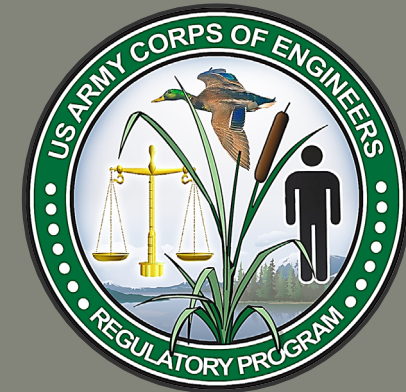




REGULATORY 101

08 MAR 2022



Vicksburg District Regulatory Division

<https://www.mvk.usace.army.mil/Missions/Regulatory/>

"The views, opinions and findings contained in this report are those of the authors(s) and should not be construed as an official Department of the Army position, policy or decision, unless so designated by other official documentation."



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CORPS OF ENGINEERS MISSIONS

Flood Control

Navigation

Environmental Stewardship

Hydropower

Recreation

Regulatory

Emergency Operations

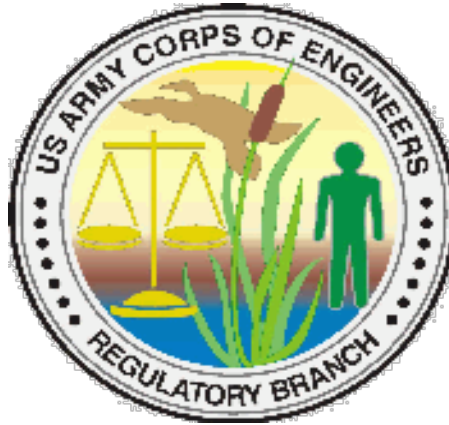
MILCON



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USACE REGULATORY MISSION



**The mission of the Corps of Engineers
Regulatory Program is to protect the
Nation's aquatic resources, while allowing
reasonable development through fair,
flexible, and balanced permit decisions.**



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Public Service Commitment

- **PROFESSIONAL** - We will conduct ourselves in a professional manner in dealings with all our customers, including applicants, violators, agencies, interest groups and the general public.
- **FAIR AND REASONABLE** - We will be open-minded, impartial, and consistent in our interactions with all our customers to ensure all actions and decisions are free from bias and are not arbitrary or capricious. Customers will be treated equally and with tolerance.
- **KNOWLEDGEABLE** - We will remain knowledgeable of applicable laws, regulations, and scientific and technical advances which affect our program.
- **HONESTY** - We will be truthful, straightforward, and candid in all dealings with our customers.
- **TIMELINESS** - We will strive to provide our customers with timely regulatory responses regardless of whether those responses are favorable or adverse.
- **ACCOUNTABILITY** - We will be decisive in all actions and accept responsibility for any of our decisions and resulting consequences. All decisions will be factual and properly documented.
- **RESPECT** - We will treat our customers with dignity, courtesy, compassion, and sensitivity.



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REGULATORY



One of the most visible and controversial Corps programs

Charged with balancing environmental protection with sustainable development



Decisions based on best professional judgment



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MVK: REGULATORY ORGANIZATION

Office of the Chief - (Acting) Cori Carraway, Division Chief
- (Vacant) Deputy to the Division Chief

- Program Management
- Workforce Management
- Administrative Support
- Budget Management

Permit/Evaluation Branch - Bryan Williamson, Branch Chief

- Standard Permits/Letter of Permission
- Mitigation
- Nationwide Permits
- Regional General Permits/Programmatic General Permits

Enforcement/Compliance Branch - Jerry Bourne, Branch Chief

- Jurisdictional Determinations
- Exemptions
- Alleged Violations/Enforcement Actions
- Compliance



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MVK: REGULATORY INTERACTION



- Engineering
- ERDC
- Office of Counsel
- Planning
- Project Management
- Project Resources Management
- Real Estate
- River Operations



STATUTORY AUTHORITY

Rivers and Harbors Act of 1899 - Section 10 gives the Corps of Engineers responsibility to regulate work which could affect the Nation's navigable waterways.

Clean Water Act of 1977- Section 404; gave the Corps of Engineers responsibility to regulate the discharge of dredged material and fill material into the Nation's navigable waterways and tributaries (Initially Federal Water Pollution Control Act of 1972).

Marine Protection, Research, and Sanctuaries Act of 1972 - Section 103 of the Act authorizes the Corps to regulate the transportation of dredged material for ocean dumping.



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SECTION 10 OF THE RIVERS AND HARBORS ACT (RHA) OF 1899

Prohibits the unauthorized obstruction or alteration of any navigable water of the United States unless you have a permit from the Corps of Engineers

Examples of obstructions or alterations are:

- construction of any structure in or over any navigable water of the United States,
- the **excavating from** or depositing of material
- the accomplishment of any other work **affecting the course, location, condition, or capacity** of such waters



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NAVIGABLE WATERS OF THE UNITED STATES UNDER THE RHA

Navigable waters of the United States are those waters that are subject to the ebb and flow of the 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.

*Navigable waters of the US include:

- Some inland waterbodies to the “Head of Navigation” and
- All ocean and coastal waters seaward of the baseline (territorial sea) to the outer limits of the Exclusive Economic Zone (EEZ), a distance 200 nautical miles.



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SECTION 404 OF THE CLEAN WATER ACT (CWA)

To restore and maintain the chemical, physical and biological integrity of the waters of the U.S.

...authorizes the Secretary of the Army to issue permits for the **discharge of dredged or fill material into the waters of the United States** at specified disposal sites.



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ACTIVITIES REGULATED UNDER SECTION 404 OF THE CLEAN WATER ACT

Discharge of Dredged Material

- Material that is excavated or dredged from waters of the U.S.
 - OTHER THAN INCIDENTAL FALLBACK

Discharge of Fill Material

- Material placed in waters of the U.S. where the material has the effect of:
 - (i) Replacing any portion of a water of the US with dry land; or
 - (ii) Changing the bottom elevation of any portion of a water of the US.



“Incidental fallback”

SECTION 103 OF THE MARINE PROTECTION, RESEARCH AND SANCTUARIES ACT (MPRSA) (AKA OCEAN DUMPING ACT) 33 CFR 324.4

Permits for: Transportation of dredged material by vessel or vehicle for purpose of dumping (disposal) in ocean waters.

Ocean waters are defined as those waters of the open seas lying seaward of the baseline from which the territorial sea is measured.



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SECTION 103 MPRSA

Prohibits the dumping of material into the ocean that would unreasonably degrade or endanger human health or the marine environment. Ocean dumping cannot occur unless a permit is issued under the MPRSA. 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.

(Evaluated in accordance with criteria set forth in 40 CFR 227.)

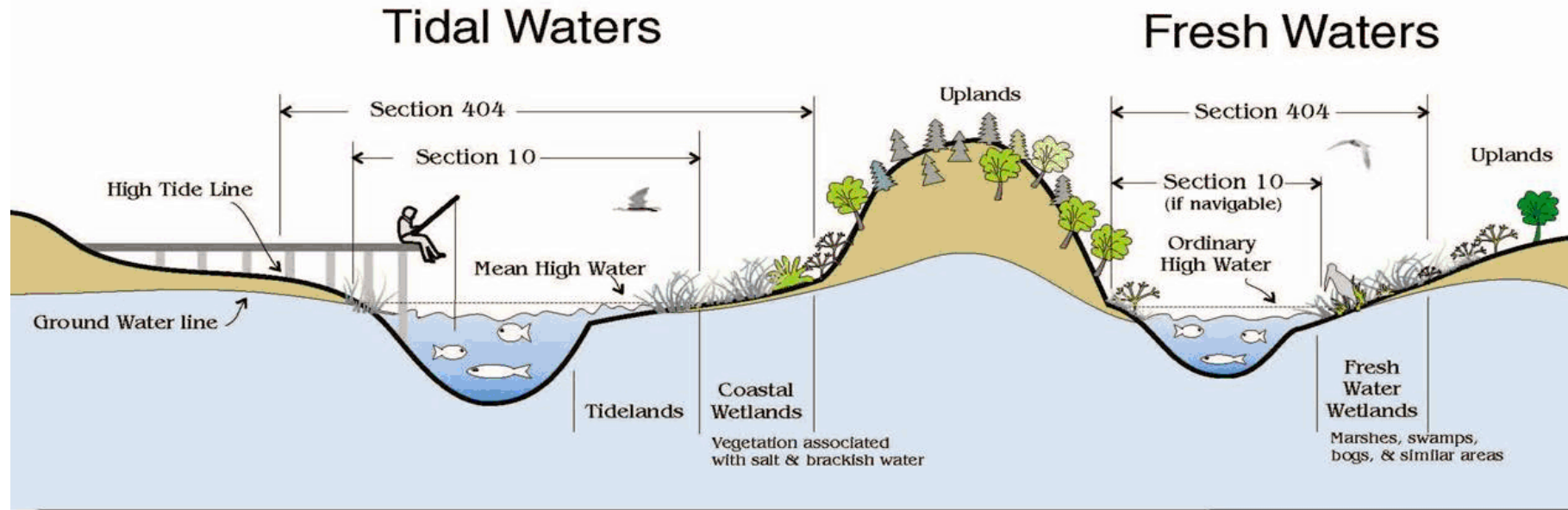


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AUTHORITY

CORPS OF ENGINEERS REGULATORY JURISDICTION



Typical examples
of regulated activities

Section 103 Ocean Disposal of Dredged Material

Ocean discharges of
dredged material

Section 404 Discharge of Dredged or Fill Material (all waters of the U.S.)

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

Section 10 All Structures and Work (navigable waters)

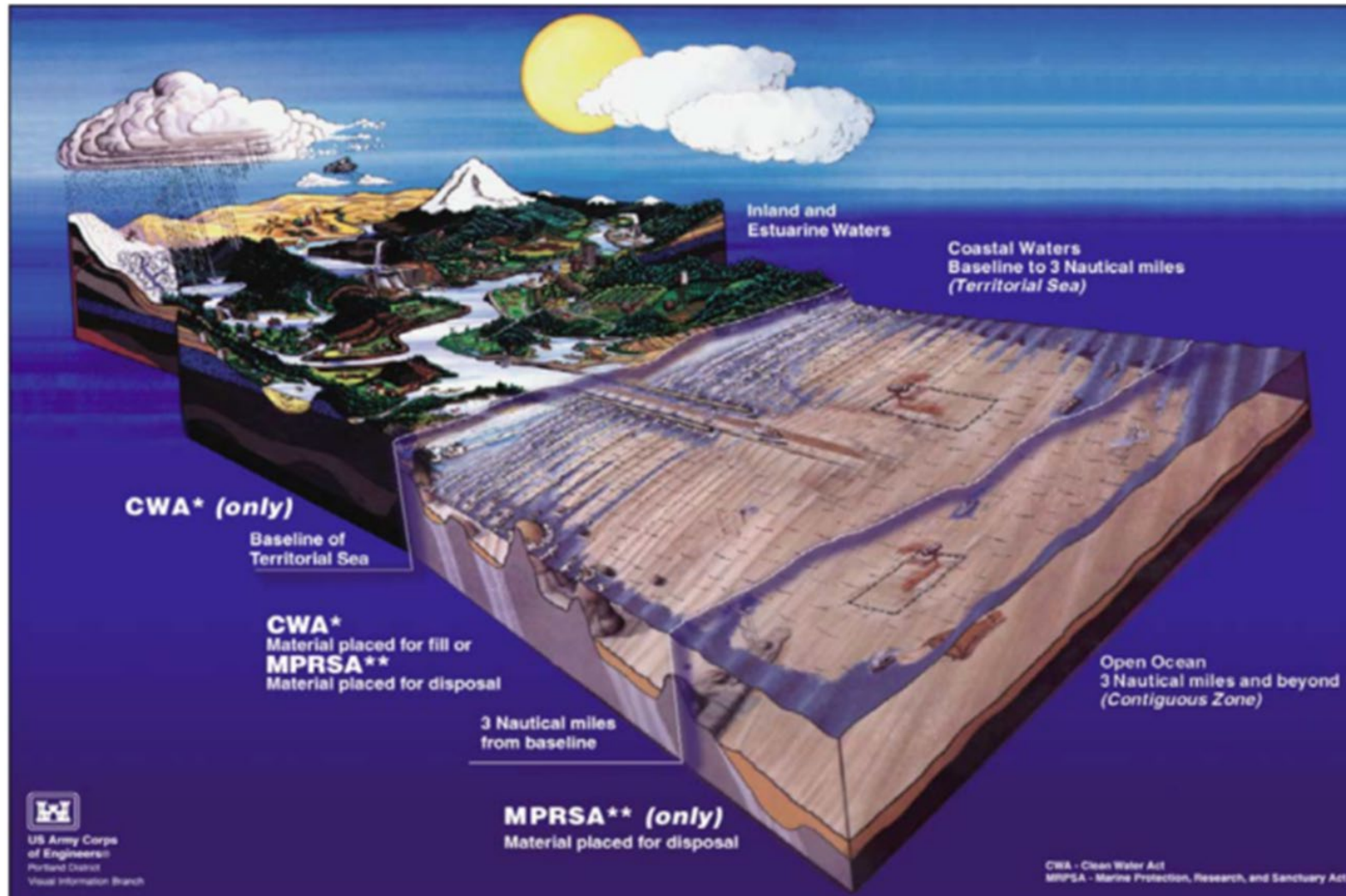
Dredging, marinas, piers, wharves,
floats, intake / outtake pipes,
pilings, bulkheads, ramps, fills,
overhead transmission lines, etc.



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AUTHORITY




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Portland District
Visual Information Branch


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WHAT IS JURISDICTIONAL?



IT DEPENDS...



NAVIGABLE WATERS



Includes the oceans and navigable coastal and inland waters, lakes, rivers, and streams.

WETLAND DEFINITION

Corps/EPA definition for Clean Water Act Section 404 purposes:

Areas that are inundated or saturated by surface or ground **water** at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of **vegetation** typically adapted for life in saturated **soil** conditions.



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OTHER WATERS

- Section 404 includes wetlands, and streams.
- Perennial, Intermittent, and Ephemeral flows, under current pre-2015-regime.
- Look for Ordinary High Water Mark (OHWM). If it has one, then it's likely jurisdictional.



WHO NEEDS A PERMIT?

Anyone could need a Permit

Many people own land with regulated waters on the property. The term “waters” includes rivers, streams, lakes, and wetlands.

These statutes apply to private as well as public property, and are intended to protect not only commerce on navigable waters, but also the aquatic environment.



WHEN IS A PERMIT REQUIRED?



When “work”

- including dredging - occurs in jurisdictional areas (mostly a Section 10 activity)

WHEN IS A PERMIT REQUIRED?



When “work”

- placement/discharge of dredged material occurs in jurisdictional areas (mostly a Section 404 activity, but also Section 10)

TYPES OF DEPARTMENT OF THE ARMY PERMITS

- **General Permits (Section 10 & Section 404)**
 - Non-controversial projects
 - Minimal adverse impacts
 - Agency coordination only – no Public Notice
 - < 60 days to reach permit decision after receipt of a complete application
- **Standard Permits (Section 10 & Section 404)**
 - Controversial projects
 - More than minimal adverse impacts
 - Public Notice (21 to 30 days)
 - 120 days or more to reach the permit decision after receipt of a complete application
- **Letters of Permission (Section 10 only)**
 - Non-controversial
 - Agency coordination only – no Public Notice
 - 60 to 120 days to reach the permit decision after receipt of a complete application



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WHAT OTHER LAWS APPLY?

- Water Quality Certification (Section 401 of the Clean Water Act)
- Coastal Zone Consistency (Section 307 of Coastal Zone Management Act)
- Endangered Species Consultation (Section 7 of Endangered Species Act)
- Cultural/Historical Consultation (Section 106 of National Historic Preservation Act)
- 404(b)(1) Guidelines (National Environmental Policy Act)
- **Section 408** (1899 Rivers and Harbors Act)
 - Activities which may alter or occupy a Federal Project



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WHAT ABOUT MITIGATION?

Avoid

Minimize

Mitigate



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2008 MITIGATION RULE

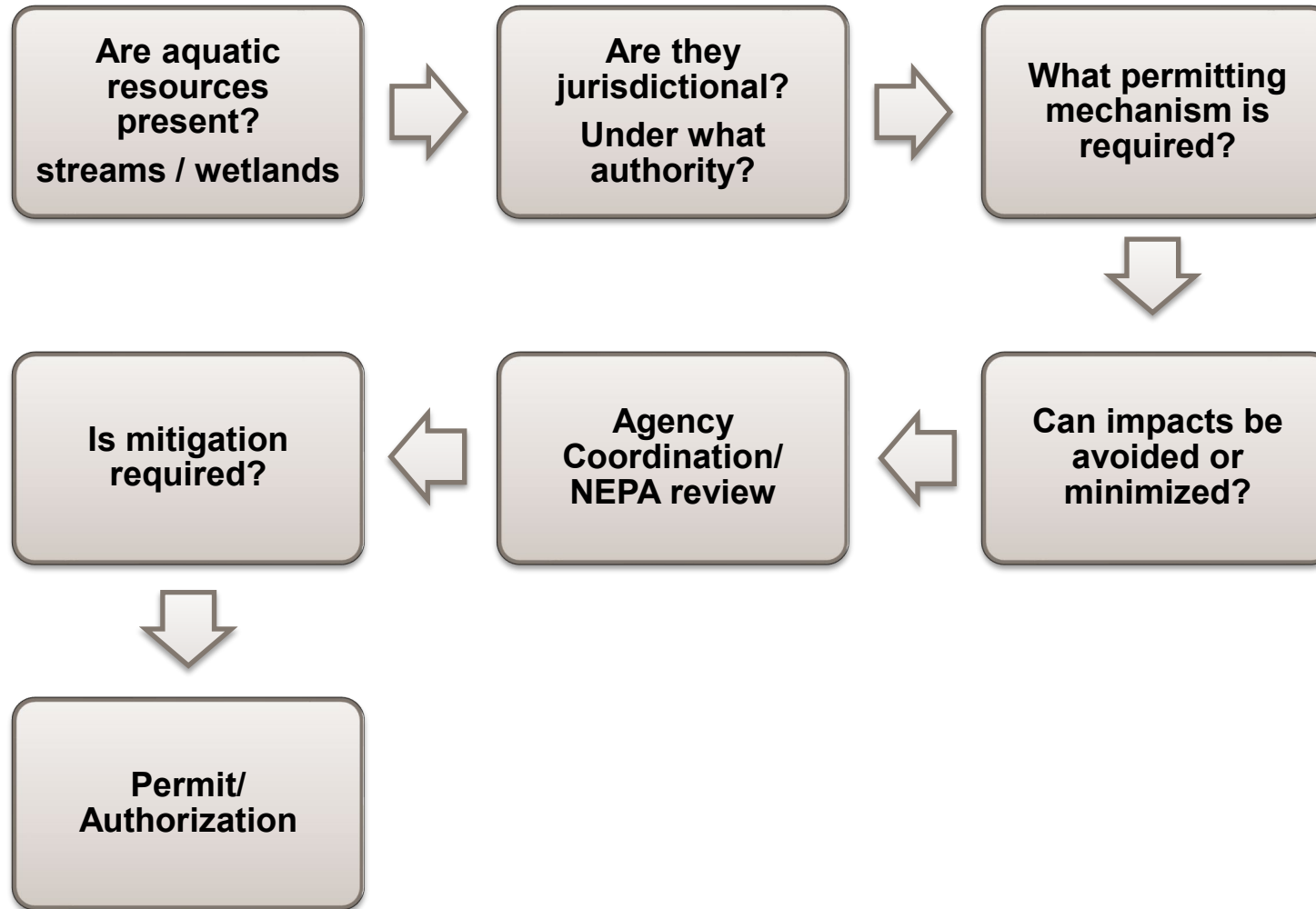
- Established preference for mitigation banks over “permittee responsible mitigation”
- Banks
 - Developed by sponsors, approved by Interagency Review Team
 - “Credits” generated; price point set by sponsor/banker
 - All responsibility is transferred
- Permittee Responsible Mitigation
 - Can be less expensive
 - Responsibility still on permittee
 - Obligation for perpetuity



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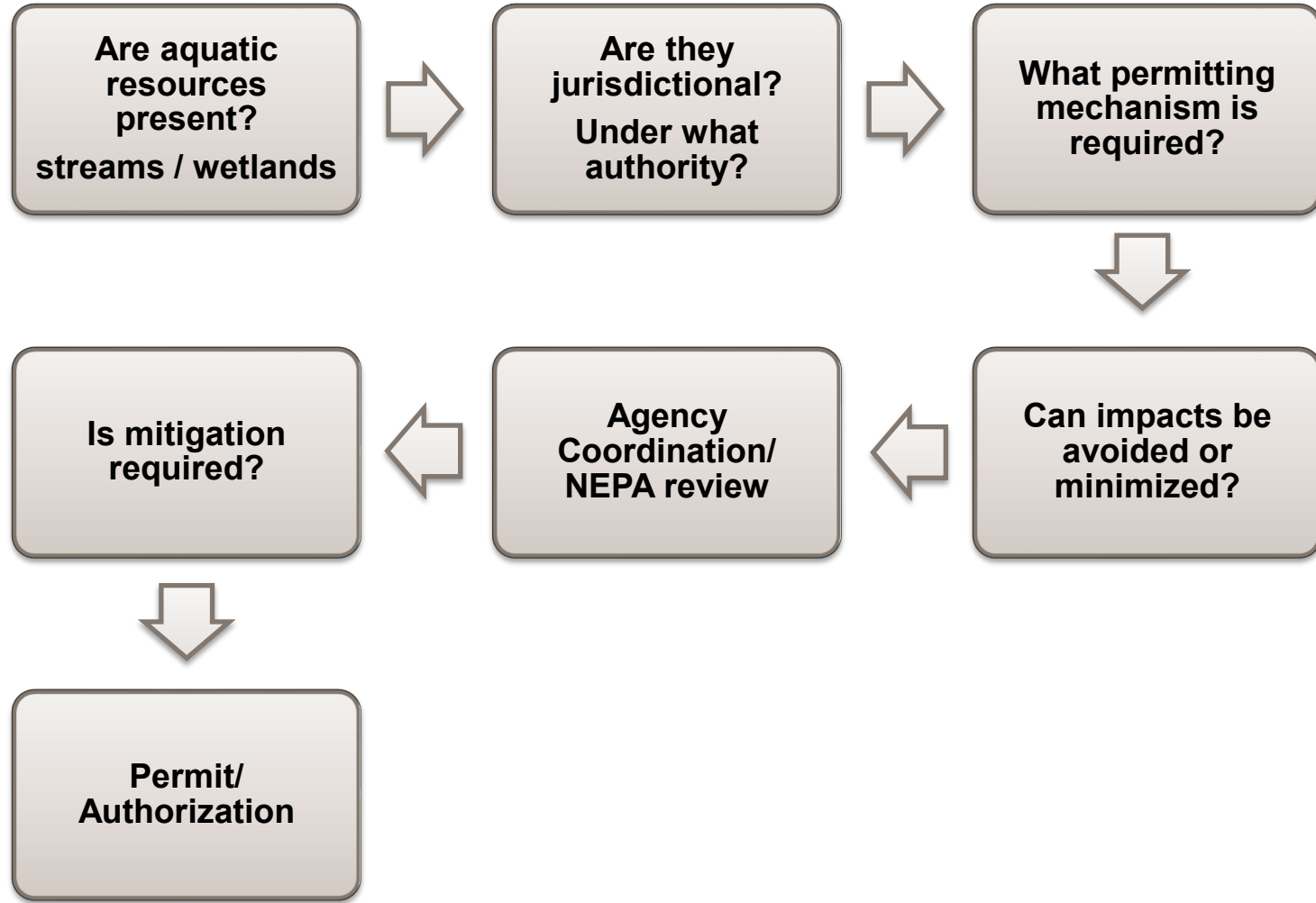


THE PROCESS (SIMPLIFIED)



THE PROCESS (SIMPLIFIED)

Pre-Application
Consultation
Meeting!!!



OVERVIEW

- Section 10, Section 404, Section 103
- Anyone can be required to obtain a permit(s)
- Navigable Waters, Wetlands, Streams and Tributaries
- Regulatory Public Service Principles
- Pre-Application Consultation Meetings are highly encouraged!

Questions?



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Mobile District: CESAM-RD@sam.usace.army.mil

New Orleans District: Brad.A.Guarisco@usace.army.mil



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