

# U.S. ARMY CORPS OF ENGINEERS REGULATORY PROGRAM IN MAINE

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Date: March 21, 2024



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# OVERVIEW

- **Updates**
  - MPO PM Contacts
  - Mitigation
  - RRS
  - Maine General Permit Updates (2025)
- **Jurisdiction**
  - Jurisdictional Waters (2023 Conformed Rule)
  - Exclusions
  - AJD vs. PJD
- **Permitting Process**
  - Types of Permits & Thresholds
- **Response to Storm Event**
- **Exemptions under § 404 of the Clean Water Act**



# UPDATES

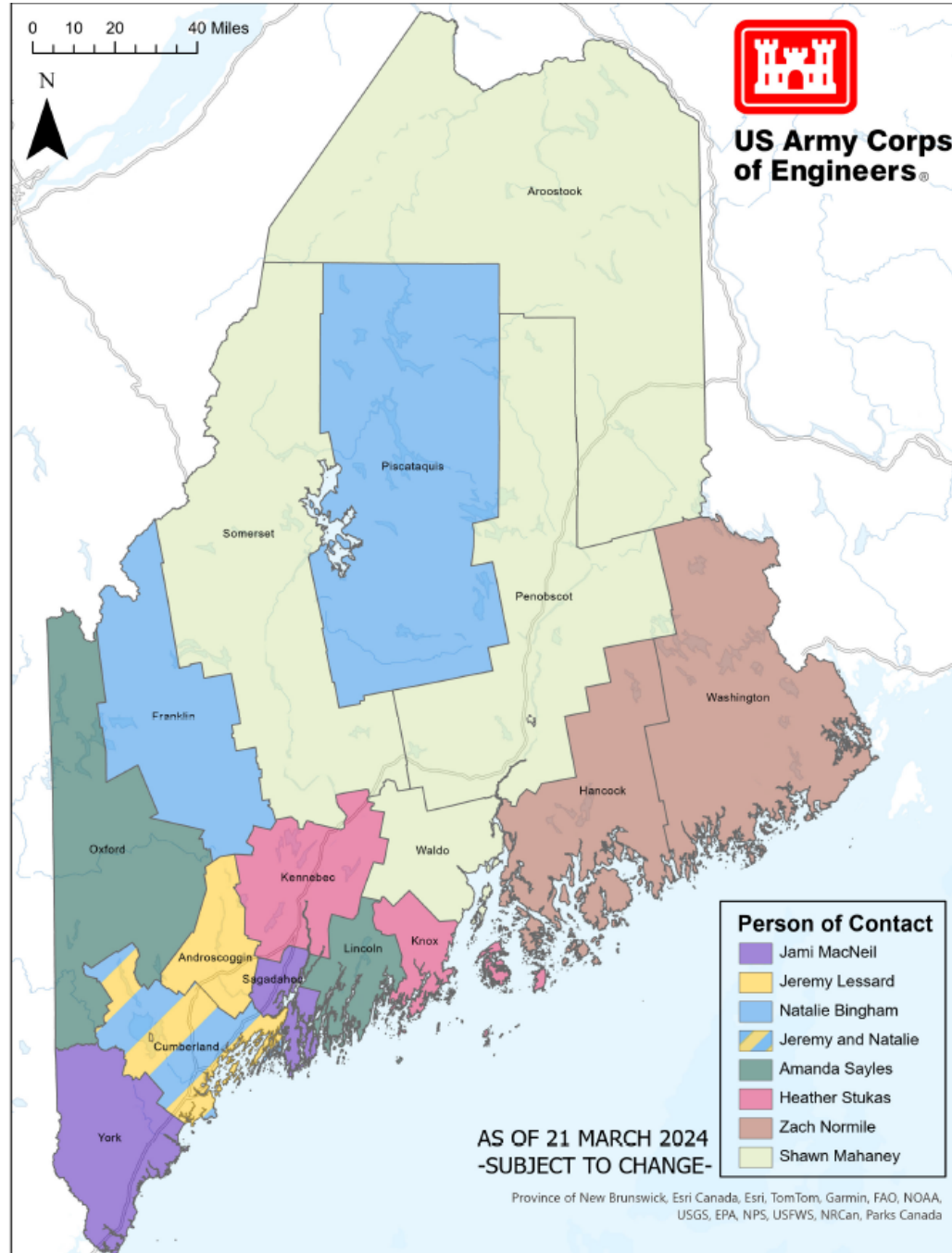


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# MPO - AOR

- Will be posted to webpage and facebook
- Subject to change as staff changes
- Phone numbers & contact info will be included





# MITIGATION



## SPECIAL PUBLIC NOTICE

**Public Notice Date:** March 12, 2024  
**In Reply Refer to:** Mr. Taylor Bell  
**Phone:** (978) 318-8952  
**Email:** Taylor.m.bell@usace.army.mil

### COMPENSATORY MITIGATION THRESHOLDS UPDATE FOR THE NEW ENGLAND DISTRICT REGULATORY DIVISION

<b>Resource</b> <sup>1</sup>	Non-Tidal	Tidal
Stream <sup>2</sup>	200 Linear Feet	200 Linear Feet
Other Open Waters <sup>3</sup>	Project Dependent	Project Dependent
Wetland	5000 Square Feet	500 Square Feet
Vernal Pool <sup>4</sup>	All	N/A
SAV	Project Dependent	25 Square Feet
Mudflat	N/A	1000 Square Feet
Intertidal <sup>5</sup>	N/A	1000 Square Feet



# APPLICATION PROCESS



## New Process:

- Regulatory Request System (RRS)

<https://rrs.usace.army.mil/>

Welcome to the Regulatory Request System

Apply Online · Learn about the Regulatory Program · Track Request

[Get Started >>>](#)

- Regulatory Program Information**  
Learn the basics about the Regulatory Program, including recent announcements.
- Jurisdiction**  
Does the property in question contain wetlands/waters? If so does the Corps have jurisdiction?
- Permitting**  
Do you need a permit? Need to schedule a pre-application meeting?
- Mitigation**  
Discover how we help avoid and minimize impacts to aquatic resources.
- Report Violations**  
Submit a report of unauthorized activity or permit non-compliance.
- RRS Support**  
Learn about upcoming features, new updates and get helpdesk support.
- Public Notices**  
**UNDER CONSTRUCTION**  
Visit the HQ Regulatory website to find your district and get local public notices.
- Apply for a Permit**  
**UNDER CONSTRUCTION**  
If you're ready to apply for a permit, click here to login.

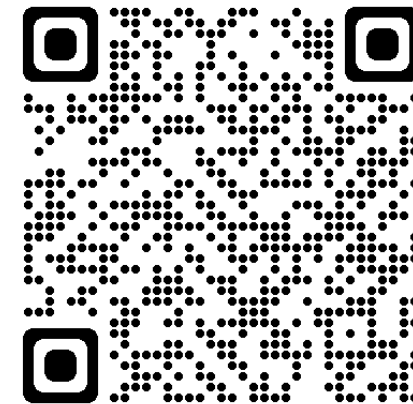
Regulatory Request System

**RRS** beta REGULATORY REQUEST SYSTEM

The U.S. Army Corps of Engineers Regulatory Program launches initial beta version of the Regulatory Request System (RRS).

[CLICK HERE](#)

Regulatory Announcement from HQ  
USACE Regulatory



The RRS is part of a new multi-faceted, enterprise-wide approach to transforming the Regulatory Program



# MAINE GENERAL PERMITS



Applicant: General Public, State of Maine

Effective Date: October 14, 2020

Expiration Date: October 14, 2025

## DEPARTMENT OF THE ARMY GENERAL PERMITS FOR THE STATE OF MAINE

### Upcoming changes

- New Self-verification tool/form. Automatic authorization if completed without triggering PCN
- PCN threshold for permanent impact lowered (3 acres exceeds more than minimal)
- Applicants/consultants should complete IPAC Northeast DKEYS for NLAAs
- Mitigation threshold for permanent freshwater wetland loss > 5,000 SF (may be required below for high quality)

# JURISDICTION



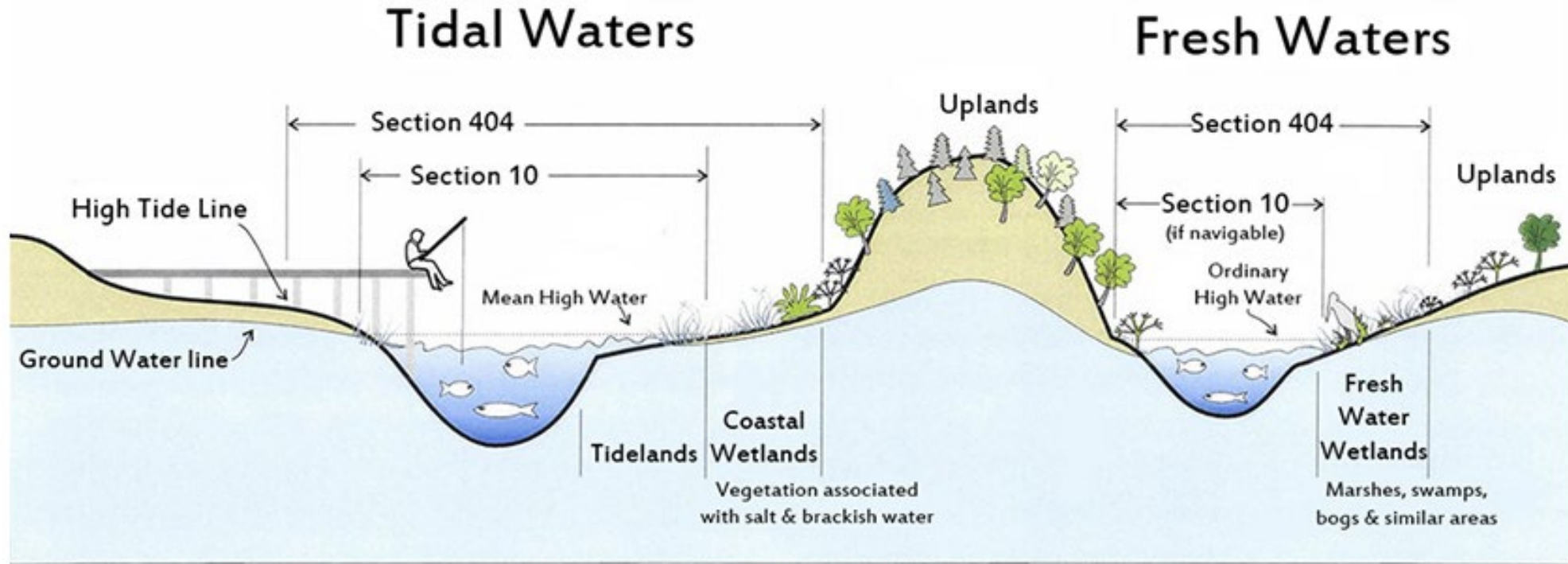
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# LIMITS OF JURISDICTION

## Corps of Engineers Regulatory Jurisdiction



Typical examples of regulated activities

**Section 103**  
 Ocean Discharge of Dredged Material  
 Ocean discharges of dredged material.

**Section 404**  
 Disposal of Dredged or Fill Material  
 All filling activities, utility lines, outfall structures, 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.



# 2023 CONFORMING RULE

- (a)(1)(i) Traditional Navigable Waters (“TNWs”)
- (ii) Territorial Seas
- (iii) Interstate Waters
- (a)(2) Impoundments of Jurisdictional Waters
- (a)(3) Tributaries
- (a)(4) Adjacent Wetlands
- (a)(5) Intrastate lakes and ponds, streams, and wetlands that do not fall within (a)(1) –(a)(4)

\*\*\*The 2023 Rule was published in the Federal Register on 18 January 2023. Effective Date on 08 September 2023, as there were changes made to the 2023 rule.

**USACE Public Outreach Event :**  
To talk more about WOTUS  
TBD – July



# (a)(1) TRADITIONAL NAVIGABLE WATERS

Waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

## Waters in ME:

- All waters subject to ebb and flow of the tide
- The Kennebec River to Moosehead Lake
- The Penobscot River to the confluence of the East and West Branch at Medway
- Lake Umbagog





## (a)(2) IMPOUNDMENTS

### CHARACTERISTICS:

Created by discrete structures (often human-built) like dams or levees that typically have the effect of raising the water surface elevation, creating or expanding the area of open water, or both

- Can be natural (like beaver ponds) or artificial (like reservoirs)
- Can vary in size, with some being very small and others being very large
- Can be located off-channel (i.e., an impoundment with no outlet or hydrologic connection to the tributary network) or in-line with the channel (i.e., an impoundment with a hydrologic connection to the tributary network)





## (a)(3) TRIBUTARIES

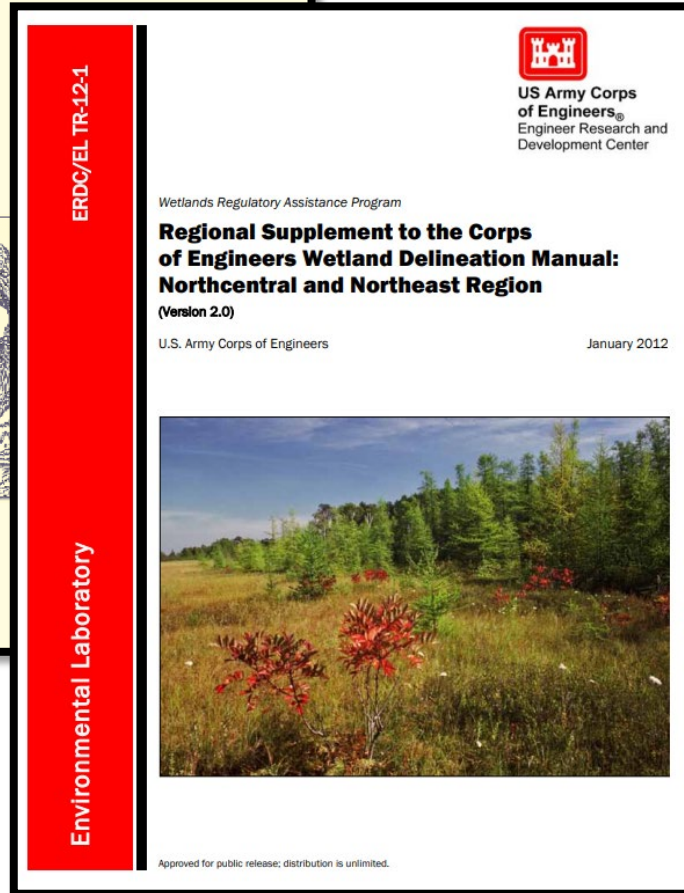
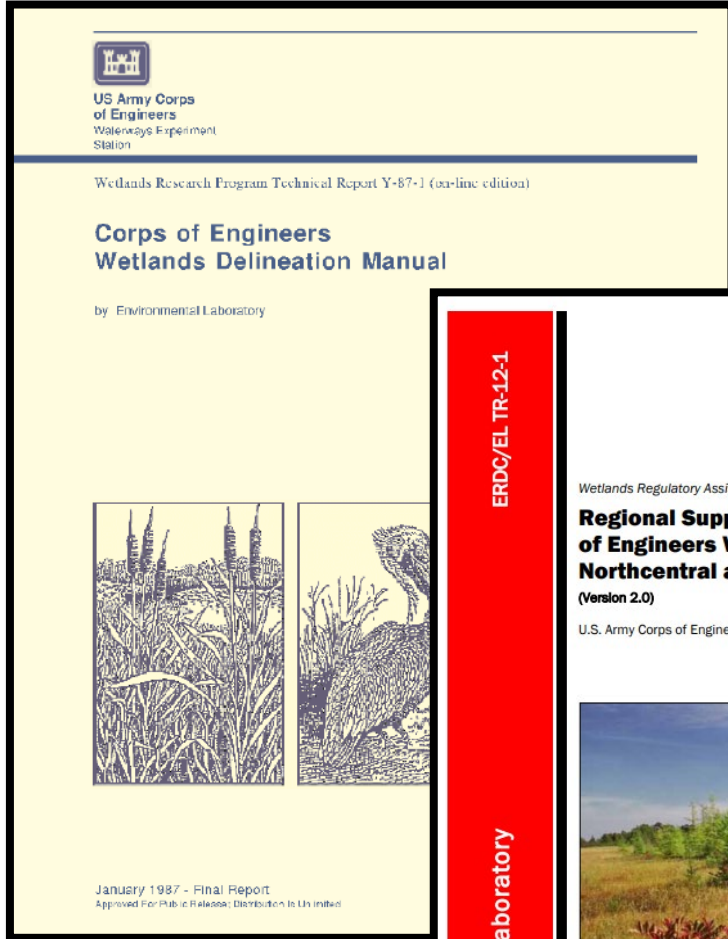


- Tributaries of waters identified in paragraph (a)(1) or (2) of this section that are relatively permanent, standing or continuously flowing bodies of water
  - Connected directly or indirectly to a (a)(1) or (2) water
  - Can be manmade or altered
  - Must meet relatively permanent status (i.e. not in direct response to precipitation)





# (a)(4) ADJACENT WETLANDS



- 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. Wetlands generally include swamps, marshes, bogs, and similar areas.
- Wetlands adjacent to (a)(1)- (3) waters with a **continuous surface connection** to those waters are jurisdictional



# EXCLUSIONS:



## Categories of Exclusions (AKA Preamble Waters)

- (b)(1) Waste treatment systems
- (b)(2) Prior converted cropland
- (b)(3) Certain ditches (solely constructed in uplands)
- (b)(4) Artificially irrigated areas that would revert to upland if irrigation ceased
- (b)(5) Certain artificial lakes and ponds
- (b)(6) Artificial reflecting or swimming pools or other small ornamental bodies of water
- (b)(7) Certain waterfilled depressions
- (b)(8) Swales and erosional features



\*



# JURISDICTIONAL DETERMINATIONS

A jurisdictional determination (JD) is a **written** USACE determination that a wetland and/or waterbody is subject to regulatory jurisdiction under Section 404 of the Clean Water Act or under Section 9 or 10 of the Rivers and Harbors Act of 1899 (33 CFR 331.2).

- Two types: **Preliminary** Jurisdictional Determination (PJD)  
**Approved** Jurisdictional Determination (AJD)
- JDs are typically made at the request of the landowner or project proponent. USACE generally does not issue a JD of any type when a JD is not requested.
- Additional information can be found in the Corps Regulatory Guidance Letter (RGL) 16-01, including the request form:  
<https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Guidance-Letters/>



# PERMITTING PROCESS



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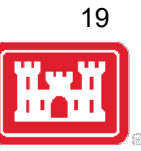
# USACE PERMITS



Maine General Permits (23 Activity Base GPs)		Individual Permit
Self-Verification (SV)	Pre-Construction Notification (PCN)	
Applicant ensures <u>all</u> General Conditions are met	Possible Special Conditions	Possible Special Conditions
Email from the USACE	Permit Verification via Letter	Permit Decision in a Letter
Wetland Data Sheets <u>available</u> to be submitted to the USACE	Wetland Data Sheets Required	Wetland Data Sheets Required
-Avoidance/ Minimization should be demonstrated on plans	-Avoidance/ Minimization should be demonstrated on plans then mitigation -On site alternatives	-Avoidance/ Minimization should be demonstrated on plans then mitigation -On site alternatives -Off Site Alternative Analysis



# GP # 1 REPAIR, REPLACEMENT & MAINTENANCE OF AUTHORIZED STRUCTURES & FILLS



GENERAL PERMIT #	SELF-VERIFICATION	PRE-CONSTRUCTION NOTIFICATION
<p><b>1. Repair, Replacement, and Maintenance of Authorized Structures and Fills</b>  <i>*See GC 25 for pile driving and removal conditions.</i></p>	<p>Repair, replacement, or maintenance of previously authorized, currently serviceable structures or fills, provided:</p> <ul style="list-style-type: none"> <li>• Conditions of the original authorization apply.</li> <li>• No expansion or change in use. Shall be rebuilt in same footprint, however minor deviations in design allowed.</li> <li>• The repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events is authorized, provided that work is commenced, or is under contract to commence, within two years of the date of their destruction or damage.</li> <li>• In-water work is conducted “in-the-dry” (see GC 24).</li> <li>• No impacts to special aquatic sites (SAS) (incl. submerged aquatic vegetation, SAV), impacts to natural rocky habitat <math>\leq 100</math> SF, and impacts to intertidal area <math>\leq 1,000</math> SF</li> <li>• Slope stabilization is <math>\leq 500</math> LF in total length as measured below the plane of the HTL and is <math>\leq 200</math> LF in total length as measured below the plane of the MHW or OHWM. Vertical structures are <math>\leq 200</math> LF in total length as measured below the plane of the MHW or OHWM and are <math>\leq 18</math> inches waterward of existing face.</li> <li>• Dam and flood control, or levee work does not alter water levels or flood elevations.</li> <li>• Discharge of accumulated bottom sediments from or through a dam is not more than <i>de minimus</i>.</li> <li>• Tide gate work has a Corps-approved operation and maintenance plan and no effect to hydraulic regime, or tide gates that solely convey stormwater and/or Maine National Pollutant Discharge Elimination System-permitted discharges.</li> </ul>	<p>Repair, replacement, or maintenance of previously authorized structures or fills not eligible for SV, provided:</p> <ul style="list-style-type: none"> <li>• <math>\leq 0.5</math> acre temporary or permanent impacts, fill, excavation, and/or secondary impacts.</li> <li>• Temporary and/or permanent fill or excavation in SAV <math>&lt; 1,000</math> SF</li> <li>• Permanent fill or excavation in other SAS <math>&lt; 4,300</math> SF</li> </ul>



# GENERAL CONDITION #24

## TIME-OF-YEAR WORK (TOY) WINDOWS/ RESTRICTIONS



	<u>TOY Restriction (<i>no work</i>)</u>	<u>TOY Work Window (<i>work allowed</i>)</u>
Non-tidal waters	Oct. 1 <sup>st</sup> to Jul. 14 <sup>th</sup>	Jul. 15 <sup>th</sup> to Sep. 30 <sup>th</sup>
Tidal waters	Apr. 10 <sup>th</sup> to Nov. 7 <sup>th</sup>	Nov. 8 <sup>th</sup> to Apr. 9 <sup>th</sup>

# GENERAL CONDITION #25

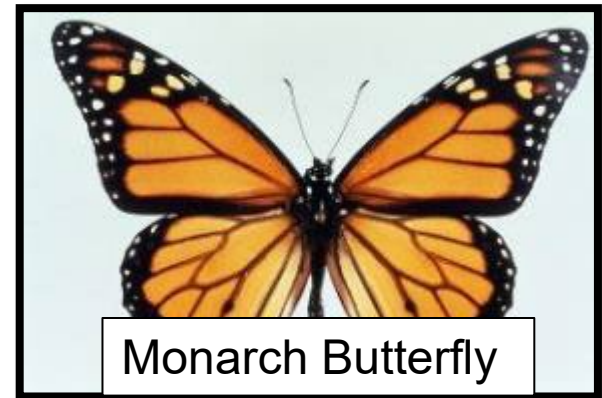
## PILE DRIVING AND PILE REMOVAL IN NAVIGABLE WATERS

- i. “In-the-dry”, or
- ii. In-water between Nov. 8<sup>th</sup> to Apr. 9<sup>th</sup>, or
- iii. Drilled and pinned to ledge, or
- iv. Vibratory hammers used to install any size and quantity of wood, concrete, or steel, or impact hammers limited to one hammer and <50 piles installed/day with the following: wood piles of any diameter, concrete piles  $\leq 18$ -inches diameter, steel piles  $\leq 12$ -inches diameter if: (1) the hammer is  $\leq 3,000$  pounds and a wood cushion or equivalent is used between the hammer and steel pile, or (2) a soft start is used. Soft starts require an initial set of three strikes from the impact hammer at 40% energy, followed by a 1-minute waiting period between subsequent three-strike sets. The soft-start procedure shall be conducted any time hammering ceases for more than 30 minutes.



# GENERAL CONDITION #16

## § 7 OF THE ENDANGERED SPECIES ACT

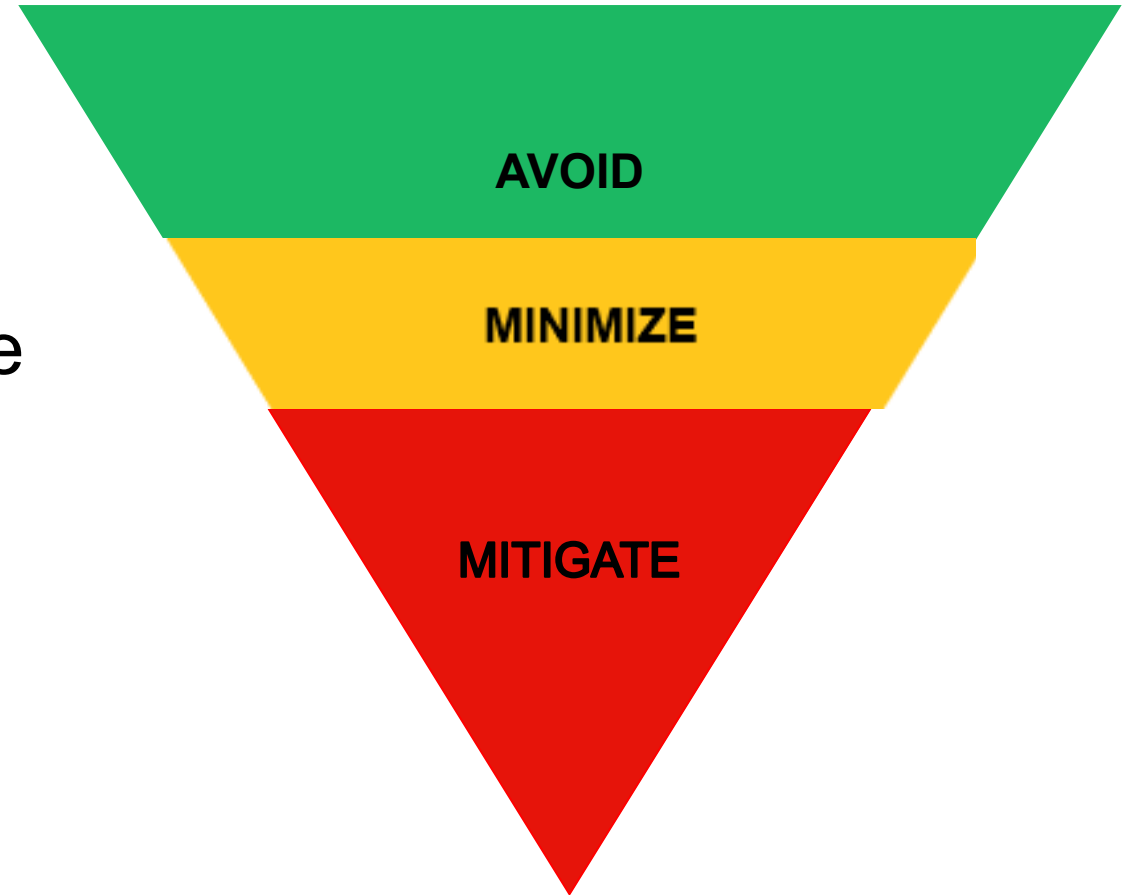




# GENERAL CONDITION #9: MITIGATION (AVOIDANCE, MINIMIZATION, & COMPENSATORY MITIGATION)



- **AVOID IMPACTS** to waters of the U.S. to the maximum extent practicable
- **MINIMIZE IMPACTS** to waters of the U.S. to the maximum extent practicable
- **MITIGATE** for the unavoidable impacts of the project (generally when impacts are over 5,000 sq. ft.)
  - In-Lieu-Fee
  - Permittee responsible mitigation



# EXEMPTIONS



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# 404(f) EXEMPTIONS

## 33 CFR 323.4 (a)2



### Maintenance:

- Including emergency reconstruction of recently damaged parts, of currently serviceable structures such as riprap, bridge abutments, dams, causeways, etc.
- Does not include modifications that change the character, scope, or size of the original fill design.
- Must occur within a reasonable time after damage occurs



\*\*\* Exemptions did NOT change



# RESPONSE TO JAN 10<sup>TH</sup> STORM EVENT



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# RESPONSE TO JAN 10<sup>TH</sup> STORM EVENT:

## NOT A 404 EXEMPTION – PREVIOUSLY AUTHORIZED MAINTENANCE OF STRUCTURES



**Maintenance of certain Section 10 structures & work** in navigable waters of the U.S. that have been previously authorized (permitted) by the Corps may not require additional authorization, provided it remains in compliance with the terms & conditions of the original Corps permit and current Federal Regulation. Permit holders should refer to their original permit for the activity and determine whether maintenance has been previously authorized or required by a general or special condition.

For example, the current 2020 Maine General Permits include the following maintenance requirement via general condition (GC) 35:

*GC 35. Maintenance. The permittee shall maintain the activity authorized by these GPs in good condition and in conformance with the terms and condition of these permits. This does not include maintenance dredging, related disposal, or beach nourishment projects, which are subject to review thresholds for GP 5 on page 30, unless specified in written authorization from the Corp.*

# USACE - MAINE PROJECT OFFICE

## Address:

U.S. Army Corps of Engineers  
Maine Project Office  
442 Civic Center Dr.  
Augusta, Maine 04330

## Phone:

(207)-623-8367

General Email: [cenae-r-me@usace.army.mil](mailto:cenae-r-me@usace.army.mil)

Peter's: [Peter.D.Olmstead@usace.army.mil](mailto:Peter.D.Olmstead@usace.army.mil)

Amanda's: [Amanda.L.Sayles@usace.army.mil](mailto:Amanda.L.Sayles@usace.army.mil)



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1-800-343-4789  
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