

# CORPS REGULATORY PROGRAM AND JURISDICTION OVERVIEW

Galveston District, Regulatory Division  
(SWG RD)

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# REGULATORY PROGRAM AUTHORITIES

## **Section 10 of the Rivers and Harbors Act of 1899 (Section 10)**

- Corps authorizes structures and/or work in/or affecting “navigable waters of the U.S.” such as dredging, piers and docks, dikes, levees.
- Structures/work/navigable waters
- Navigable waters are those that are subject to the ebb and flow of the daily 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. 33 CFR Part 322.2

## **Section 404 of the Clean Water Act of 1972 (Section 404)**

- Corps authorizes the discharge of dredged and/or fill material into waters of the U.S. such as earthen fill, mechanized landclearing, riprap.
- Discharge of dredged and/or fill material/waters of the U.S.

## **Section 301 of the Clean Water Act (Section 301)**

- Prohibits the discharge of any pollutant into navigable waters of the United States without specific provisions of the Clean Water Act including Sections 402 & 404.

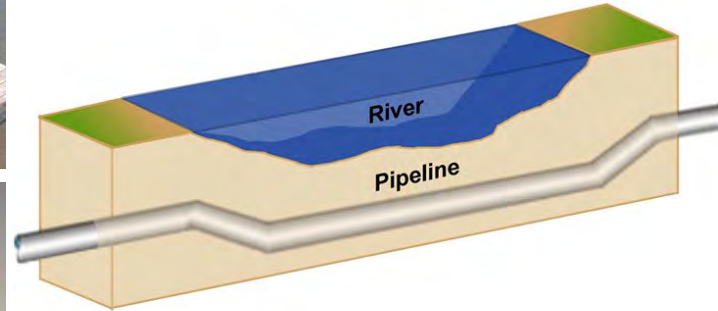
## **Section 103 of Marine Protection, Research, and Sanctuaries Act of 1972 (Section 103)**

- Corps regulates transport of dredged material for purpose of ocean disposal.
- The Corps must have written concurrence from EPA that the material meets the MPRSA criteria before a permit decision may be made.

# RIVERS & HARBORS ACT OF 1899 – SECTION 10

## 33 CFR PART 322.2

### Structures



### Work



# REGULATORY PROGRAM AUTHORITIES

## Section 404 of the Clean Water Act of 1972 (Section 404)

- The Corps authorizes the discharge of dredged and/or fill material into waters of the United States (U.S.) such as earthen fill, mechanized landclearing, riprap.
- Discharge of dredged and/or fill material/waters of the U.S. 33 CFR Part 323.2
- 1987 Corps of Engineers Wetland Delineation Manual
- Supplements: Atlantic and Gulf Coastal Plain Region & Great Plains Region.



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# CLEAN WATER ACT OF 1972 - SECTION 404

## 33 CFR 323.2

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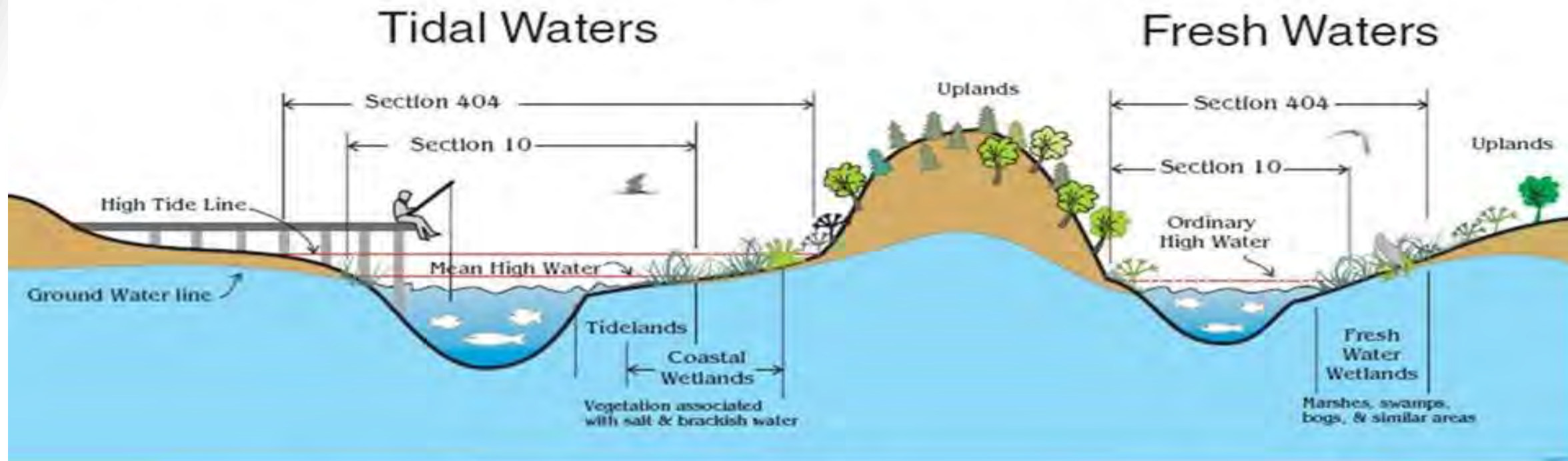


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# GEOGRAPHIC LIMITS OF TIDAL AND NON-TIDAL WATERS

## 33 CFR PART 328.4

### CORPS OF ENGINEERS REGULATORY JURISDICTION



**Section 103**  
 Ocean Discharge of  
 Dredged Material

*Typical examples  
 of regulated activities*

Ocean discharges of  
 dredged material

**Section 404**  
 Discharge of Dredged or Fill Material  
 Regulated Waters Definition: 33 CFR 328.3(a)

All filling activities, utility lines, outfall structures,  
 road crossings, beach nourishment, riprap,  
 jetties, some excavation activities, etc.

**Section 10**  
 All Structures and Work  
 Regulated Waters Definition: 33 CFR 329.4

Dredging, marinas, piers, wharves,  
 floats / docks, intake / withdrawal pipes,  
 pilings, bulkheads, ramps, fills, overhead  
 transmission lines, etc. that occur within,  
 over, under, or affecting the waterbody.



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# WATERS OF THE U.S. DEFINITIONS

## 33 CFR 329.11

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**Mean High Water (MHW)** - shoreward limit for all tidal waters; line on the shore reached by the plane of the average high water. Section 10 limit of all tidal waters.

Established by survey based on available tidal data, averaged over a period of 18.6 years because of the variations in tide.

In absence of this data, the mean high water mark is determined by physical markings such as line of vegetation, wrack lines, sand/soil color changes, shelving, slope change or comparison of the area in question compared to physical characteristics for which tidal data is readily available.

# WATERS OF THE U.S. DEFINITIONS

## 33 CFR PART 328.3

**High Tide Line (HTL)** - the line of intersection of the land with the water's surface at the maximum height reached by a rising tide (Spring Tide). Section 404 limit for all tidal waters. Shoreward limit of jurisdiction for all tidal waters (Section 404 regulated activities).

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.



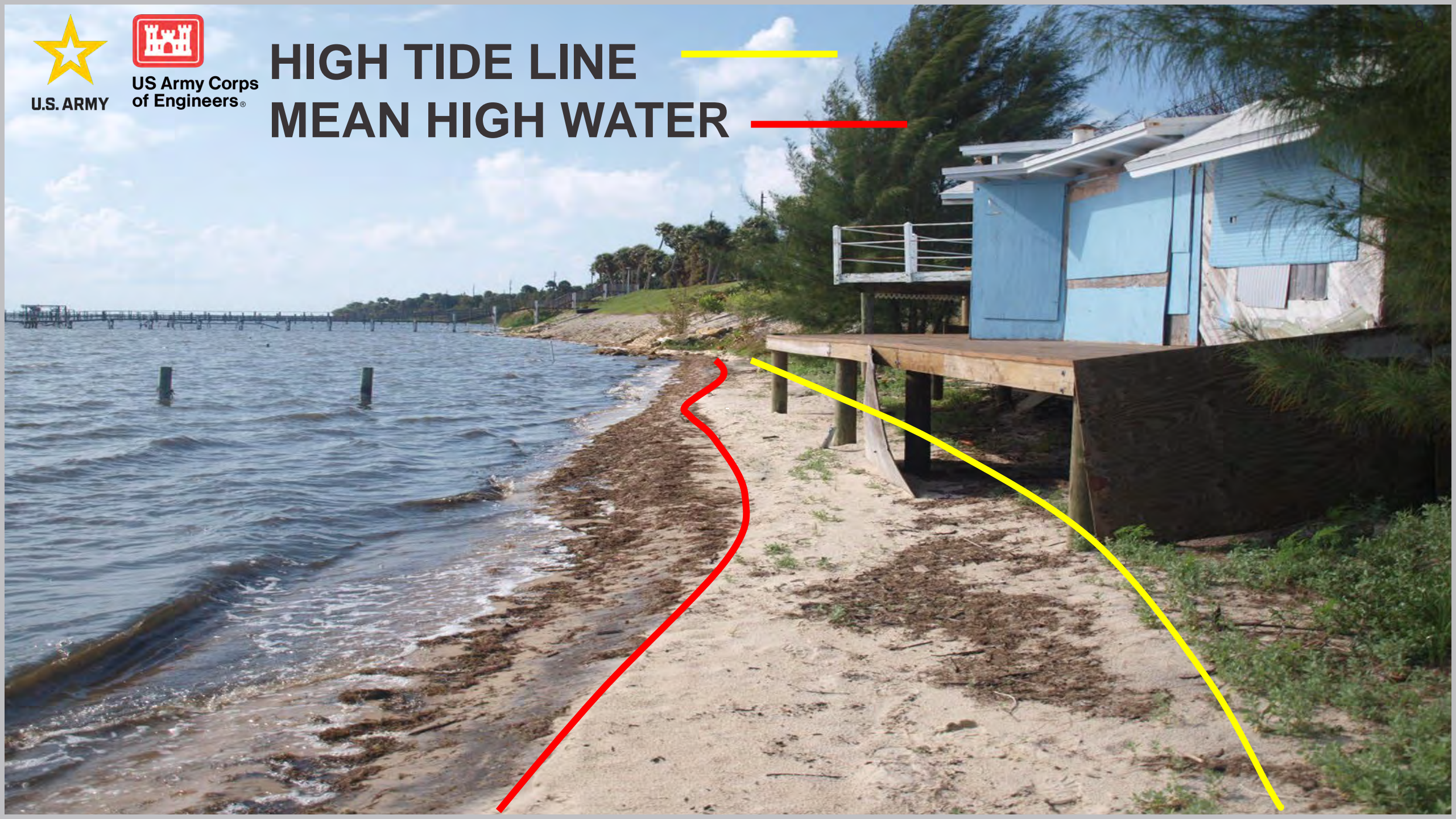
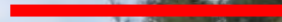


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**HIGH TIDE LINE**  
**MEAN HIGH WATER**





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HIGH TIDE LINE 

MEAN HIGH WATER LINE 



# WATERS OF THE U.S. DEFINITIONS

## 33 CFR PART 328.3

**Ordinary High Water Mark (OHWM):** The line on the shore of streams and lakes established by fluctuations of water. Non-tidal waters, the Corps' jurisdiction extends to the ordinary high water mark.

The physical characteristics include a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris or other appropriate means that consider the characteristics of the surrounding areas.

When adjacent wetlands are present, the Corps' jurisdiction extends beyond the ordinary high water mark to the limit of the adjacent wetlands. When the water consists only of wetlands, the jurisdiction extends to the limit of the wetland boundary.

National Ordinary High Water Mark Field Delineation Manual for Streams and Rivers is coming next year: Spring or Summer! Accepting comments until December.

Located here: <https://hdl.handle.net/11681/46102>



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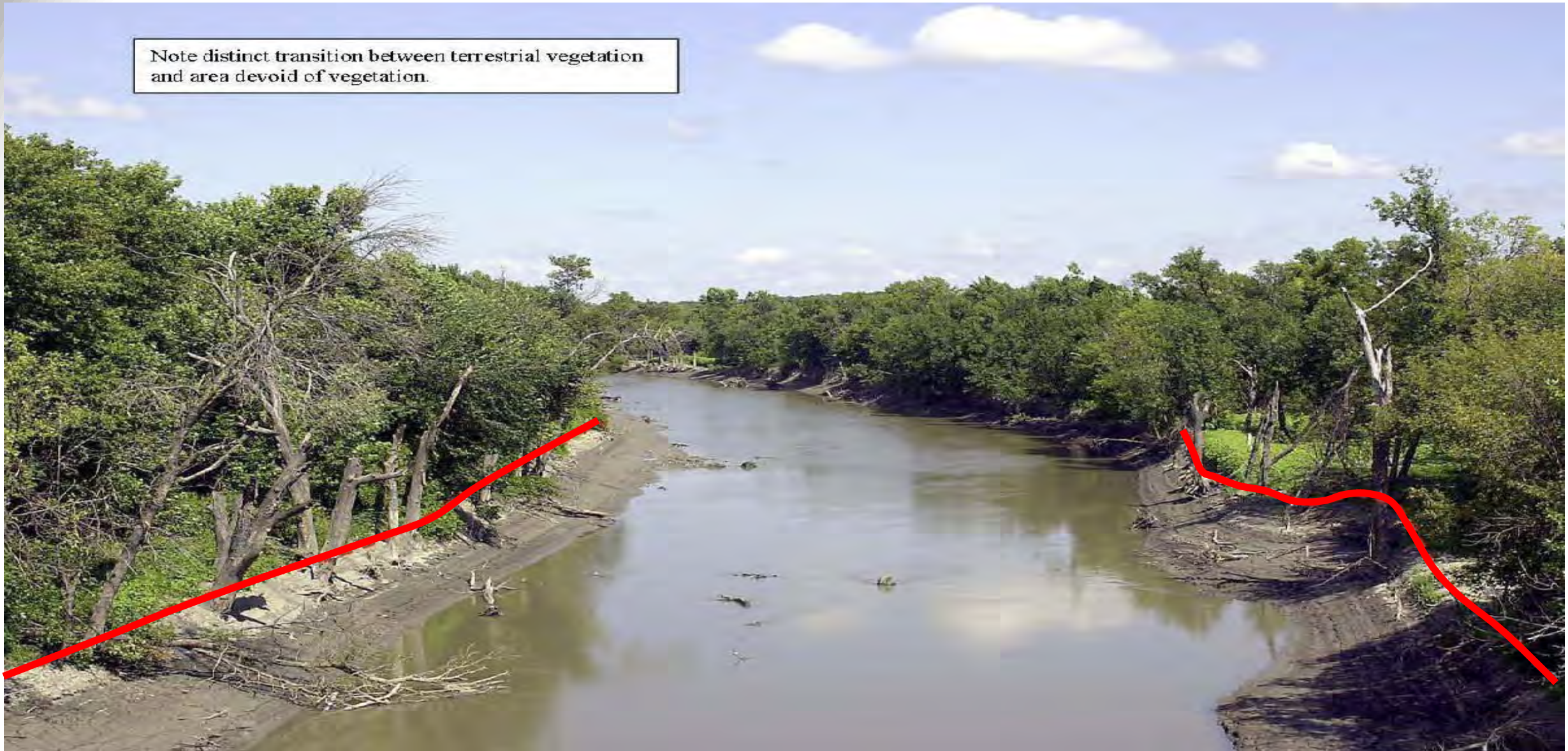
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# ORDINARY HIGH WATER MARK (OHWM)

## 33 CFR 329.11

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Note distinct transition between terrestrial vegetation and area devoid of vegetation.





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# IMAGES TAKEN FROM OHWM DRAFT MANUAL

Figure 9. Example of a heavily vegetated bank and a vertical cutbank.



Figure 18. Cutbanks on a meander bend with accumulation of slumping material (left) and evidence of erosion through undercutting (right). Note that the location of the OHWM is delineated based primarily on evidence from the point bar across the channel and up- and downstream of the cutbanks, not from evidence shown along these cutbanks.

OHWM at top of collapsed and reworked material along cutbank. This elevation matches the elevation of vegetation and soil changes on opposite bank and up- and downstream of this location.

OHWM at top of steep cutbank. Elevation slightly higher than OHWM at top of point bar on left bank. Note that water surface is not flat, particularly at high flows and around bends. Therefore, elevation of OHWM may differ on opposite banks.

Northern Prairies: North Dakota

Antelope Creek

Southern Prairies: Oklahoma

Jimmy Creek

5 meters

10 meters

\*Vegetation is not to scale

2.5 meters

10 meters

Figure 20. Three examples of shelving in a channel from natural berm development (left), exposure of underlying stratigraphy (middle), and bedrock (right). The middle and right examples are structural features resulting from sediment or rock strength and are not reliable indicators of flow frequencies. The berms in the left example may represent recurring flows and should be considered along with other indicators in the WoE process.

Depositional and Erosional	Erosional Feature	
<p>Berms/Shelf</p>	<p>Exposure of stratigraphy</p>	<p>Bedrock exposure</p>
<p>OHWM at elevation of mature woody vegetation establishment.</p> <p>Sand deposited during high flows.</p>	<p>OHWM at upper break in slope, where woody vegetation begins to establish.</p>	<p>OHWM begins at break in slope, where soil and woody vegetation are established.</p>
<p>Schematic of stratigraphic layering in banks.</p>		



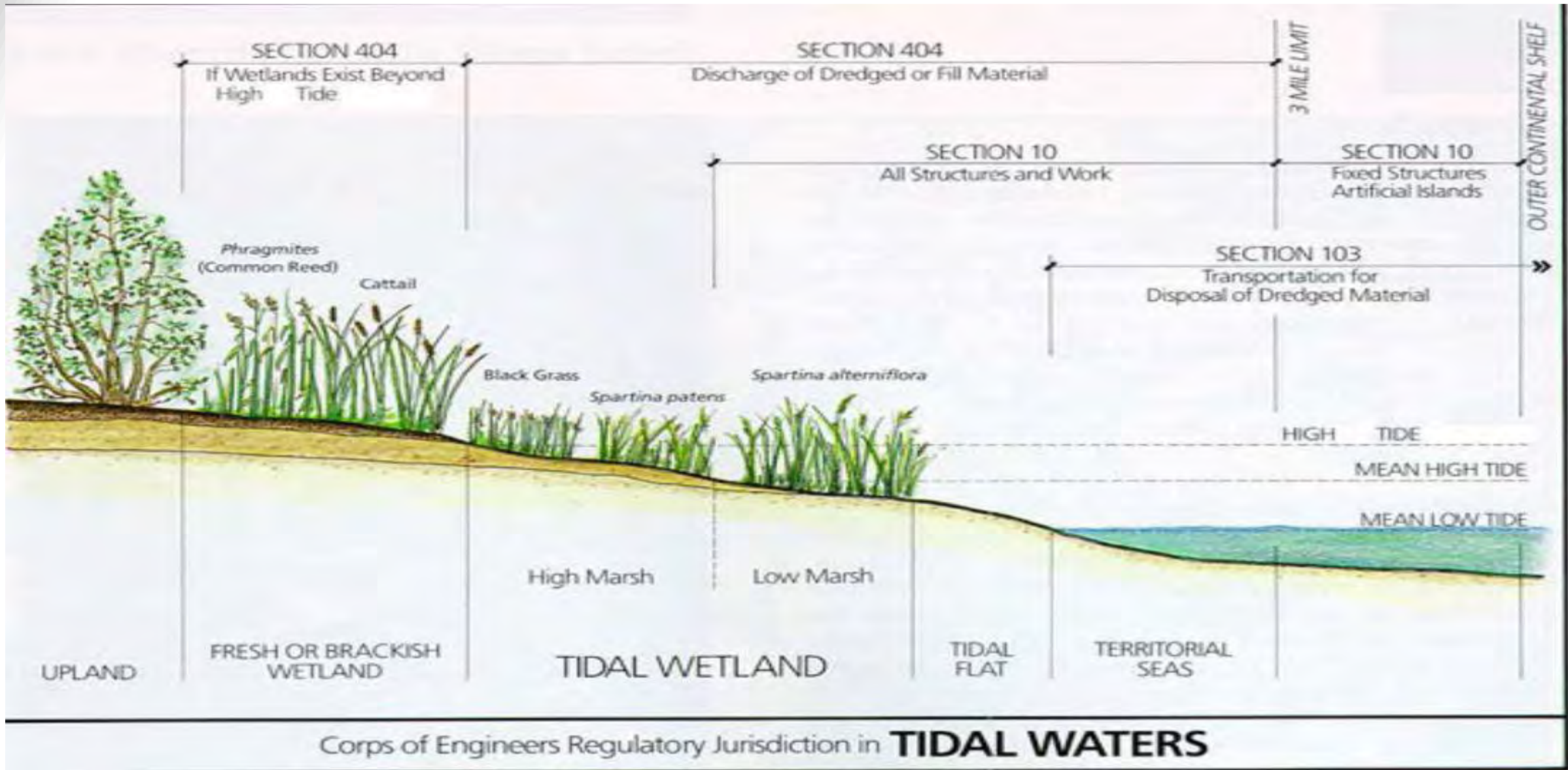
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# TIDAL WATERS EXHIBIT – LATERAL EXTENTS OF JURISDICTION

## 33 CFR 329.11



# REGULATORY PROGRAM AUTHORITIES

## Section 103 of Marine, Research, and Sanctuaries Protection (MPRSA) of 1972 (Section 103)

- The Corps regulates transport of dredged material for purpose of ocean disposal.
- The Corps must have written concurrence from EPA that the material meets the MPRSA criteria before a permit decision may be made.



# OTHER CORPS AUTHORIZATIONS

## Section 14 of the Rivers and Harbors Act of 1899 (Section 408)

- Requires authorization regarding work and/or projects in or affecting features built or under the control of the USACE for the improvement of any of Federal navigable waters and/or Federal projects
- Regulatory can not issue a permit until Section 408 Authorization (if required) is given
- <https://www.swg.usace.army.mil/Missions/Navigation/Land-Use/>

### Navigation Examples:

Pipeline removal/installation under Federal channels  
New work dredging  
Bulkheads/docks adjacent to Federal channels  
Pipeline adjacent to Placement Area

### Flood Risk Mgmt. (FRM) Examples:

Pipeline adjacent to FRM levee  
Construction on Galveston Seawall  
Construction within or adjacent to FRM projects (Galveston Ship Channel)





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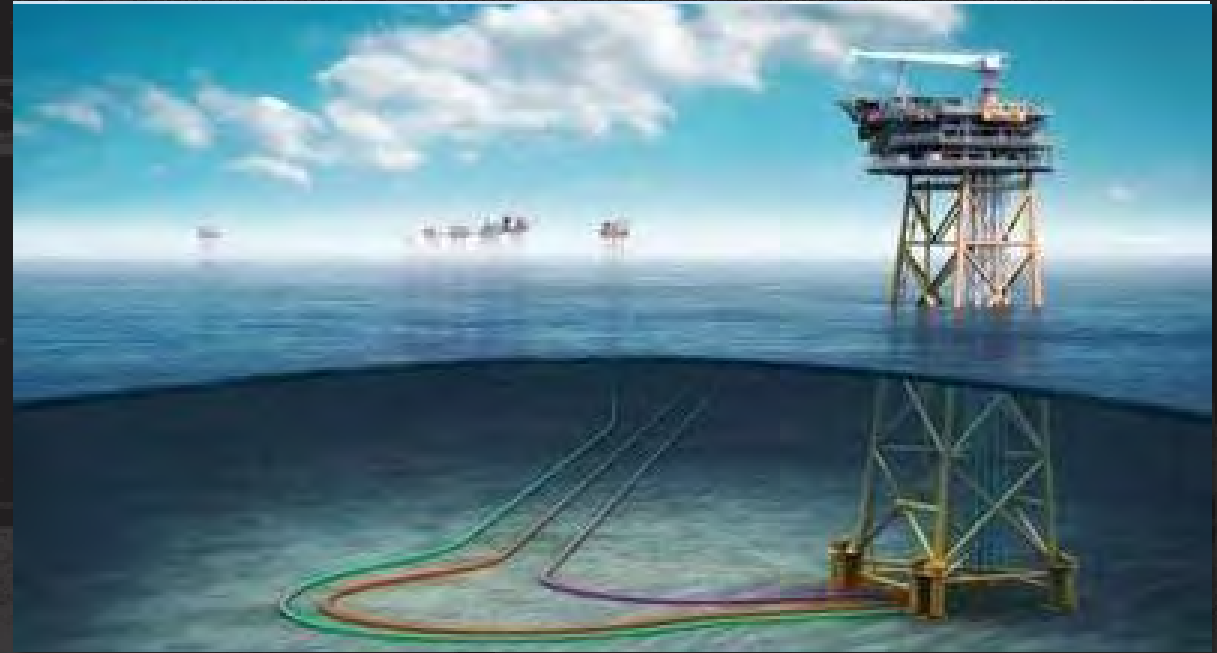


# PERMIT EVALUATION

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# REGULATORY PERMIT PROCESS

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## Topics for Discussion:

- Overview of Permitting Process & Tips for Streamlining
- Major Milestone Moments in the Permitting Process
- Changes in Regulation or Process





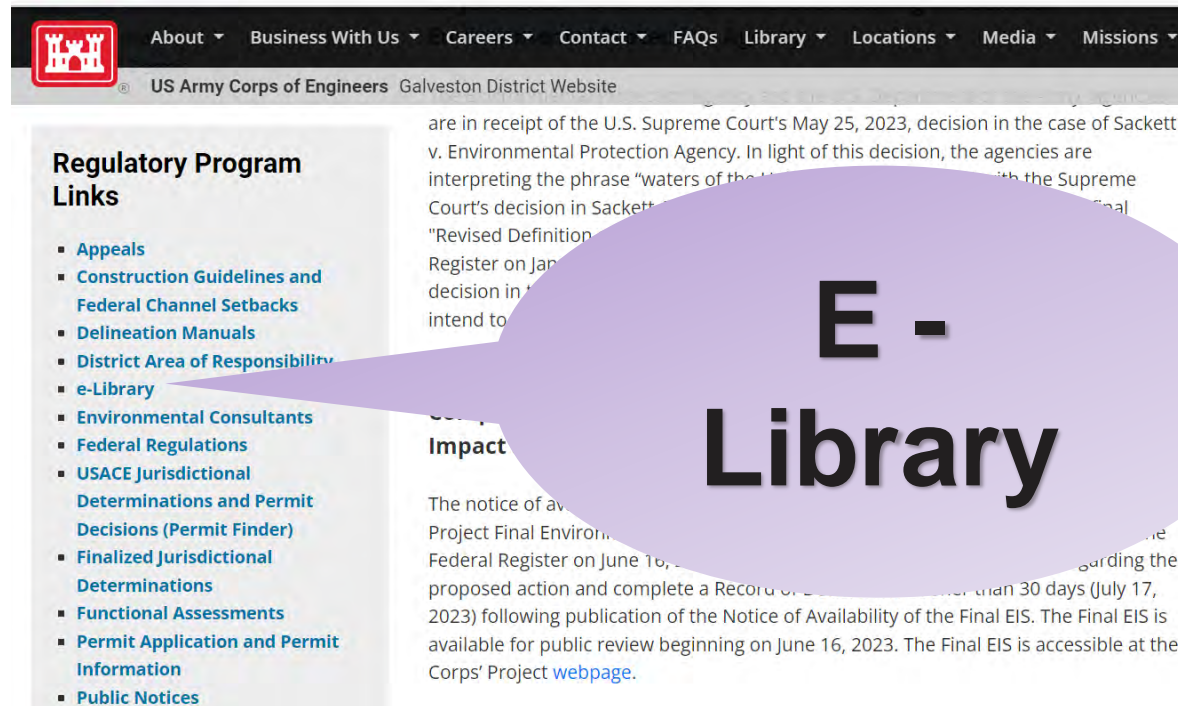
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# REGULATORY PERMIT PROCESS - OVERVIEW



Previous Outreach Events: <https://www.swg.usace.army.mil/Missions/Regulatory/E-Library/>

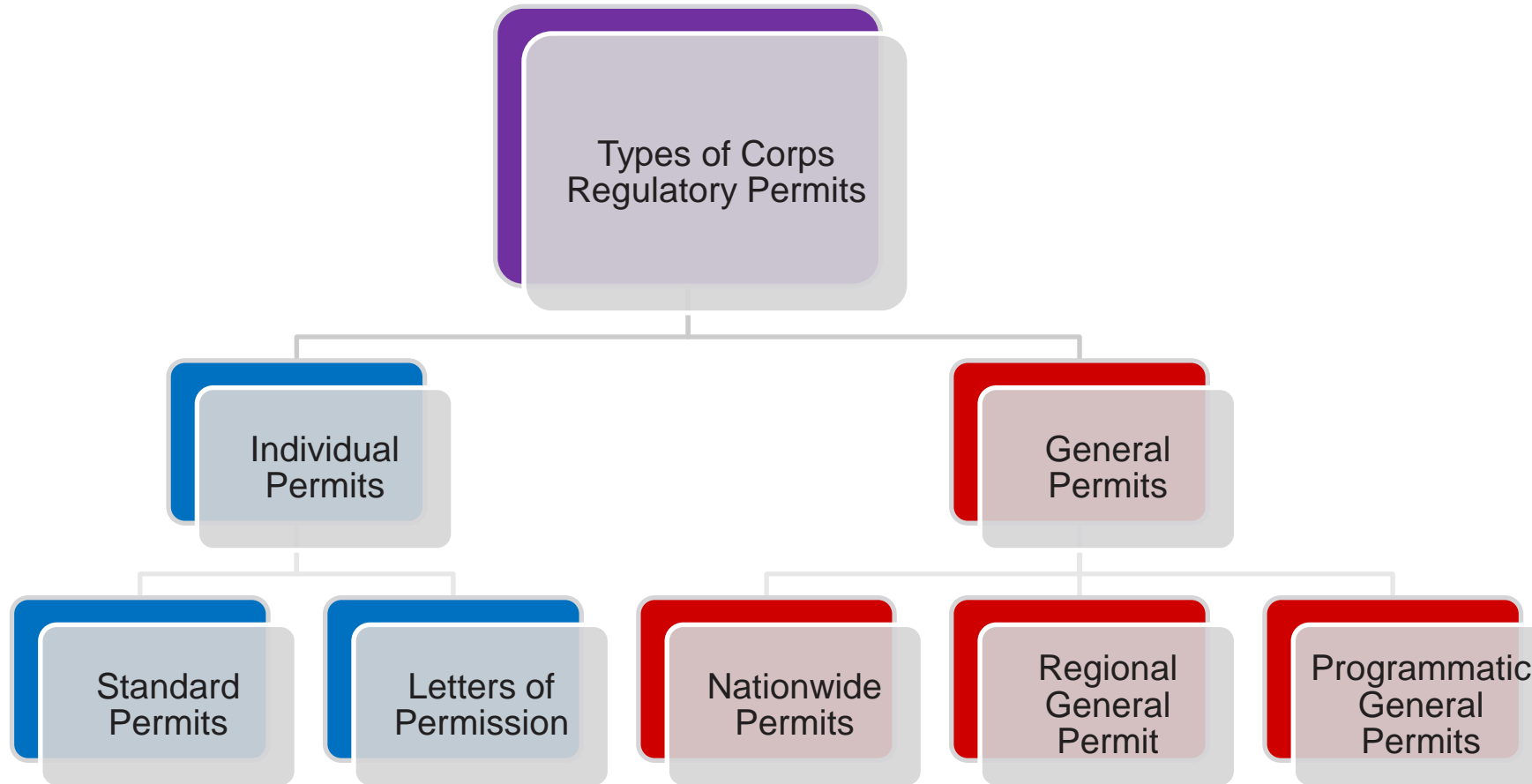
- ❑ 2019 – Detailed Regulatory Permitting Information
- ❑ 2019 – Section 408 Presentation
- ❑ 2020 – Presentations from USFWS, TPWD, and TxGLO





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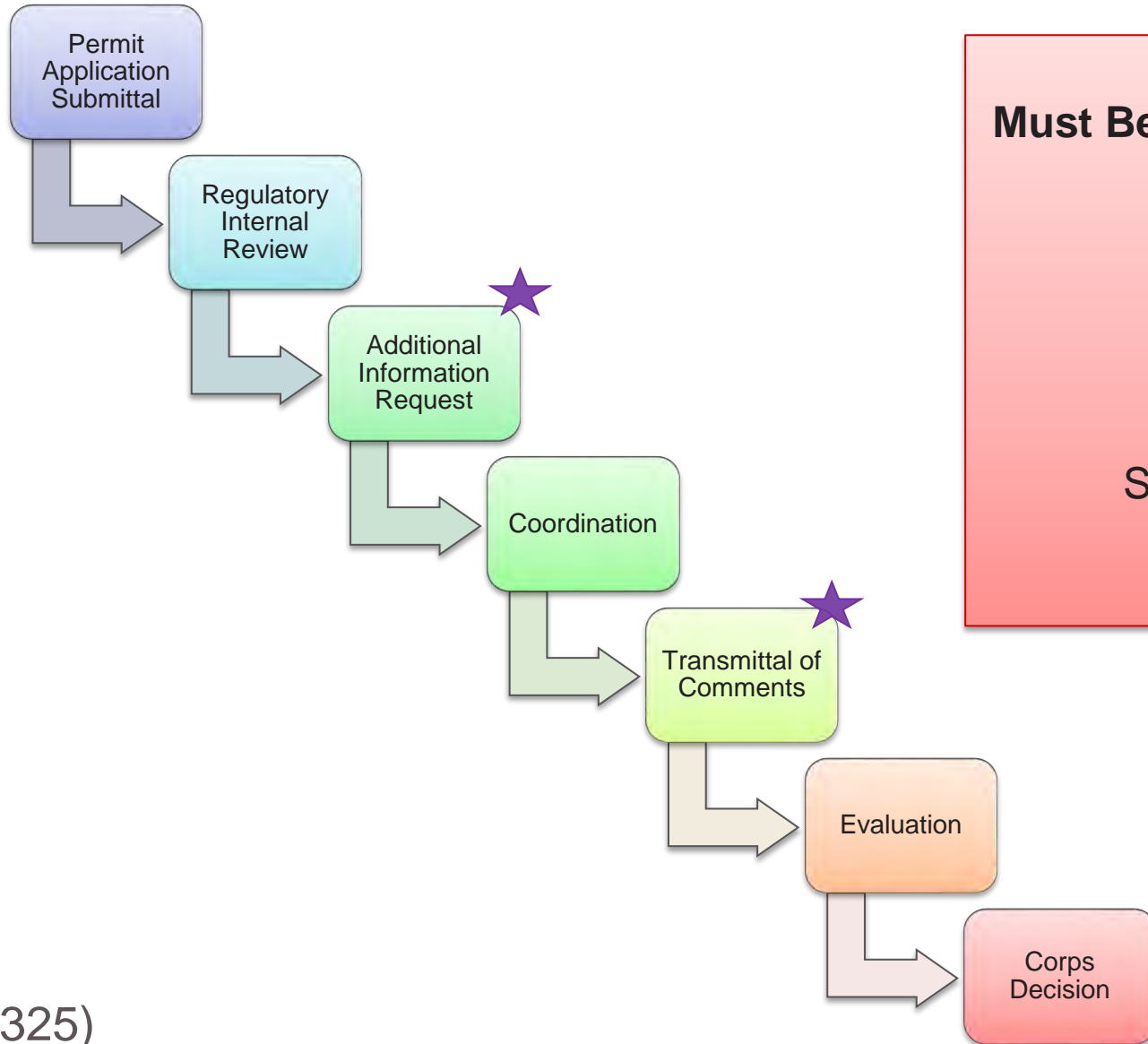
# REGULATORY PERMIT PROCESS - OVERVIEW



(33 CFR 325.5(b-c))



# REGULATORY PERMIT PROCESS - OVERVIEW



**Possible Requirements  
Must Be Completed Prior to Corps Decision**

- ESA Consultation
- EFH Consultation
- NHPA Consultation
- Tribal Consultation
- Section 408 Review
- Section 401 Certification Process
- CZMA Certification Process



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# REGULATORY PERMIT PROCESS - OVERVIEW

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## Why Does The Permit Process Take So Long?

Primary cause of **delay** for applications is:  
*incomplete, inaccurate, or contradictory information.*

Written descriptions and/or tables provided must match  
what is reflected on the project plans (drawings)

Requests for **additional information** cause the project  
manager to take away from **review time** and write an  
**additional information letter**; **complete applications** get  
worked on and produce a decision!





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# REGULATORY PERMIT PROCESS - OVERVIEW



Typical Missing Information and/or Challenges in the Application



- Complete Application Form
- Project Plans / Drawings
- Project Discrepancies
- Section 401 WQC Pre-filling/ Application
- Permit History
- Purpose and Need
- Siting Criteria
- Alternative Analysis
- Delineations and Surveys
- Compensatory Mitigation Plans
- Coordination Needs (ESA, EFH, NHPA)
- Section 408 Authorization







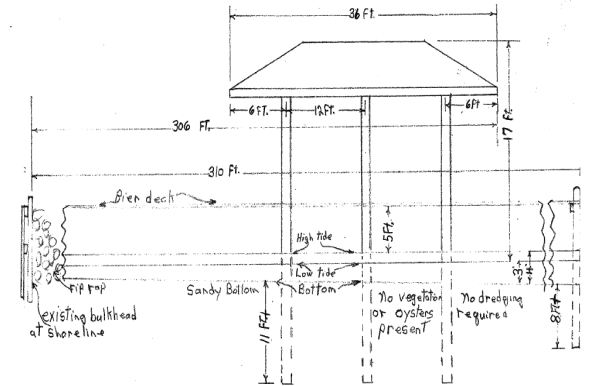


# REGULATORY PERMIT PROCESS - OVERVIEW



## Project Plans / Drawings

- Must be able to **locate the project area** with what is provided - change maps;
  - Plans identifying the **aquatic resource habitat type**;
- Clearly identify the following:
  - Temporary and Permanent** impacts;
  - Activities? Jurisdictional? Regulated?;**
  - Construction egress and ingress** are on plans
    - (maybe they are using uplands and existing access roads);
  - Dimensions** - Acres/linear feet; and
  - OHWM or MLLW/MHHW - NAV/RE** - Add our regulated jurisdiction line AND NAV/RE lines for federal channels.
- Engineering plans** - acceptable on a case by case basis - if legible; and
- Color of lines** - too many pastels and light colors, such as yellow.





# REGULATORY PERMIT PROCESS - OVERVIEW



## TIPS FOR STREAMLINING THE PERMITTING PROCESS:

- Use straightforward, clearly-reproducible drawings with complete legends;
  - Include all structures, access roads, staging areas, dredged material placement areas, and fill with waters of the US
- Check application materials for accuracy;
  - Consistency among sections of the application packet; and
  - Consistency in project drawings and calculations
- Appropriately identify the project purpose and identify practicability of alternatives;
- Jurisdictional Determinations (PJD/AJD): Not Required to complete evaluation of a permit or mitigation plan;
  - Wetland Verification – May be required to complete the evaluation of a permit or mitigation plan
- Avoid, Minimize, THEN Compensate!
- Active Engagement – If the we do not see forward movement by the applicant on the other requirements (ESA, Section 401, Section 408, etc.), we will withdraw the Regulatory Permit application.



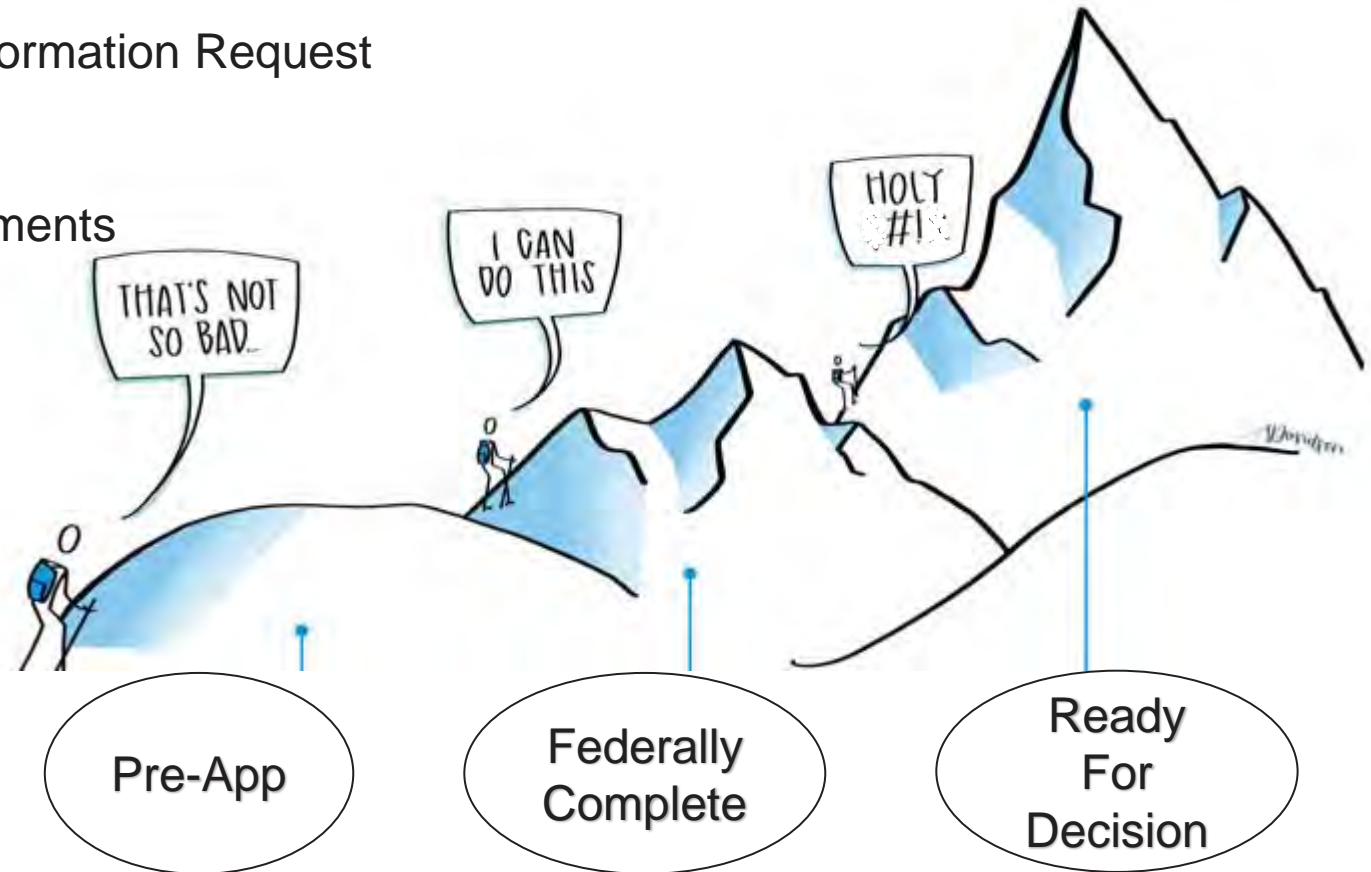
# REGULATORY PERMIT PROCESS - MILESTONES



Pre-Application Meeting – Joint Evaluation Meeting (JEM)

Federally Complete – Initial Additional Information Request

Ready for Decision – Transmittal of Comments





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# REGULATORY PERMIT PROCESS - MILESTONES



## Pre-Application Meetings

-Use Time Wisely: Have sufficient details of the proposed project to generate meaningful conversations. Not too early, but also not too late in the process.

-Joint Evaluation Meetings (JEM):

The Galveston District Office: 2<sup>nd</sup> Wednesday of each month.

The Corpus Christi Field Office: 1st Tuesday of each month.

JEM is a round table discussion, moderated by the Corps, between the agencies and applicants to provide constructive feedback regarding compliance with applicable laws and regulations, as well as environmental issues and/or concerns for a specific proposed project.

-In-Person Meetings: The Corps doors are open. If you would like to have an in-person meeting, let us know.



# REGULATORY PERMIT PROCESS - MILESTONES

## Federally Complete

-Nationwide Permits (NWP): Defined by each specific NWP. See Federal Register Notices [Galveston District > Missions > Regulatory > Permits > Nationwide General Permits \(army.mil\)](#)

Note: The 45-Day clock does not start until After the application packet has been deemed Federally Complete.

-Standard Permits: Defined by 33 CFR 325.3 – Public Notice <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Federal-Regulation/>

The 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 proposed activity to generate meaningful comment.



# REGULATORY PERMIT PROCESS - MILESTONES



## Ready for Decision

- Sufficient Information to make a Permit Decision:
  - Finalized ESA Consultation
  - Finalized EFH Consultation
  - Finalized NHPA Consultation
  - Finalized Tribal Consultation
  - Finalized Section 408 Review
  - Finalized Section 401 Certification Process
  - Finalized CZMA Certification Process
  - Finalized Compensatory Mitigation Plan
  - Finalized Public Interest Review
  - Finalized 404(b)(1) Guidelines
  - Finalized Alternative Analysis



- Level and detail of information needed is much greater than what was required for Federally Complete.



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# REGULATORY PERMIT PROCESS - MILESTONES

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## Withdraw is Not Always the End:

**Requests for Information:** In general, we will give the applicant 30 days to respond to information requests.

**Cannot Meet Timeframes:** This is a signal that the applicant is not ready for the next step in the permit process.

**Withdrawal of Permit Application:** When the applicant is not ready for the next step, a withdraw maybe in order. This will give the applicant the time needed to prepare themselves to submit the needed information for the Corps to take action.

## Re-Submittal of the Withdrawn Application:

- May be able to start the application process where we left off.
- May need to start over in the application process.







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# REGULATORY PERMIT PROCESS - CHANGES

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Change alone is eternal, perpetual, immortal.  
– Arthur Schopenhauer

National Environmental Policy Act (NEPA) Rule Making

Environmental Justice – Executive Order(s)

Section 401 Clean Water Act

Texas Coastal Zone Management Act (CZMA) – Memorandum of Understanding (MOU)

Regulatory Request System (RRS)



# REGULATORY PERMIT PROCESS - CHANGES



## -National Environmental Policy Act (NEPA) Rule Making

### -Federal Registers:

#### -Phase 1: April 20, 2022

-Reverted Purpose and Need, Definition of Effects, Definition of Reasonable Alternatives back to the 1978 version.

#### -Phase 2: July 31, 2023

-Incorporate Fiscal Responsibility Act of 2023 (FRA) Changes to NEPA

-Maintained time and page limits:

EAs = 1 year/75 pages, EISs = 2 year/150 pages (routine) or 300 pages (complex)

-Enhanced emphasis on outreach to Environmental Justice and Tribal communities

-Requires Corps to Update 33 CFR 325 Appendix B within 12 months from the effective date of the final rule.

## - Fiscal Responsibility Act of 2023 (FRA) Changes to NEPA

-42 USC 4336a: Timely and Unified Federal Reviews

- “A lead agency that determines it is not able to meet the deadline may extend such deadline, in consultation with the applicant, to establish a new deadline that provides only so much additional time as is necessary to complete such environmental impact statement or environmental assessment.”



# REGULATORY PERMIT PROCESS - CHANGES



## -Environmental Justice

-These EO(s) tasks us to reassess our current processes. In particular situations, we may need to conduct broader, more extensive efforts to address environmental justice impacts in environmental reviews.

- Not all projects will need to have this additional review.

-May need additional information:

-Did you perform any screening to determine the presence of disadvantaged communities?

-Did you perform any additional outreach?

-Depending on the project specific review, the Corps may need to perform additional outreach, discussions, and reviews.



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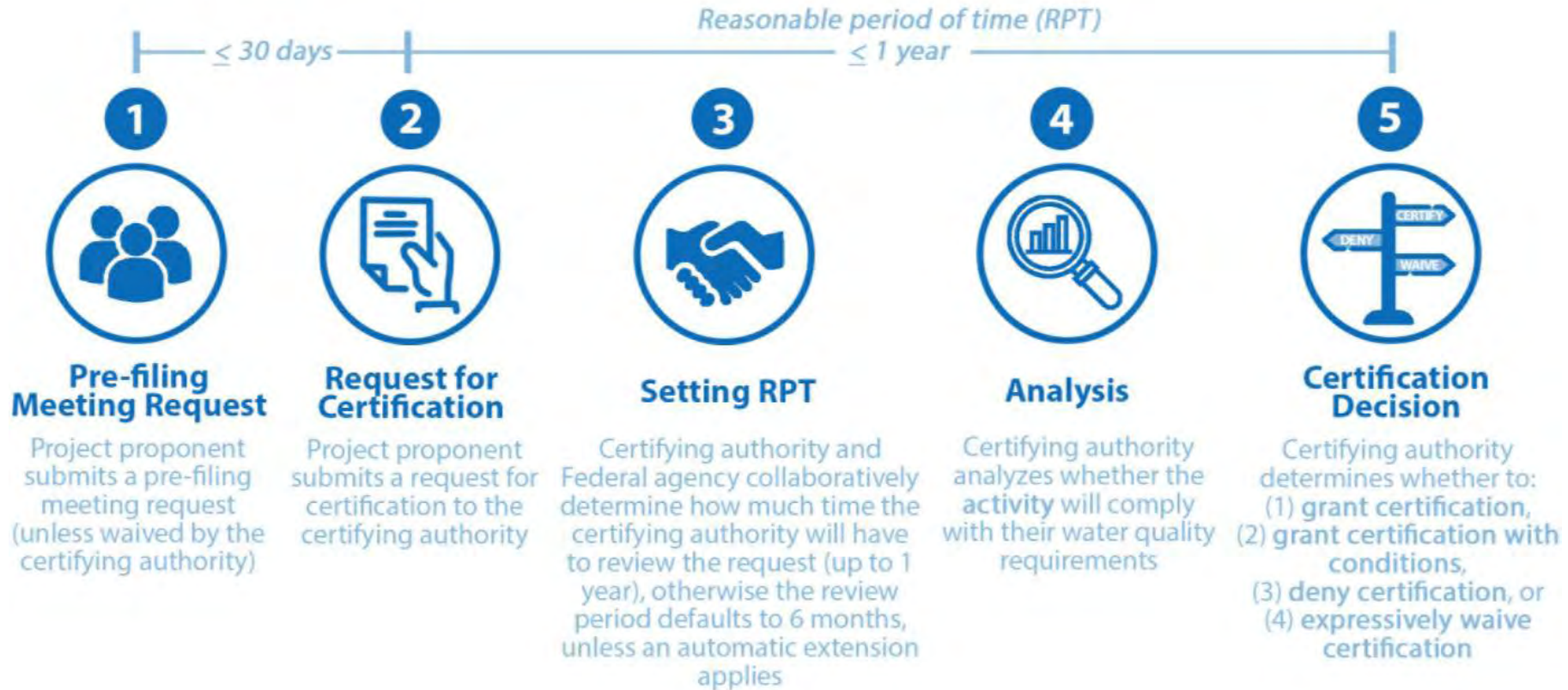
# REGULATORY PERMIT PROCESS - CHANGES



## -Section 401 Clean Water Act 2023 - Rule Making

-Improvement Rule Federal Register, Pre-Publication Sept 14, 2023

-The 2020 Rule will be in effect until the date that the final 2023 Rule goes into effect, which will be 60 days after it is published in the *Federal Register*.





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# REGULATORY PERMIT PROCESS - CHANGES

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## Section 401 Clean Water Act 2023 - Rule Making Cont.

### -Request for Certification Contents:

- Copy of Federal license or permit application
- Any readily available water quality-related materials

- Reasonable Period of Time: Begins on the date that the State receives a request for certification. If the Federal agency and State authority do not agree in writing on the length of the reasonable period of time, the reasonable period of time shall be 6 months. The reasonable period of time will not exceed one year.

<https://www.epa.gov/cwa-401>



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# REGULATORY PERMIT PROCESS - CHANGES

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-Section 401 Clean Water Act 2023 - Rule Making Cont.

-Modifications: Certifying authorities and federal agencies may agree to modify a grant of certification (with or without conditions)

-Enforcement and Inspection: The proposed rule does not include regulatory text on enforcement and removes the previous regulatory text on inspections.

-Neighboring Jurisdictions: EPA has provided more detail and explanation on the neighboring jurisdiction process under section 401(a)(2), including the roles of the actors involved, defining when the neighboring jurisdiction process begins, and the minimal contents of a notification to EPA.



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# REGULATORY PERMIT PROCESS - CHANGES

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- Texas Coastal Zone Management Act (CZMA) – Memorandum of Understanding (MOU)
  - 1997 – Texas Coastal Coordination Council and the Corps signed a MOU
  - 2011 – Sunset Review concluded the Coastal Coordination Council be disbanded and exclusive administrative responsibility of the CZMA Program be given to the GLO.
  - 2023 – Updated MOU to be signed by both the GLO and Corps
- The General Concurrences outlined in this MOU revise and supersede General Concurrence #1, dated June 19, 1997, and the Revised General Concurrence #1, dated May 18, 2004, as well as General Concurrence #3, dated August 25, 1998.

## General Outline of Updates to the MOU:

- General Concurrences:
  - Describes Abbreviated Timelines for Consistency Review
    - Corps LOPs, Project Revisions, Minor modifications
  - Describes Activities that Do Not Require Consistency Review
    - Extensions of time
- General Conditions – Appendix B



# REGULATORY PERMIT PROCESS - CHANGES



Coastal Zone Management Act (CZMA) – MOU Cont.

Describes GLO’s notification of State Consistency or Federal Consistency Review:

Under the CMP, the consistency of activities authorized by Corps may be determined using either the federal consistency process (15 CFR Part 930 and 31 TAC Chapter 30) or the state consistency review process (31 TAC Chapter 29), but not both.

Type of Corps Permit	Threshold	Agency Issuing CZMA Cert	Type of CZMA Review
Section 404* Permit Application	Below Threshold	TCEQ or RRC	State Consistency Review
Section 404* Permit Application	Above Threshold	GLO	Federal Consistency Review
		GLO May opt to defer TCEQ or RRC	State Consistency Review
Section 10 Only Permit Application	N/A	GLO	Federal Consistency Review

\*Including applications that trigger by both Section 404 and Section 10.





# REGULATORY PERMIT PROCESS - CHANGES



Coastal Zone Management Act (CZMA) – MOU Cont.

Review Thresholds:

For Section 401 certifications issued by TCEQ, an activity is above the threshold if it affects one or more acres of a critical area and authorizes the discharge of not less than one thousand (1,000) cubic yards of dredged or fill material, all or part of which occurs in a critical area. See 30 TAC Section 281.48 Appendix A.

For Section 401 certifications issued by RRC, an activity is above the threshold if it permanently disturbs five (5) or more acres of critical area or authorizes the removal of more than ten thousand (10,000) cubic yards of material from a critical area, except with respect to submerged aquatic vegetation or tidal sand or mud flats south of Pass Cavallo, in which case the permanent disturbance must be ten (10) acres or more. See 16 TAC Section 3.8(j)(3).

Note: GLO Published a new Federal Consistency Guidance Manual on July 10, 2023:

<https://glo.texas.gov/coast/coastal-management/federal-consistency/index.html>



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# REGULATORY PERMIT PROCESS - CHANGES

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## Process Changes

### -Operation & Navigation Division:

- Pipeline Depth of Cover Requirements
- Signed February 2023

### -Payment:

-We are now able to accept credit card payments for Corps Regulatory Permits. Customers can log in at [www.pay.gov](http://www.pay.gov) and pay the \$10 or \$100 Regulatory permit fees without having to write and mail a check.

### -Regulatory Request System:

-Single Source for all Permit Application Needs...



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# REGULATORY PERMIT PROCESS - CHANGES

## REGULATORY REQUEST SYSTEM (RRS)



Regulatory Priority: Innovation

**WHO:** Regulatory Program  
**WHAT:** Regulatory Request System  
**WHEN:** TBD  
**WHERE:** Nationwide

**WHY:** The goal of RRS is to modernize our public interface and permitting process to keep up with existing technology and meet user expectations.

**WHAT'S NEXT:** Additional capabilities, including joint applications, are planned for phase 2

### Summary:

The Regulatory Program has introduced a new national online application portal and management platform called the Regulatory Request System (RRS) to provide a straightforward transparent process for timely review of permit requests. It includes relevant information regarding the Regulatory Program and utilizes a series of easy to answer questions to help users determine whether a permit is required. RRS allows users to submit project information electronically and receive automatic project numbers and status updates. Additionally, RRS removes duplicative data entry by cross walking information directly into the Operations and Management Business Information Link (OMBIL) Regulatory Module (ORM), the database of record for the Regulatory Program. These technology advances promote the public's understanding of the Regulatory Program, increase transparency, and improve permitting timelines.



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# REGULATORY PERMIT PROCESS





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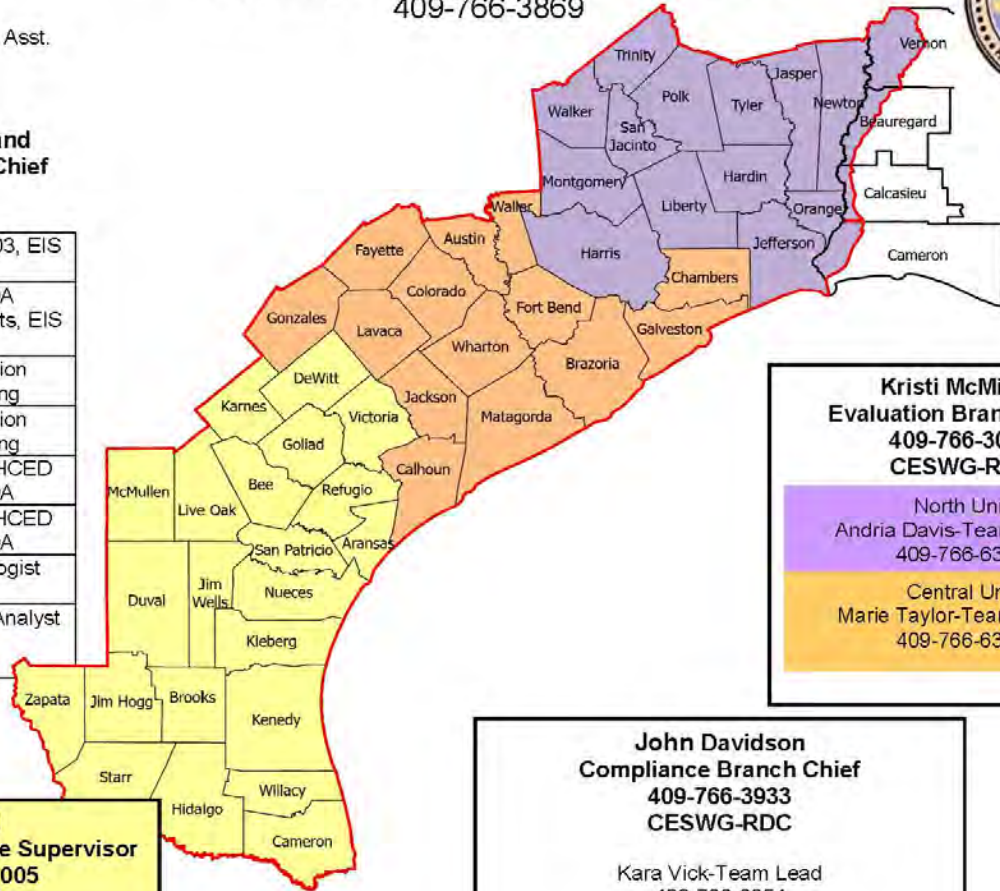
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Felicity Cunningham	WRDA Agreements, EIS
Sam Watson	Mitigation Banking
Vacant	Mitigation Banking
Dwayne Johnson	HCFC/HCED WRDA
Diana Stevens	HCFC/HCED WRDA
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**Galveston District**  
**Regulatory Division Areas of Responsibility**  
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Compliance's AOR Covers both North and Central Units

**Kristie Wood**  
Corpus Christi Field Office Supervisor  
361-814-5847 x.1005  
CESWG-RDR

CCRFO covers permit evaluation and compliance actions for its AOR.

# DREDGING WHEN UPLAND PLACEMENT IS NOT AVAILABLE

2023 Galveston District Regulatory Outreach

Presented by:

Jayson M Hudson

Regulatory Project Manager

Policy Analysis Branch



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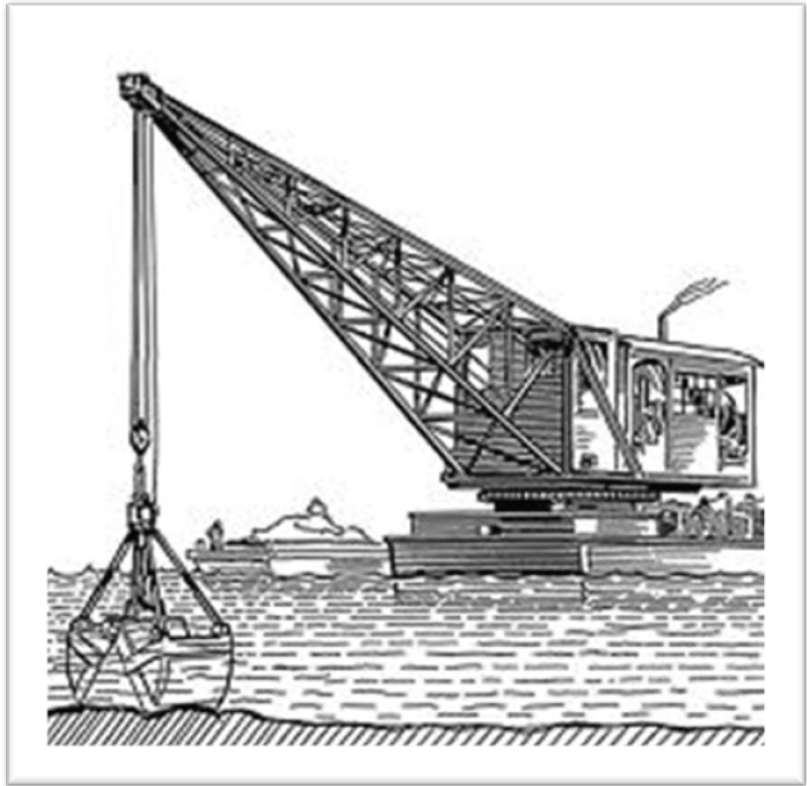
# AUTHORITY FOR DREDGING

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## Rivers and Harbors Act of 1899, Section 10

“...It shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or enclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of War prior to beginning the same.”



# SECTION 404 OF THE CLEAN WATER ACT (CWA)

Section 404 requires a permit before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt from Section 404 regulation (e.g. certain farming and forestry activities).

Section 404 also requires EPA, in conjunction with the Corps, to promulgate GUIDELINES for the discharge of dredged or fill material to ensure that such discharge will not result in unacceptable adverse environmental impacts to WOUS







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# RESTRICTIONS ON DISCHARGE

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230.10(a) states that no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem

230.10(b) requires compliance with established legal standards

**230.10(c) requires that discharge of dredged material not result in significant degradation of the aquatic ecosystem. These findings are based on appropriate factual determinations (see 230.11), evaluations, and tests required by Subparts B and G, after consideration of Subparts C through F**

230.10(d) requires that all practicable means be utilized to minimize adverse environmental impacts.

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# MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT (MPRSA)



- The MPRSA implements the requirements of the *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter of 1972*, known as the London Convention. The London Convention is one of the first international agreements for the protection of the marine environment from human activities.
- Today, most of the material disposed in the ocean is dredged material removed from our nation's waterways. In the case of dredged material, the decision to issue a permit is made by the Corps, using EPA's environmental criteria and subject to EPA's concurrence.
- Other materials disposed in the ocean include human remains for burial at sea, vessels for artificial reefs, and mariculture fish wastes.



## Section 102

- Requires EPA, in consultation with the Corps, to develop environmental CRITERIA that must be complied with before ocean disposal is allowed
- **Gives EPA the authority to designate ocean disposal sites (or commonly referred to as Ocean Dredged Material Disposal Sites or ODMDs). (40 CFR 230)**

## Section 103

- Assigns to the Corps the permitting responsibility for ocean disposal BUT must utilize the CRITERIA established by EPA to assess the effects. (40 CFR 220-228)
- **Authorizes the Corps to “select” an ocean disposal site for a project specific use when there is not EPA designated site or it is not feasible to use that site.**



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# 40 CFR PART 227, CRITERIA FOR EVALUATION OF PERMIT APPLICATIONS



- Prohibited Materials (*such as mercury and known carcinogens*)
- Constituents prohibited as other than **trace** amounts
- Limits on Specific Wastes
- Fishing, Navigation, Shorelines, or beaches
- Need
- Economics, Aesthetics, Recreation
- Alternatives to ocean disposal



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# EPA SECTION 103 OVERSIGHT

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- EPA has a major oversight role in reviewing the Corps' determination of compliance with the CRITERIA.
- If EPA determines the CRITERIA are not met, disposal may NOT occur without a waiver of the CRITERIA by EPA.



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# REGULATORY CHALLENGES



- While dredging may have an impact, the primary issue when evaluating a dredge project is placement of the material.
- Confined upland placement capacity is greatly reduced.
- Beneficial use requires additional review, specifically material testing, and alternatives analysis.
- Use of offshore dredge material placement sites requires additional evaluation for capacity, specific materials testing, and an alternatives analysis for dredge placement in addition to the dredge project.





# PERMITTING

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## General Permits

### **Nationwide Permit 35 Maintenance Dredging of Existing Basins**

- Non-reporting NWP that authorizes maintenance dredging of previously authorized basins.
- Require that dredged material be deposited in area with no waters of the U.S., unless authorized by the Corps by a separate permit.
- NEPA already completed.

## Individual Permits

### **Letter of Permission For Dredge & Nationwide Permit 16 for Return Water From Upland Contained Disposal Areas.**

- Authorization for dredging and placement in existing upland DMPA (not a water of the US).
- NEPA already completed.

## **Standard Permit**

- Authorization for dredging and inland or offshore placement.
- NEPA Requirement.

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# WHAT IS THE APPLICABLE AUTHORITY FOR DISCHARGING DREDGED MATERIAL IN TIDAL WATERS?

Clean Water Act

OR

Marine Protection, Research, and Sanctuaries Act?

Location and purpose matters when determining authority!!

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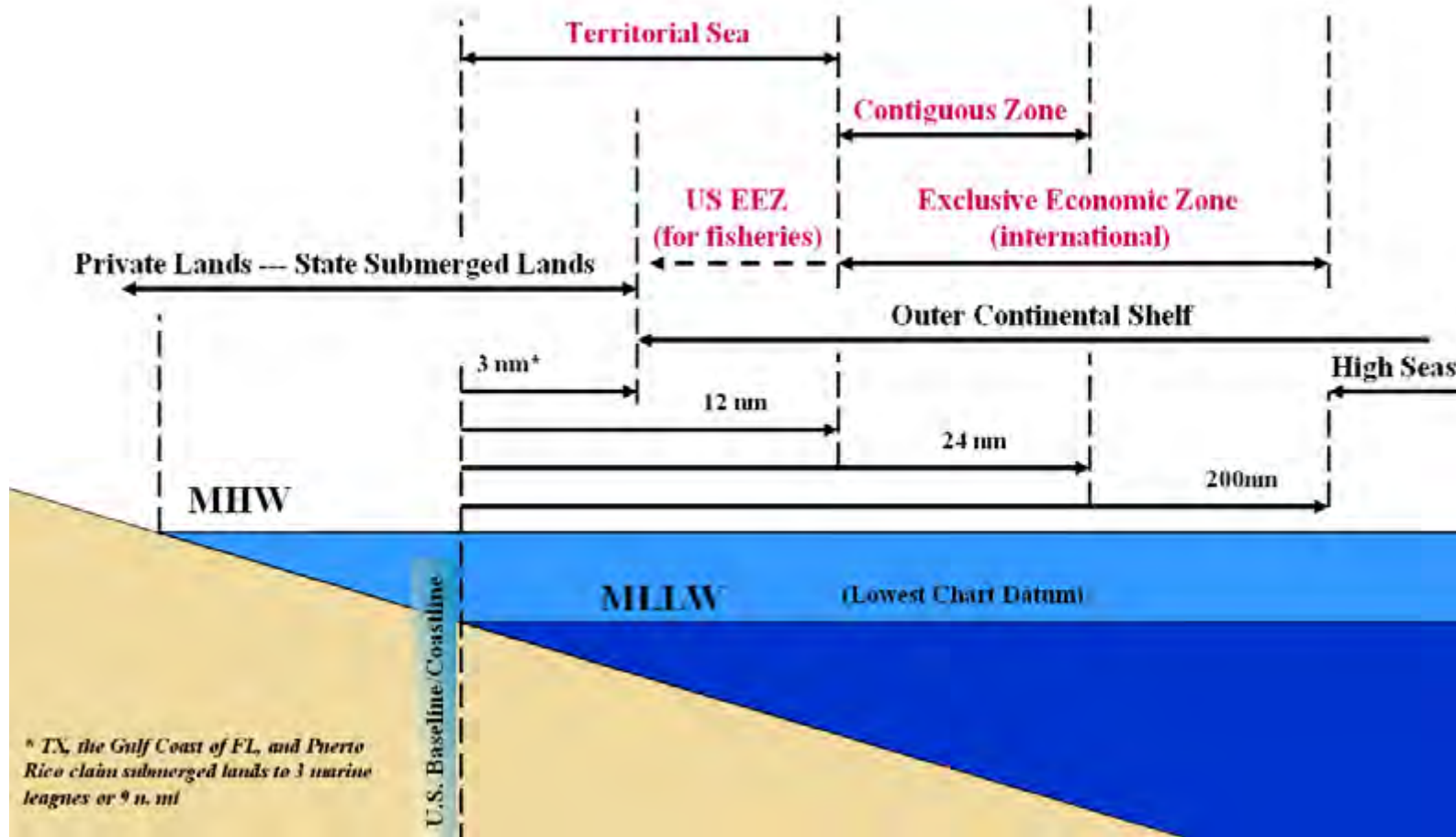




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# VARIOUS LIMITS OF NATIONAL WATERS

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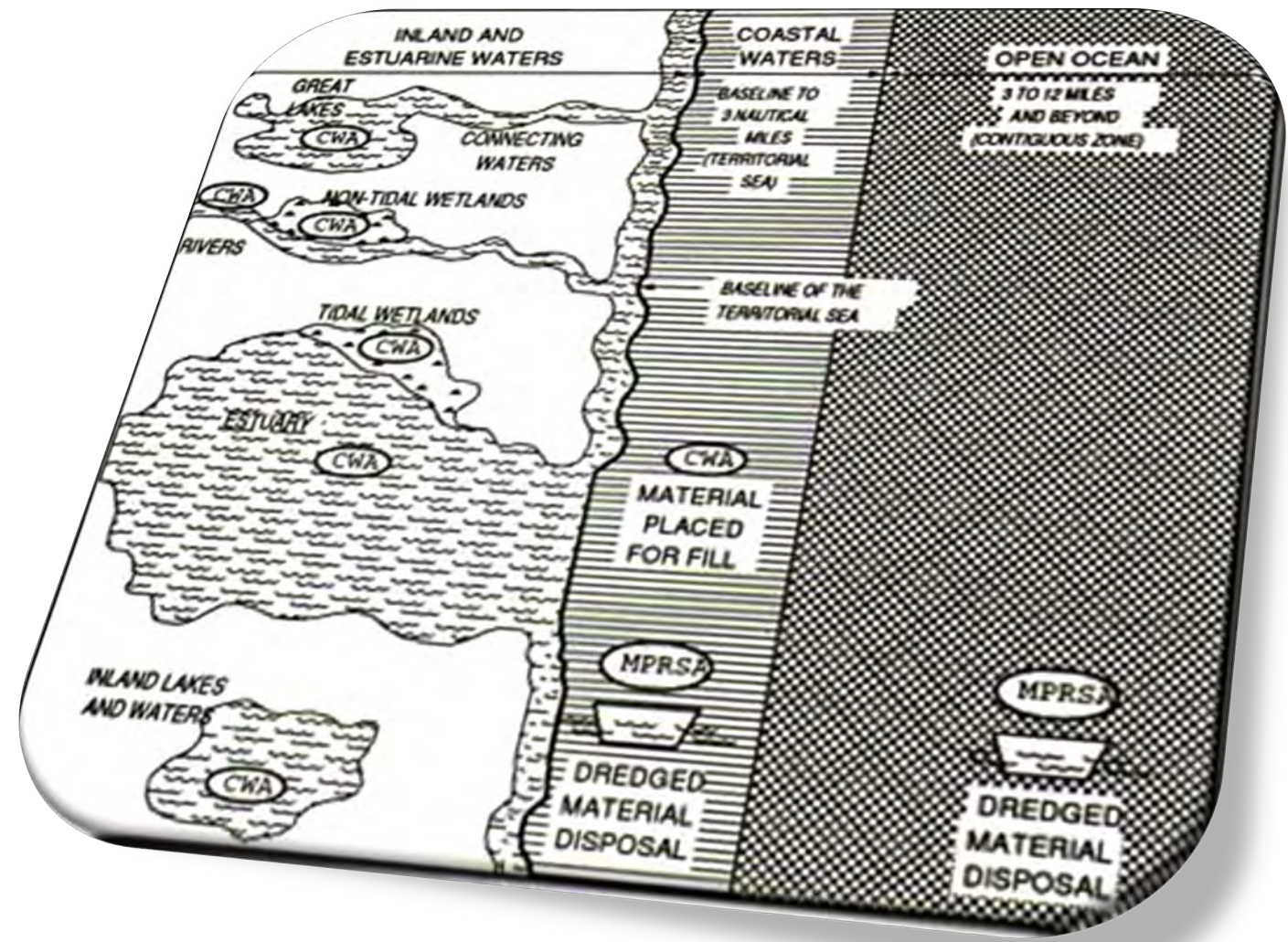


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# WHAT IS THE APPLICABLE AUTHORITY?



Clean Water Act OR Marine Protection, Research, and Sanctuaries Act





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# REGULATORY GUIDANCE LETTER NO. 06-02

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*An overlap of CWA and MPRSA jurisdiction exists within the territorial sea. The **disposal** of dredged material in the territorial sea is evaluated in accordance with the MPRSA. In general, in those cases where the discharge of dredged material into the territorial sea would be for the primary **purpose of fill**, such as the use of dredged material for **beach nourishment, island creation, or construction of underwater berms**, the discharge is evaluated under the CWA.*



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# WHAT IS BENEFICIAL USE OF DREDGED MATERIAL



1. **Habitat Restoration and Development:** to build and restore wildlife habitat, especially wetlands or other water-based habitat.
2. **Beach Nourishment:** using dredged material to restore beaches.
3. **Parks and Recreation:** using dredged material as the foundation for parks and recreational facilities.
4. **Agriculture, Forestry, Horticulture, and Aquaculture:** using dredged material to replace eroded topsoil, elevate the soil surface, or improve the physical and chemical characteristics of soils.
5. **Strip-Mine Reclamation and Solid Waste Management.**
6. **Construction/Industrial Development:** support commercial or industrial activities near waterways such as bank stabilization or construction material.



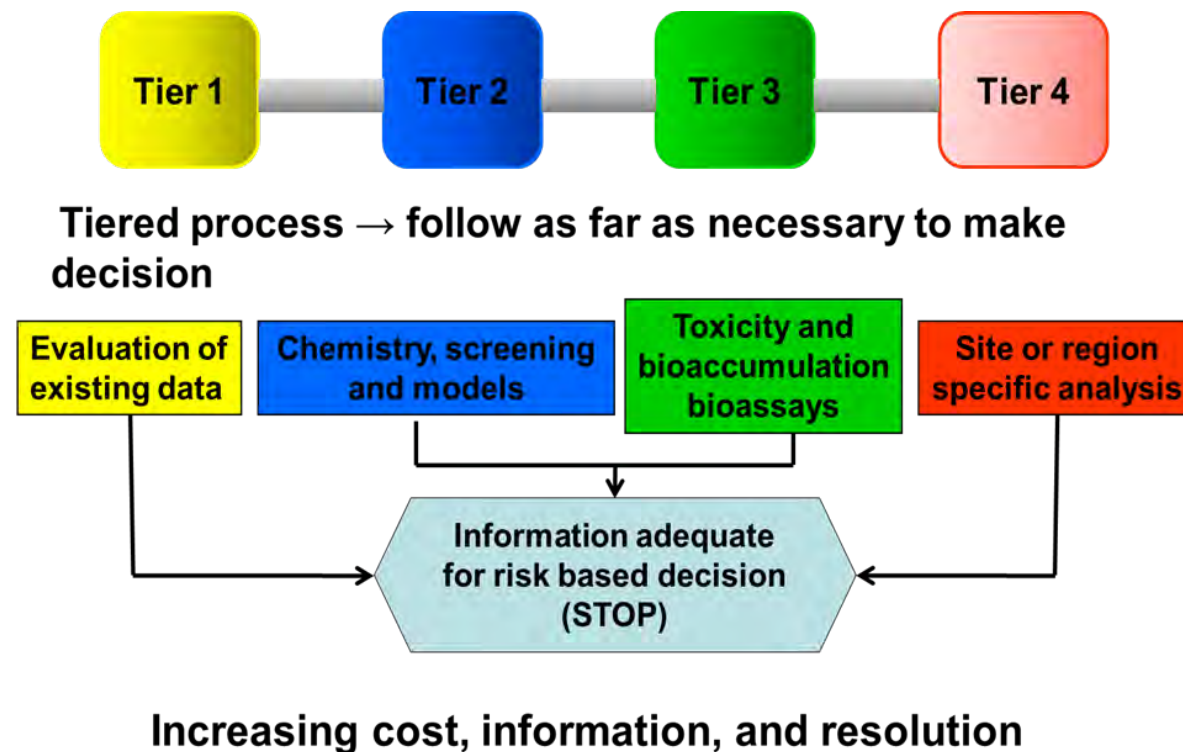


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# TIERED DREDGE MATERIAL ANALYSIS



- Tier I is a comprehensive analysis of all existing and readily available, assembled, and interpreted information on the proposed dredging project, including all previously collected physical, chemical, and biological data.
- If one or more of the exclusionary criteria can be satisfied for the dredged material no further evaluation is required. If no exclusionary criteria can be met, the subsequent evaluation will be based on the collected information.





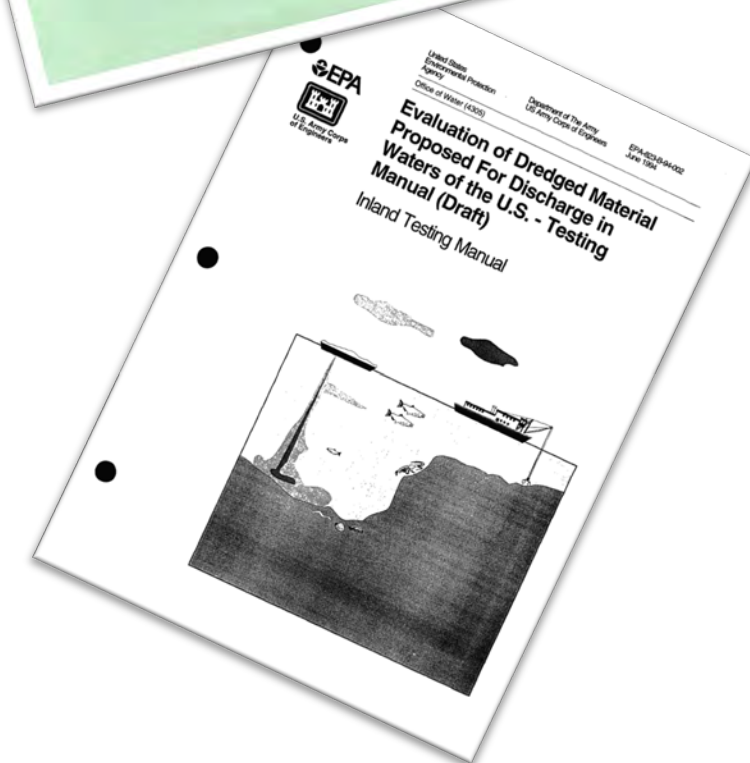
## EXCLUSIONS FROM TESTING

### MPRSA

- ~ Predominantly sand, gravel, rock, and high energy environment (or)
- ~ Beach nourishment material (or)
- ~ Same as disposal and “far removed” from sources of contamination.

### CWA

- ~ Not a carrier of contaminants (e.g. sand)
- ~ If constraints are available to manage sediments – (i.e. risk management)
- ~ Far removed from sources of contaminants
- ~ Adjacent to placement site





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# OTHER TIERS (ITM & GREEN BOOK)

## Tier II

- ◆ Water column screen
- ◆ Theoretical Bioaccumulation potential (TBP)



## Tier III

- ◆ Elutriate, Sediment Toxicity, and Bioaccumulation Bioassays



## Tier IV

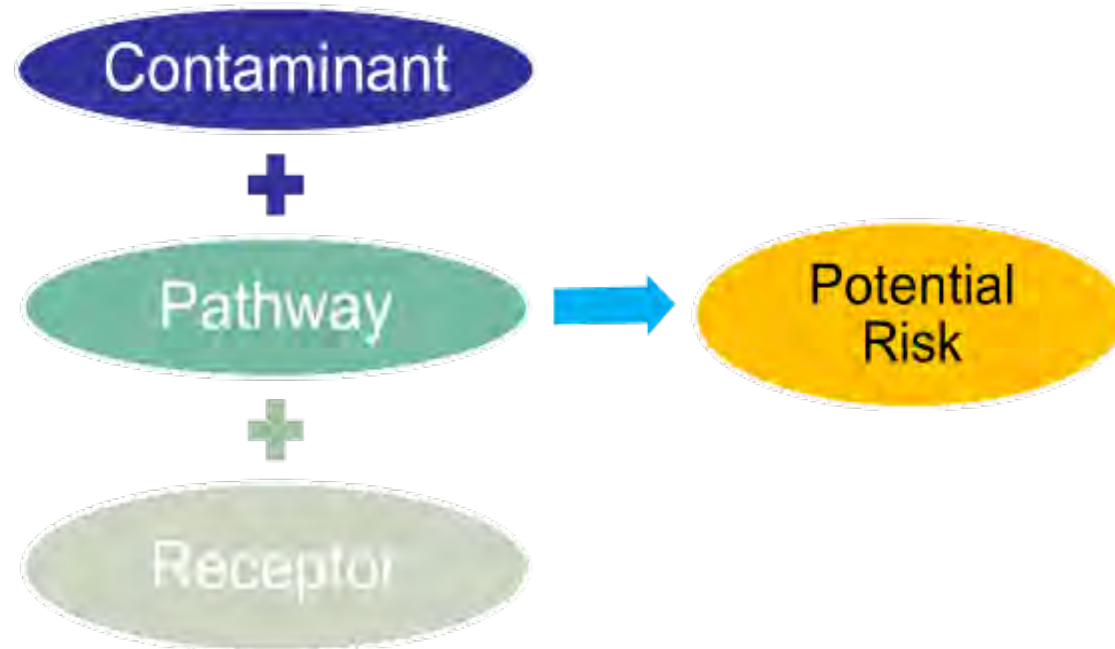
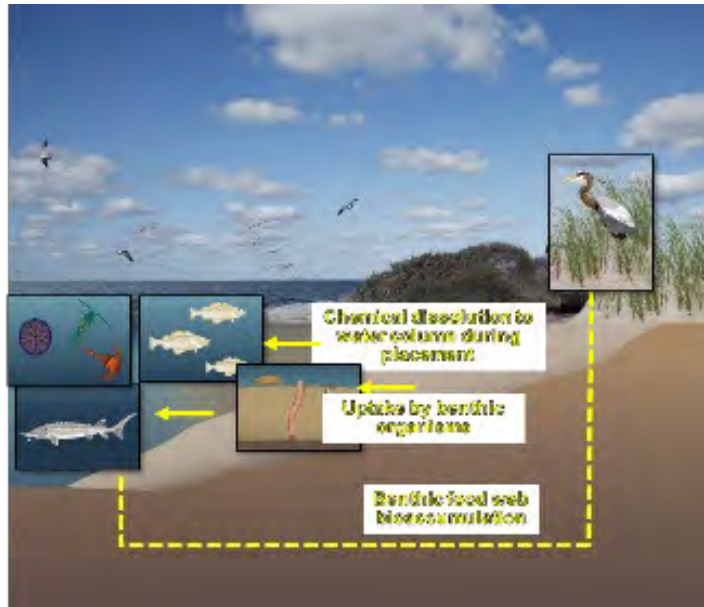
- ◆ Site specific studies

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# CONTAMINATION RISK MANAGEMENT



“Risks can be minimized by reducing either their likelihood or their impact” Suedel, et al. 2012



where there is adequate justification to show that widespread dispersion by natural means will result in no significantly adverse environmental effects, discharged material may be intended to be spread naturally in a very thin layer over a large area 40CFR 230.11(f)

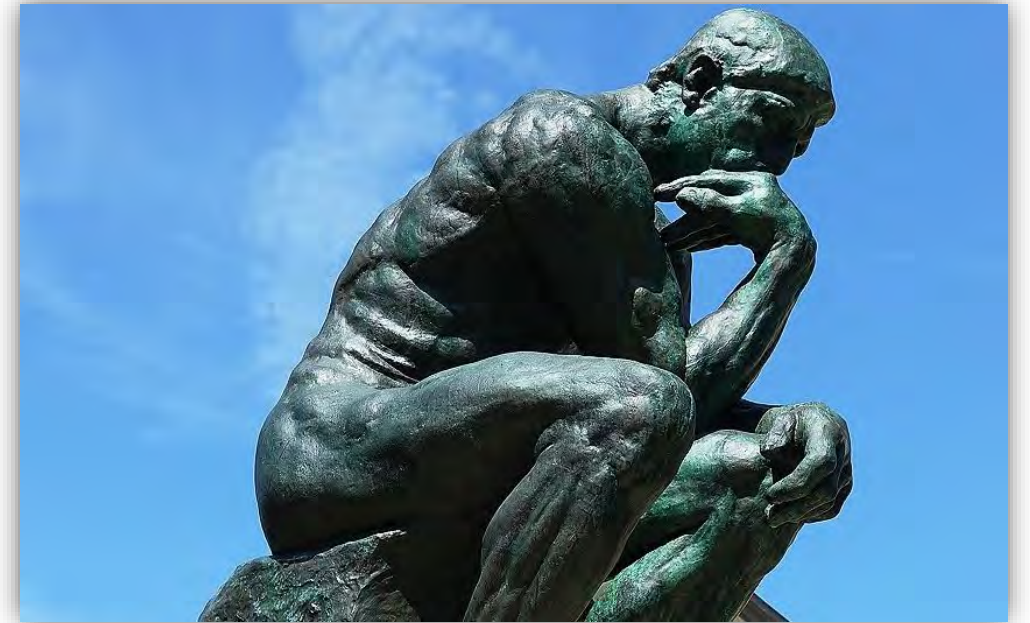
Cycle Image Credit: John Childs





YOU HAVE TESTED, ASSESSED, EVALUATED,  
AND CALCULATED, NOW IT IS TIME TO MAKE A  
DECISION....

WHAT ELSE DO YOU HAVE TO TAKE INTO  
CONSIDERATION?





# A FEW MORE CONSIDERATIONS

## Permit Evaluation Considerations

- Technical Feasibility - Consider constraints (pumping distance, water depth, access, etc.)
- Impacts to Navigation - Marking, Notice to Mariners, etc...
- Other impacts – ESA, NHPA, EFH, 401 Cert., etc...

## Permit Lifespans Considerations

- New work dredge permits are typically valid for 5 years.
- Maintenance Dredging Permits can be good for 10 years.
- Ocean Disposal permits can only be good for 3 years.
- Testing results are valid for 5 years.





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# TIER I

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## Examine existing information

### ◆ Contaminant of Concern and Sources

- ~ Pathways of contaminant sources
- ~ Spill information

### ◆ Physical characteristics of sites (Dredging & Discharge)

- ~ Bathymetry, currents, deposition, time since last dredging was required

### ◆ Prior physical/chemical monitoring

### ◆ Is it EXEMPT from testing?

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# SAMPLING AND ANALYSIS PLAN



- The development of a project-specific SAP is an important step in the project evaluation process for those projects found to have inadequate information following a Tier I evaluation.
- The SAP is the main source of information about the proposed dredging project's sampling design/approach and quality assurance/quality control (QA/QC) measures associated with sample collection and dredged material analyses.
- We recommend including all project-specific sampling, testing and QA/QC components in the project SAP.





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# ALTERNATIVE ANALYSIS



- Clean Water Act, MPRSA, and NEPA all require an alternatives analysis.
- Analysis may evaluate alternatives to dredging, but must also address alternatives of placement of dredge material in a water of the U.S.
- The “No Action” alternative and all practicable\* alternatives must be considered.



\* Practicable is the term used in both the Guidelines and MPRSA



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# ESA- NEW WORK DREDGING VS. MAINTENANCE DREDGING

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- New work dredging will require a project-specific ESA consultation for both 404 and 103 application.
- Placement of maintenance material under 404 will require project specific ESA consultation but may initially be included with new work consultation.
- Disposal of maintenance material under 103 will be conducted in accordance with the Revision No.2 *Regional Biological Opinion on Hopper Dredging of Navigational Channels and Borrow Areas in the Gulf of Mexico*



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# RECOMMEND PRE-APPLICATION MEETINGS



The first step is an informal meeting with the Corps office responsible for the area in which the project will be done.

The second step is a joint evaluation meeting with the Corps and other state and federal agencies involved in the process.

The applicant should be prepared to discuss the proposed project in enough detail to indicate the major requirements necessary.

1. A statement of the purpose and need of the project
2. A detailed vicinity map showing the preferred project location, discharge location, and alternatives considered.
3. A preliminary (desk) delineation along with a description of the project's likely impact on water of the U.S.
4. Proposed mitigation plans and alternatives.





# QUESTIONS?

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Galveston Regulatory Hotline: 409.766.3869  
Hotline Email: [ceswg-pe-r@usace.army.mil](mailto:ceswg-pe-r@usace.army.mil)

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# USACE REGULATORY

Southwestern Division Technical  
Regional Execution Center  
(SWD TREC)

Eva Zaki-Dellitt  
SWD TREC Team Lead  
Tulsa District Office  
September 21, 2023



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## Leading Change



## To better serve the public



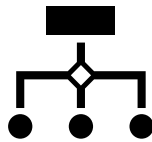
## USACE Regulatory Program

### Our Goal

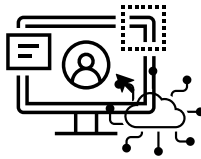
Improve public service through transformational change that will enable USACE Regulatory Program to continue to effectively deliver decisions that balance natural resource protection with the need for progress and economic growth.



- **Agile Workforce and Organizational Structure**  
Leverage expertise to enhance delivery of efficient, collaborative, coordinated environmental reviews and permit decisions for TREC identified projects and priorities.



- **Innovative Processes**  
Facilitate implementation of cutting-edge concepts (e.g., Regulators without Borders).



- **Technology**  
Identify, fund, and implement technology for improved processes.



- **Strengthen Relationships**  
Improve relationships with stakeholders through outreach.

# TREC ORGANIZATION AND PURPOSE

- TREC's in 7 Divisions Nationwide.
- Focused on improving processes and reducing backlog through utilization of the Regulators without Borders concept and development and implementation of efficiency tools.
- SWD TREC consists of one Team Lead and 5 Project Managers located throughout SWD in all 4 districts.

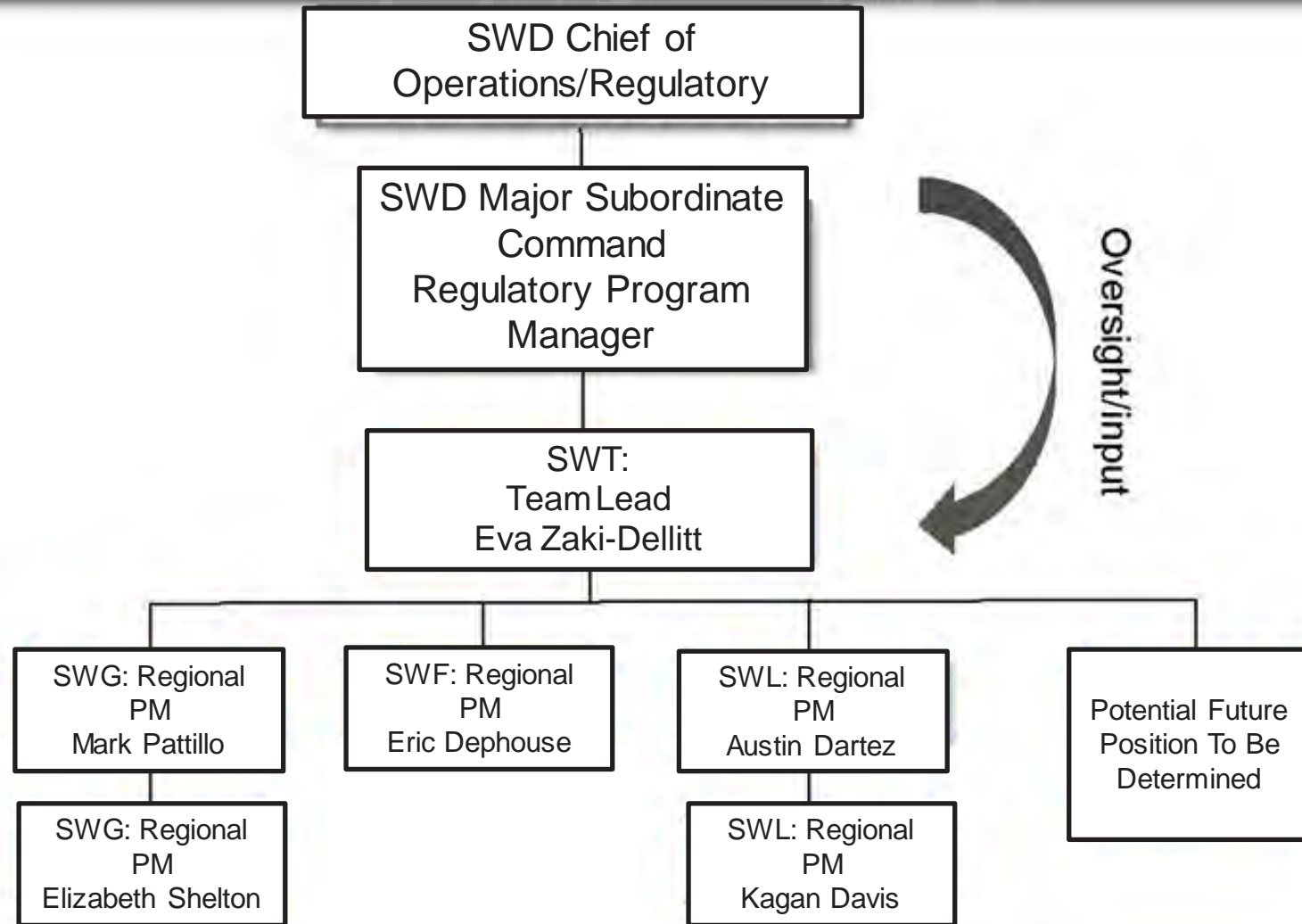


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# TREC EXECUTION ORGANIZATION CHART



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# TREC EXECUTION CONTACT INFORMATION

Name	Home District	Title	Phone Number	Email Address
Eva Zaki-Dellitt	SWT	Team Lead	918-669-7009	eva.a.zaki-dellitt@usace.army.mil
Mark Pattillo	SWG	Biologist	361-814-5847	mark.e.pattillo@usace.army.mil
Elizabeth Shelton	SWG	Project Manager	409-766-3937	elizabeth.a.shelton@usace.army.mil
Eric Dephouse	SWF	Project Manager	817-886-1820	eric.j.dephouse@usace.army.mil
Austin Dartez	SWL	Regulatory Specialist	501-690-6182	austin.r.dartez@usace.army.mil
Kagan Davis	SWL	Regulatory Specialist	501-340-1787	kagan.m.davis@usace.army.mil



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# QUESTIONS



# NMFS/USFWS: ENDANGERED SPECIES ACT – LISTED SPECIES/HABITAT OF CONCERN

Kristie A. Wood, Supervisor  
Corpus Christi Regulatory Field Office  
Regulatory Division – Galveston District

Dawn Gardiner, Assistant Field Supervisor  
Texas Coastal Ecological Services Field Office  
USFWS – Ecological Services



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# ENDANGERED SPECIES ACT OF 1973

**Purpose:** Program for the conservation of Federally listed threatened and endangered plants and animals and the habitats in which they are found.

**Section 7(a)(2) requires:** Federal action agencies to ensure that actions they authorize, fund, or carry out are not likely to **jeopardize the continued existence** of any Federally listed species or result in the destruction or adverse modification of designated critical habitat of such species.

**Federal agencies responsible for administering the ESA:**

- U.S. Fish and Wildlife Service (FWS)
- National Marine Fisheries Service (NMFS)

## “The Services”

USFWS	NMFS
ESA	ESA
<ul style="list-style-type: none"> <li>• Terrestrial T&amp;E species</li> <li>• <b>Manatee</b></li> <li>• Critical habitat for above</li> <li>• <b>Sea turtles</b> on the beach (<b>nesting</b>)</li> </ul>	<ul style="list-style-type: none"> <li>• Marine aquatic T&amp;E species</li> <li>• Anadromous fishes (in marine <u>and</u> freshwater habitats)</li> <li>• Critical habitat for above</li> <li>• <b>Sea turtles in the water</b></li> </ul>

# CORPS REGULATIONS: ESA REQUIREMENTS

## 33 CFR 325 Processing of Department of the Army (DA) Permits

- 325.2 Processing of applications
  - 325.2(b)(5) Endangered Species
    - ✓ **Applications will be reviewed** for the **potential impact** on threatened or endangered species pursuant to section 7 of the ESA as amended. [NOTE: This means **ALL** applications.]
    - ✓ The district engineer (DE) **will include a statement** (no effect or may affect) in the **public notice** of his current knowledge of endangered species based on internal review. [Reiterated in the public notice contents listed in 33 CFR 325.3(a) Public Notice, General.]

- 325.4 Conditioning of permits
  - ✓ DEs will add **special conditions** to DA permits when such conditions are necessary to satisfy legal requirements, such as compliance with the ESA.



slender rush-pea –  
endangered



# CORPS REGULATIONS: ESA REQUIREMENTS CONTD

## 33 CFR 330 Nationwide Permit (NWP) Program

- 330.4 Conditions, limitations, and restrictions
- (f) Endangered species.
  - ✓ No activity is authorized by any NWP if that activity is likely to jeopardize the continued existence of a listed, or proposed for listing, species.
  - ✓ No activity is authorized by any NWP if that activity is likely to destroy or adversely modify the critical habitat of such a species.



red knot –  
threatened



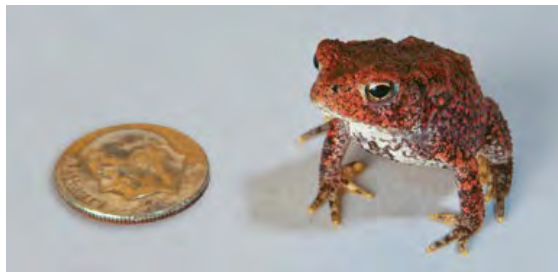
# CORPS REGULATIONS: ESA REQUIREMENTS CONTD

## 2021 NWP – General Condition 18. Endangered Species (highlights)

- No activity is authorized under any NWP which “**may affect**” a listed species or critical habitat, **unless** ESA section 7 **consultation** addressing the consequences of the proposed activity on listed species or critical habitat **has been completed**.
- **Federal permittees:**
  - ✓ Should follow their own procedures for complying with ESA.
  - ✓ If a pre-construction notification (PCN) is required, must provide documentation demonstrating compliance with ESA for **Corps verification**.
  - ✓ If appropriate documentation is not submitted, additional ESA section 7 consultation may be necessary.
  - ✓ The respective federal agency would be responsible for fulfilling its obligation under ESA.

## ➤ Non-federal permittees:

- ✓ Must submit PCN if any listed species (or species proposed for listing) OR designated critical habitat (or critical habitat proposed such designation) **might be affected** OR is **in the vicinity of the activity**, OR **if the activity is located in** designated critical habitat or critical habitat proposed for such designation.
- ✓ Shall not begin work until Corps notifies permittee that the requirements of the ESA have been satisfied.
- ✓ For activities that **might affect** listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the **PCN must include** the name(s) of the listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation).
- ✓ The Corps will determine whether the proposed activity “**may affect**” or will have “**no effect**” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within **45 days** of receipt of a complete pre-construction notification.



Houston toad – endangered

NMFS



Species and Critical Habitat of Concern



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# NMFS: SPECIES AND CRITICAL HABITAT LIST

## Threatened and Endangered Species and Critical Habitats Under NOAA Fisheries Jurisdiction

Source:

<https://www.fisheries.noaa.gov/southeast/consultations/threatened-and-endangered-species-list-texas>

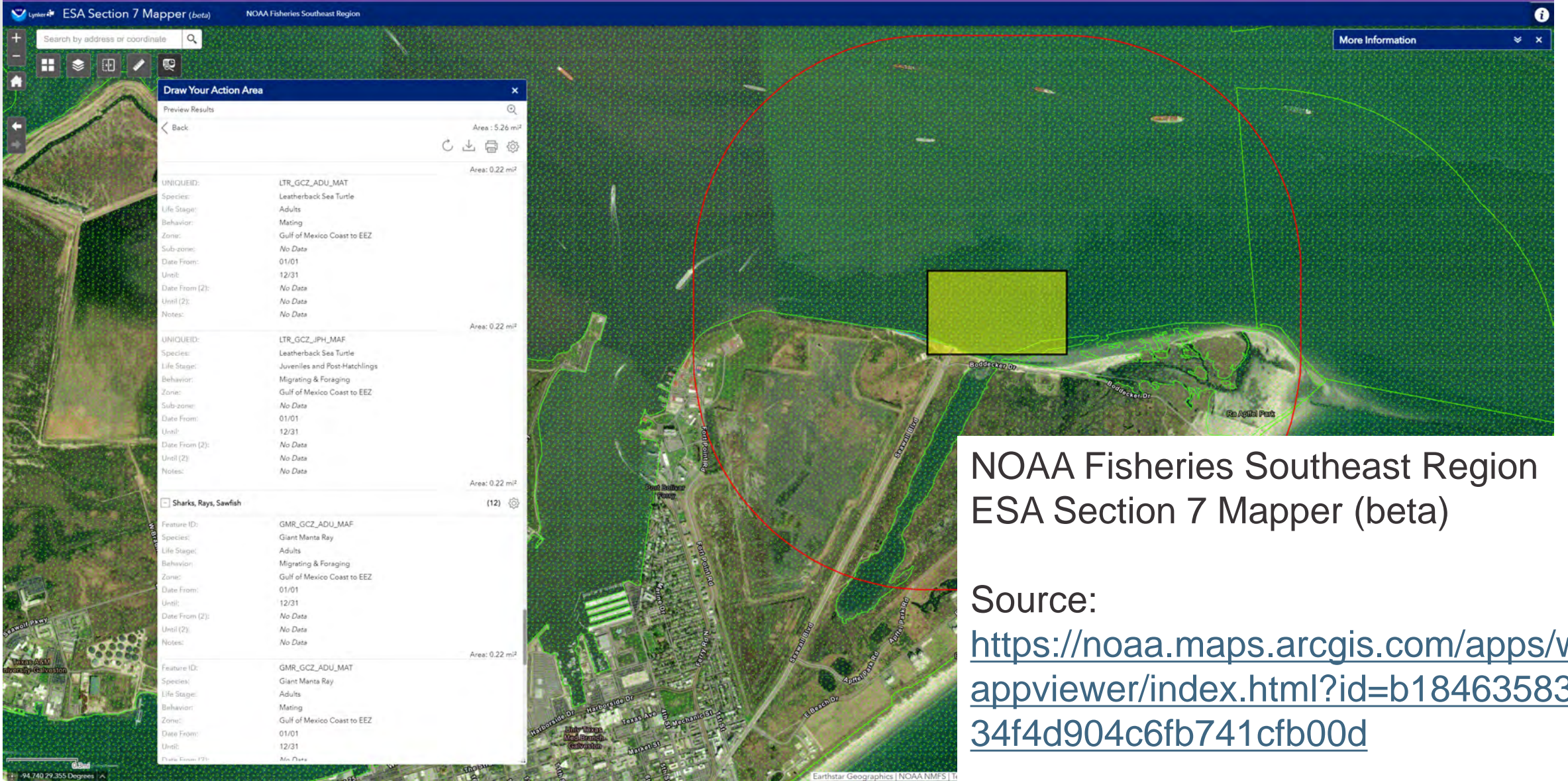
\* Red boxes indicate recent changes

Species	Listing Status	Recovery Plan	Critical Habitat
<a href="#">Green sea turtle</a>	Threatened - North and South Atlantic Distinct Population Segment ( <a href="#">81 FR 20057</a> ; <a href="#">April 6, 2016</a> )	<a href="#">October 1991</a>	Proposed Rule ( <a href="#">88 FR 46572</a> ; <a href="#">July 19, 2023</a> ); <a href="#">63 FR 46693</a> ; <a href="#">September 2, 1998</a>
<a href="#">Kemp's ridley sea turtle</a>	Endangered ( <a href="#">35 FR 18319</a> ; <a href="#">December 2, 1970</a> )	<a href="#">September 2011</a>	None
<a href="#">Leatherback sea turtle</a>	Endangered ( <a href="#">35 FR 8491</a> ; <a href="#">June 2, 1970</a> )	<a href="#">April 1992</a>	<a href="#">44 FR 17710</a> ; <a href="#">March 23, 1979</a>
<a href="#">Loggerhead sea turtle</a>	Threatened - Northwest Atlantic Ocean Distinct Population Segment ( <a href="#">76 FR 58868</a> ; <a href="#">September 22, 2011</a> )	<a href="#">December 2008</a>	<a href="#">79 FR 39856</a> ; <a href="#">July 10, 2014</a>
<a href="#">Hawksbill sea turtle</a>	Endangered ( <a href="#">35 FR 8491</a> ; <a href="#">June 2, 1970</a> )	<a href="#">December 1993</a>	<a href="#">63 FR 46693</a> ; <a href="#">September 2, 1998</a>
<a href="#">Oceanic whitetip shark</a>	Threatened ( <a href="#">83 FR 4153</a> ; <a href="#">January 30, 2018</a> )	<a href="#">2018 Recovery Outline</a>	None
<a href="#">Giant manta ray</a>	Threatened ( <a href="#">83 FR 2916</a> ; <a href="#">January 22, 2018</a> )	<a href="#">December 2019 Recovery Outline</a>	None
<a href="#">Sperm whale</a>	Endangered ( <a href="#">35 FR 18319</a> ; <a href="#">December 2, 1970</a> )	<a href="#">December 2010</a>	None
<a href="#">Rice's whale</a>	Endangered ( <a href="#">84 FR 15446</a> ; <a href="#">April 15, 2019</a> ); Name Change ( <a href="#">86 FR 47022</a> ; <a href="#">August 23, 2021</a> )	<a href="#">September 2020 Recovery Outline</a>	Proposed Rule ( <a href="#">88 FR 47453</a> ; <a href="#">July 24, 2023</a> )

Previously Bryde's Whale



# NMFS: SPECIES MAP



NOAA Fisheries Southeast Region  
ESA Section 7 Mapper (beta)

Source:  
<https://noaa.maps.arcgis.com/apps/webappviewer/index.html?id=b184635835e34f4d904c6fb741cfb00d>



# NMFS: CRITICAL HABITAT MAP

NMFS ESA Critical Habitat Mapper

Source:

<https://noaa.maps.arcgis.com/apps/webappviewer/index.html?id=68d8df16b39c48fe9f60640692d0e318>

**National NMFS ESA Critical Habitat Mapper**

Find address or place

**Critical Habitat Query**

Draw or upload shapefile to query an area for critical habitat

Draw    Shapefile

Select draw mode

Buffer distance (optional)

Show results within

0 Miles

Query    Start Over

**Legend**

National NMFS ESA Critical Habitat Map Service

All NMFS Critical Habitat

- All\_critical\_habitat\_poly\_20230502
- All\_critical\_habitat\_line\_20220404

**Sea turtle, green (North Atlantic DPS)**

ID	100,062,103.00
Scientific Name	Chelonia mydas
Common Name	Sea turtle, green
Listed Entity	Sea turtle, green [North Atlantic DPS]
Listing Status	Threatened
Critical Habitat Status	Proposed
Unit	TX01: Texas (Mexico border to and including Galveston Bay)
Taxon	Marine reptile
Zoom to	...





# NMFS: CONSULTATION FRAMEWORKS

- Summarize the best available information on species life history, behavior and distribution.
- Identifies activities and potential routes of effect.
- Recommendations for integrating recovery considerations into Section 7 consultation practices.
- Can be used to minimize effect to ESA-listed species and critical habitats.
- To be considered a consultation aid and used as general guidance.

Source:

<https://www.fisheries.noaa.gov/southeast/consultations/consultation-frameworks>

## Consultation Frameworks

- [Sea turtle species](#) (PDF, 44 pages)
- [Sea turtle critical habitat](#) (PDF, 13 pages)
- [Coral species](#) (PDF, 39 pages)
- [Elkhorn and staghorn coral critical habitat](#) (PDF, 18 pages)
- [Gulf sturgeon and critical habitat](#) (PDF, 18 pages)
- [Nassau grouper](#) (PDF, 17 pages)
- [Giant manta ray](#) (PDF, 17 pages)
- [Smalltooth Sawfish and critical habitat](#) (PDF, 21 pages)

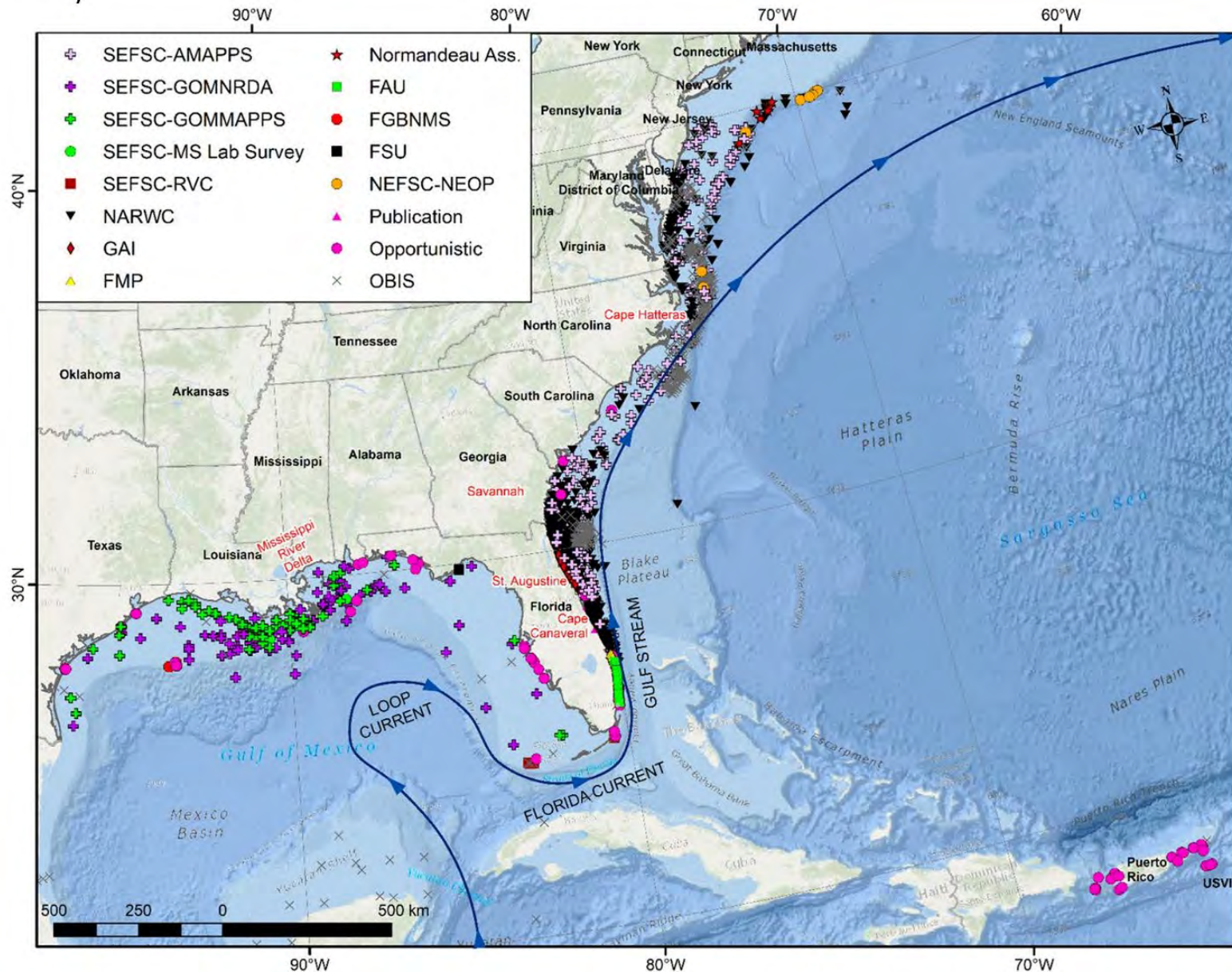
We are developing additional consultation frameworks for species and critical habitat under SERO's jurisdiction.

Return to the Southeast Region's ESA Section 7 Interagency Consultation main page [here](#).

Last updated by [Southeast Regional Office](#) on 09/05/2023



# NMFS: SPECIES OF CONCERN – GIANT MANTA RAY



- Use NMFS ESA Section 7 Mapper (beta) to determine if occur in action area
- Experience similar impacts as sea turtles (e.g. entanglement, noise, vessel strike, habitat degradation, etc.)
- Can use similar avoidance and minimization measures as sea turtles (e.g. Protected Species Construction Conditions, alternative piling installation method, Vessel Strike Avoidance Measures, etc.)

Sources:

1. Giant Manta Ray Consultation Framework
2. [https://media.fisheries.noaa.gov/2021-06/Protected\\_Species\\_Construction\\_Conditions\\_1.pdf?null](https://media.fisheries.noaa.gov/2021-06/Protected_Species_Construction_Conditions_1.pdf?null)
3. [https://media.fisheries.noaa.gov/2021-06/Vessel\\_Strike\\_Avoidance\\_Measures.pdf?null](https://media.fisheries.noaa.gov/2021-06/Vessel_Strike_Avoidance_Measures.pdf?null)



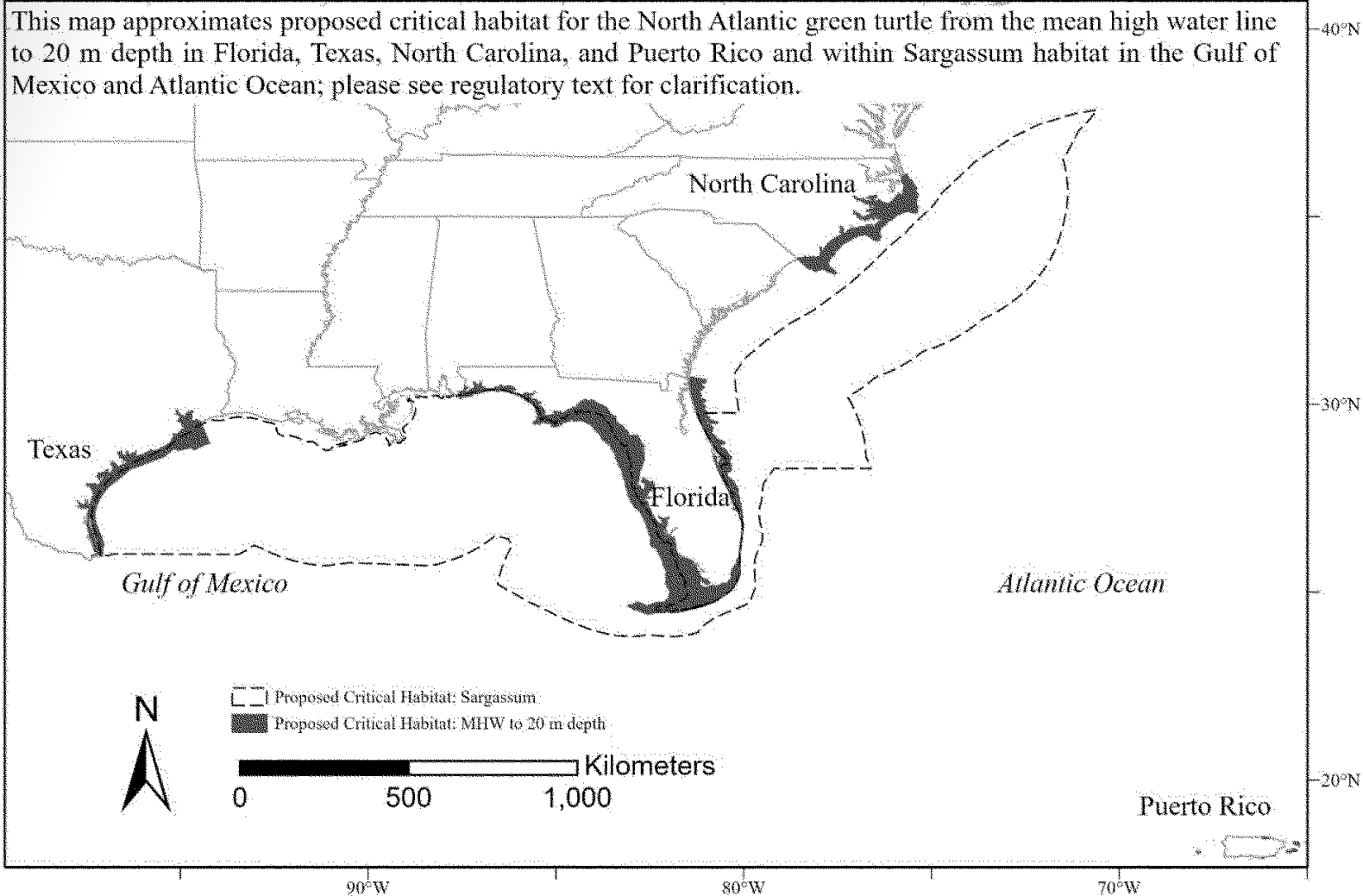
# NMFS: CONSULTATION FRAMEWORK – GIANT MANTA RAY

Aquaculture	<ul style="list-style-type: none"> <li>• Potential interactions with construction equipment</li> <li>• May be a physical barrier</li> <li>• May pose an entanglement risk</li> <li>• May alter water quality and/or habitat</li> <li>• Vessel traffic</li> </ul>	<ul style="list-style-type: none"> <li>• Interaction with equipment is extremely unlikely to occur due to species' mobility</li> <li>• Physical barrier could block or impede movement in the area?</li> <li>• Entanglement could result in injury or mortality</li> <li>• Water quality/habitat degradation could reduce foraging habitat</li> <li>• Vessel strike could result in injury or mortality</li> </ul>	<ul style="list-style-type: none"> <li>• Type of equipment and duration of in-water construction?</li> <li>• Duration of the permit (i.e., how long will the project be in operation so we know how long any structures would be in the water)?</li> <li>• What is the configuration and design of the aquaculture equipment?</li> <li>• What are the maintenance plans for the facility (e.g., how often will nets/lines be inspected)?</li> <li>• What is the average speed of support vessels and how frequently they are deployed?</li> </ul>
Dredging (e.g., hopper, clamshell, or cutter head)	<ul style="list-style-type: none"> <li>• Potential disturbance during construction</li> <li>• Short and/or long-term habitat alteration</li> <li>• Drowning in trawl net (if there is relocation trawling prior to dredging)</li> <li>• Vessel traffic</li> </ul>	<ul style="list-style-type: none"> <li>• Interaction with equipment is extremely unlikely to occur due to species' mobility</li> <li>• Vessel strike could result in injury or mortality</li> <li>• If relocation trawling is proposed, there is potential injury and mortality.</li> </ul>	<ul style="list-style-type: none"> <li>• What is the average speed of support vessels and how many vessels will be in the project area at a given time?</li> <li>• Type of equipment to be used and the duration of dredging?</li> <li>• Are there shutdown procedures in place if a listed species is observed?</li> <li>• Will there be tow time limits for relocation trawls?</li> <li>• Will trained observers be present? If so, include tissue sampling and possible tagging.</li> </ul>
Marina, dock, ramp, and additional slips	<ul style="list-style-type: none"> <li>• Potential impacts during construction</li> <li>• Vessel traffic</li> <li>• Entanglement</li> </ul>	<ul style="list-style-type: none"> <li>• Interaction with construction equipment is extremely unlikely to occur due to species' mobility</li> <li>• Noise associated with construction activities is typically NLAA if it is below the injury threshold level of &gt; 2g fish.</li> </ul>	<ul style="list-style-type: none"> <li>• Type of equipment and duration of in-water construction?</li> <li>• Construction conditions and noise abatement measures.</li> <li>• Number and vessel speed. Are speed restrictions in place?</li> </ul>



# NMFS: PROPOSED CRITICAL HABITAT – GREEN SEA TURTLE

## Proposed Critical Habitat for the North Atlantic DPS of Green Turtles



- All nearshore waters of Texas from the mean high water line to 20m depth contain benthic foraging/resting essential features that may require special management considerations or protections.
- The area between the Mexico border and Lavaca-Matagorda Bay (including Laguna Madre and Lavaca-Matagorda Bay) provides high conservation value because it supports high density benthic foraging/resting.
- The area between Lavaca-Matagorda Bay and Galveston Bay (including Galveston Bay) provides moderate conservation value because it supports moderate density benthic foraging/resting.
- All other areas in Texas provide low conservation value to the DPS because of relatively lower density benthic foraging/resting in these areas.
- *Sargassum* habitat, from 10 m depth to the outer boundary of the U.S. Exclusive Economic Zone, in the Gulf of Mexico

Source: <https://www.federalregister.gov/d/2023-14109>

USFWS



Working with others to conserve, protect, and enhance fish, wildlife, plants and their habitats for the continuing benefit of the American people






US Army Corps  
of Engineers®

# USFWS: RECENTLY LISTED

## Cactus Ferruginous Pygmy Owl

- Listed August 21, 2023
- Threatened
- With proposed critical habitat

### Current Range

   Last Updated: 01-13-2022 - Wherever found

Zoom in! Some species' locations may be small and hard to see from a wide perspective. To narrow-in on locations, check the state and county lists (below) and then use the zoom tool.

Want the FWS's current range for all species? Click [here](#) to download a zip file containing all individual shapefiles and metadata for all species.

\* For consultation needs do not use only this current range map, please use [IPaC](#).

Current range maps are only shown within the jurisdictional boundaries of the United States of America. The species may also occur outside this region.



### • Wherever found

Listing status: **Threatened**

- **States/US Territories** in which this population is known to or is believed to occur: Arizona, Texas
- **US Counties** in which this population is known to or is believed to occur: [View All](#)
- **USFWS Refuges** in which this population is known to occur:



# USFWS: PROPOSED TO BE LISTED

- Alligator Snapping Turtle
- East Texas Mussels
- Green Sea Turtle Critical Habitat
- Monarch
- Rio Grande Mussels
- Tri-colored Bat
- Red Knot Critical Habitat



# USFWS: ALLIGATOR SNAPPING TURTLE

➤ Proposed Threatened

USFWS FAQ: <https://www.fws.gov/story/2021-11/proposed-listing-alligator-snapping-turtle-under-endangered-species-act>







# USFWS: EAST TEXAS MUSSELS

- Louisiana Pigtoe – Proposed Threatened
- Texas Heelsplitter – Proposed Endangered
- Both with proposed critical habitat

USFWS Press Release: <https://www.fws.gov/press-release/2023-03/proposed-endangered-species-act-protection-two-native-freshwater-mussels>





# USFWS: MONARCH

- Listing Status – Candidate
- Note - the monarch is a candidate species and not yet listed or proposed for listing. Consultation with U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act is not required for candidate species, like the monarch. We encourage agencies, however, to take advantage of any opportunity they may have to conserve the species.

For information on monarch conservation, visit <https://www.fws.gov/savethemonarch/>, [http://www.mafwa.org/?page\\_id=2347](http://www.mafwa.org/?page_id=2347), and, for the West, <https://wafwa.org/committees-working-groups/monarch-working-group/>





# USFWS: RIO GRANDE MUSSELS

- Salina mucket – Proposed Endangered
- Mexican fawnsfoot – Proposed Endangered
- Proposed critical habitat for both

USFWS Press Release: <https://www.fws.gov/press-release/2023-07/proposed-esa-protection-rio-grande-mussels#:~:text=The%20U.S.%20Fish%20and%20Wildlife,designate%20critical%20habitat%20for%20each>



# USFWS: TRI-COLORED BAT

## ➤ Proposed Endangered



USFWS Press Release: <https://www.fws.gov/press-release/2022-09/proposal-list-tricolored-bat-endangered>

USFWS FAQ: <https://www.fws.gov/press-release/2022-09/proposal-list-tricolored-bat-endangered>



## » Range Information

### Current Range

  Last Updated: 08-30-2023 - Wherever found

Zoom in! Some species' locations may be small and hard to see from a wide perspective. To narrow-in on locations, check the state and county lists (below) and then use the zoom tool.

Want the FWS's current range for all species? Click [here](#) to download a zip file containing all individual shapefiles and metadata for all species.

\* For consultation needs do not use only this current range map, please use [IPaC](#).

Current range maps are only shown within the jurisdictional boundaries of the United States of America. The species may also occur outside this region.



### • Wherever found

Listing status: **Proposed Endangered**

- **States/US Territories** in which this population is known to or is believed to occur: Alabama, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, Wyoming
- **US Counties** in which this population is known to or is believed to occur: [View All](#)
- **USFWS Refuges** in which this population is known to occur:
- **Countries** in which this population is known to occur: Canada, Guatemala, Honduras, Mexico, United States

# USFWS: RED KNOT CRITICAL HABITAT

- Red knot listing status – Threatened
- Revised proposed critical habitat

The revised rule proposes to designate 683,405 acres of critical habitat across 13 states for the rufa red knot, which relies on U.S. habitats to fuel its remarkable migrations from the Canadian Arctic to the southern tip of South America. Some rufa red knots also winter along the U.S. Atlantic and Gulf coasts. The revision includes an overall increase of 32,615 acres from the proposal published on July 15, 2021, due to added areas, changes to previously proposed units, and acreage corrections.

Federal Register Notice for Revised Proposed Critical Habitat:

<https://www.federalregister.gov/documents/2023/04/13/2023-06619/angered-and-threatened-wildlife-and-plants-designation-of-critical-habitat-for-rufa-red-knot>



# USFWS: CANDIDATES

- Spot-tailed Earless Lizard
- Black-spotted Newt
- American bumblebee



 **USFWS: SPOT-TAILED EARLESS LIZARD**





# USFWS: NEWT AND BUMBLEBEE







# USFWS: Information for Planning and Consultation (IPaC)

<https://ipac.ecosphere.fws.gov>

U.S. Fish & Wildlife Service  
IPaC Information for Planning and Consultation

LOG IN

IPaC is a project planning tool that streamlines the USFWS environmental review process

GET STARTED LOG IN

Integrate the environmental review process into your project design

Quickly and easily identify USFWS managed resources and suggested conservation measures for your project.

- Explore species and habitat**

See if any listed species, critical habitat, migratory birds or other natural resources may be impacted by your project.

Using the map tool, explore other resources in your location, such as wetlands, wildlife refuges, GAP land cover, and other important biological resources.
- Conduct a regulatory review**

Log in and define a project to get an official species list and evaluate potential impacts on resources managed by the U.S. Fish and Wildlife Service.

Follow IPaC's Endangered Species Act (ESA) Review process—a streamlined, step-by-step consultation process available in select areas for certain project types, agencies, and species.
- Build a Consultation Package**

Consultation Package Builder (CPB) replaces and improves on the original Impact Analysis by providing an interactive, step-by-step process to help you prepare a full consultation package leveraging U.S. Fish and Wildlife Service data and recommendations, including conservation measures designed to help you avoid or minimize effects to listed species.

CPB will continue to be improved over time.

 **USFWS: ADDITIONAL INFO**

Migratory Birds – Regulation Updates

<https://www.fws.gov/regulations/mbta>

# USFWS: LATEST BLACK RAIL GUIDANCE

- Surveys
- Best Management Practices



