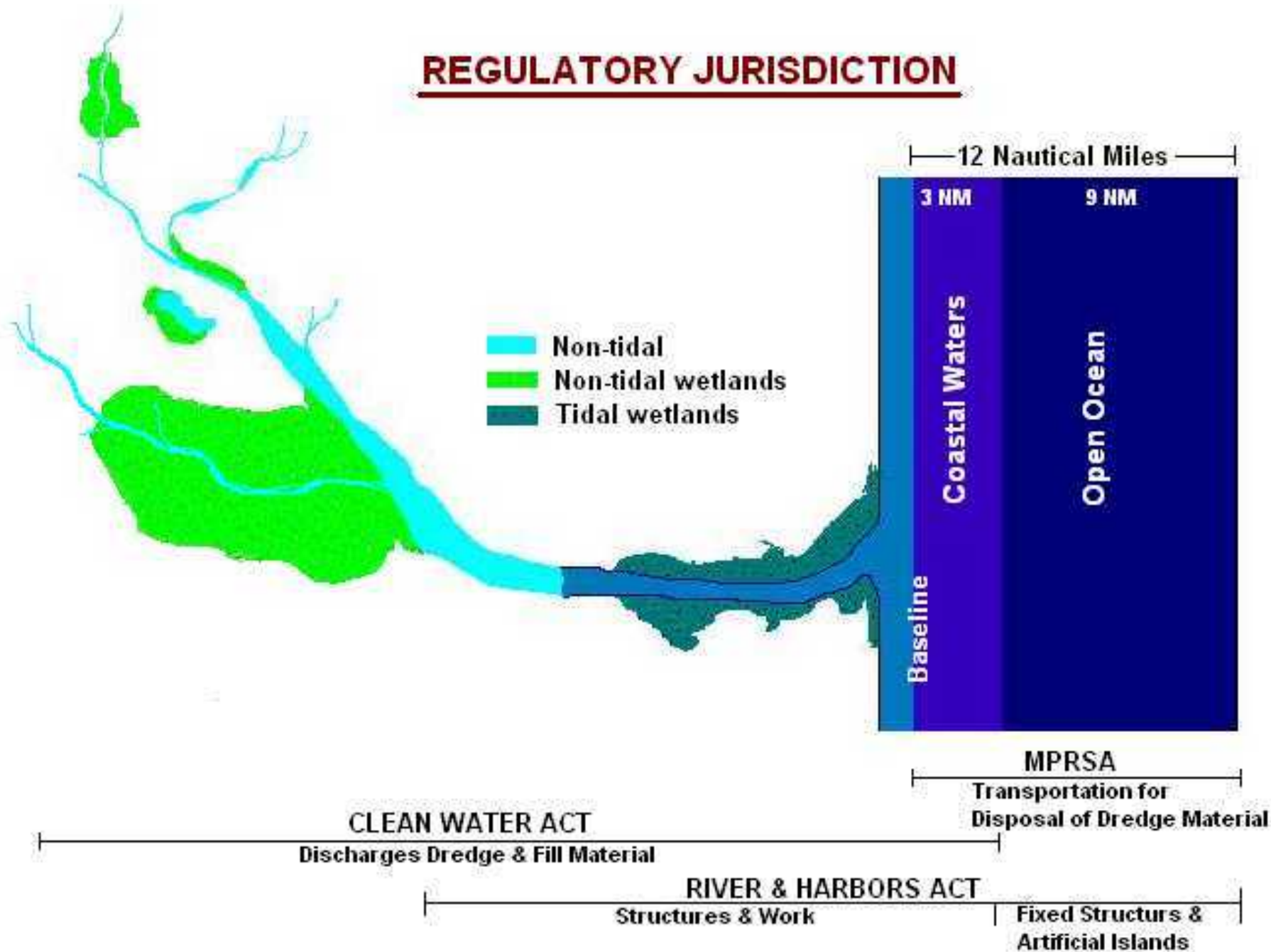
- Regulates work in navigable waters of the U.S.
- Includes virtually all temporary & permanent work
- Navigable waters = all tidal waters & other waterways that have been specifically declared navigable by Congress

Section 404 - Clean Water Act of 1972

- Regulates dredged & fill material discharges in waters of the U.S.
- Includes ANY temporary or permanent fill as well as certain excavation/demolition activities
- Waters of U.S. = all navigable waters and all others (lakes, ponds, streams, and adjacent wetlands)

NOTE: DEP or town permits are not a substitute for a Corps permit. Most stream crossings are within Corps jurisdiction, but not all require a written permit.

REGULATORY JURISDICTION





PERMIT AUTHORITIES

Section 10 - Rivers & Harbor Act of 1899

New England District

- Issue permits for work in navigable waters of the U.S.
- Work includes the installation of permanent or temporary structures, filling activities, and dredging. Any work potentially affecting the course, location, condition or capacity of such waters.
- Navigable waters in Maine: All tidal waters; Penobscot River to Medway; Kennebec River to Moosehead Lake; & Maine portion of Lake Umbagog.
- Federal jurisdictional boundary: mean high water (MHW) line
- **Virtually any tidal crossing requires a Corps permit.**



PERMIT AUTHORITIES

Section 404 of the Clean Water Act

New England District

- Issue permits for the discharge of dredged or fill material into all waters of the U.S. including navigable waters as well as their tributaries and adjacent wetlands.
- Federal jurisdictional boundaries:
 - High tide line in tidal/navigable waters; ordinary high water line in navigable waters
 - Wetland boundaries are delineated using the Jan. '87 Corps Wetland Delineation Manual & Regional Supplement
- Note: Crossings generally involve filling (cofferdams, bedding/backfill, riprap aprons, etc) and are therefore generally within Corps jurisdiction.**



TYPES OF PERMITS

New England District

▣ **Maine General Permit (Maine GP)**

- Abbreviated permit process (60 days)
- Reserved for minimal impact projects
- Two categories of review; non-reporting (Cat 1) and reporting (Cat 2)

▣ **Individuals Permits**

- Reserved for more complex or controversial projects
- Require public notice & full public interest review
- Permits processed within 120 days



Maine GP

New England District

Stream Crossings and the Maine GP (Category 1)

Special Condition 22

Requirements for Category 1 Eligibility (non-reporting)

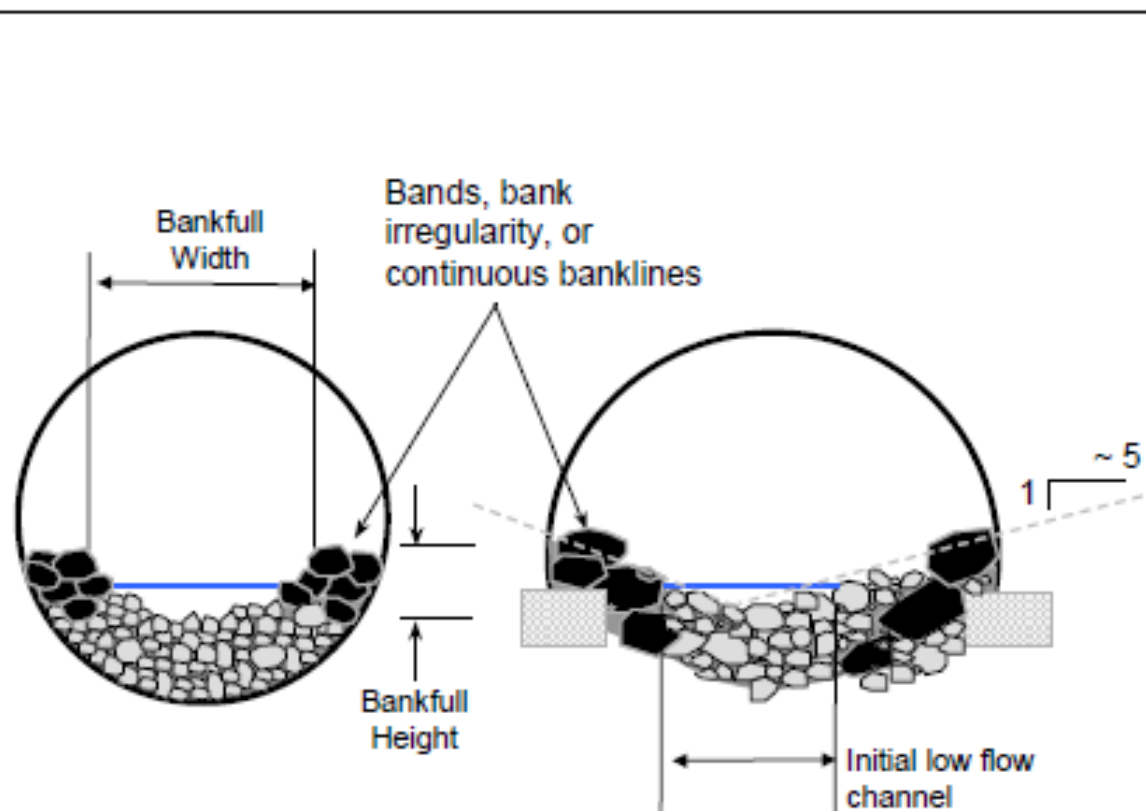
- Only applies to inland waters, i.e. freshwater; tidal crossings go Cat 2
- Generally shall not impede high flows or obstruct necessary life-cycle movements of indigenous aquatic life
- Footprint of impact in stream & wetlands must be <15,000 s.f.
- Not in Atlantic salmon Critical Habitat or DPS
- No slip lining
- No unconfined temporary or permanent fill in flowing waters
- Instream work between July 15 & October 1
- New & replacement crossings – must be spans that meet 1.2 x BFW.
Spans = 3 sided boxes, arches, bridges or open bottom culverts
- Establish/maintain a natural bottom within structure
- Established stream bed must be appropriate to natural conditions e.g. gravel on gravel
- **MUST SUBMIT CATEGORY 1 NOTIFICATION FORM!!!!**



Maine GP

New England District

An explanation of the 1.2 x Bank Full Width Design Standard



Example: BFW = 4'; Minimum culvert or arch diameter = 4.8' (60")



Maine GP

New England District

Stream Crossings and the Maine GP (Category 2)

Special Condition 22

Recommendations for Category 2 Eligibility (reporting)

- Same general requirement to pass flows & aquatic life
- Same time of year restriction is preferred
- Same preference for spans but oversized embedded culverts can be found acceptable (GP has recommendations for minimum embedment). 1.2 x BFW remains the target design. No multiple pipes.
- Slip lining/Invert lining still not preferred but can be acceptable on a case-by-case basis e.g. with built-in baffles or weirs to aid in passage
- Footprint of stream & wetland impact must be < 3 acres
- No adverse impact to federal endangered species or Critical Habitat

Category 2 requires application to and written approval to the Corps and allows for case specific determination by reviewers



Key Elements of Maine PGP Process

New England District

■ APPLICATION

- DEP, LURC or Corps application form accepted
- Clear, reproducible, & legible plans (locus map, plan view, & cross section(s))
- Clear summary of project purpose & need
- Clear summary of project impact
- Discussion of avoidance and minimization measures

■ AGENCY REVIEW (May require Endangered Species Consultation)

■ PERMIT ISSUANCE

■ COMPLIANCE & ENFORCEMENT



Individual Permits

New England District

Individual Permits and Stream Crossings

- Reserved for crossings that do not meet GP standards (rare)
- Reserved for any crossing that adversely affects federal endangered species (formal Section 7 consultation required)
- Case by case determination
- Pre-application coordination and site visits critical
- State/Federal fisheries agency input likely
- Emphasis on avoidance & minimization
- Compensatory mitigation may be required



General

New England District

SOME ISSUES

- Contradicting state/federal permit processes
- Lack of outreach
- Compliance/Enforcement
- Cost of compliance with crossing standards
- Expanding awareness of barrier issues
- New species of concern – alewives, Atlantic sturgeon



CONTACT INFORMATION

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QUESTIONS

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