

Corps of Engineers

Regulatory 101

November 4 and 5, 2019

James Cherry

Courtney Shea

Leslie Turney

U.S. Army Corps of Engineers

Mobile District - North Branch



US Army Corps of Engineers
BUILDING STRONG®

12/16/2010

Mission Statement

- ...to protect the Nation's aquatic resources, while allowing reasonable development through fair, flexible and balanced permit decisions.....



BUILDING STRONG®

Regulatory Goals

- To provide strong protection of the Nation's aquatic environment, including wetlands
- To enhance the efficiency of the Corps administration of its regulatory program
- To ensure that the Corps provides the regulated public with fair and reasonable decisions



Balance

- Public interest –
 - ▶ Not for or against a project
- Environment vs. Development
- Fair, reasonable, timely service to the public



Regulatory Authorities

- Clean Water Act – Section 404
 - Discharge of dredged or fill material into all “*waters of the U.S.*” (including wetlands)
- Rivers and Harbors Act of 1899 – Section 10
 - All activities that affect “*navigable waters of the U.S.*”
- Marine Protection Research and Sanctuaries Act – Section 103



Implementing Regulations

- 1) **33 CFR PART 320 - GENERAL REGULATORY POLICIES**
- 2) 33 CFR Part 321- Permits for Dams and Dikes in Navigable Waters of the United States
- 3) 33 CFR 322 - Permits for Structures or Work in or Affecting Navigable
- 4) 33 CFR Part 323 Permits for Discharges of Dredged or Fill Material Into Waters of the United States
- 5) 33 CFR Part 324 Permits for Ocean Dumping of Dredged Material Marine Protection Research and Sanctuaries Act of 1972 - Section 302
- 6) **33 CFR PART 325 -PROCESSING OF DEPARTMENT OF THE ARMY PERMITS**
- 7) **33 CFR PART 326 –ENFORCEMENT**
- 8) 33 CFR PART 327—PUBLIC HEARINGS
- 9) **33 CFR Part 328 - Definition of Waters of the United States**
- 10) **33 CFR Part 329 - Definition of Navigable Waters of the US**
- 11) **33 CFR Part 330 - NATIONWIDE PERMIT PROGRAM**
- 12) 33 CFR PART 331 -ADMINISTRATIVE APPEAL PROCESS
- 13) **33 CFR PART 332 - COMPENSATORY MITIGATION FOR LOSSES OF AQUATIC RESOURCES**



JURISDICTION

Section 10 Rivers & Harbors Act

- ***“Navigable waters”***
 - ▶ all waters subject to **ebb and flow of the tide**;
- and/or -
 - ▶ those that are used, or have been used in the past, to transport **interstate commerce**
 - Determined by navigability studies
 - Federal courts
 - Congress-approved navigation projects



Jurisdiction

Section 404

- *“Waters of the United States”* includes:
 1. All waters currently used or were used in the past of may be susceptible to use in interstate or foreign commerce;
 2. Interstate waters and wetlands;
 3. All other waters (such as streams, mudflats, wetlands, lakes) where degradation could affect interstate or foreign commerce
 4. Impoundments of waters otherwise defined as waters of the U.S.
 5. Tributaries of waters identified in 1 – 4 on previous slide;
 6. Territorial seas;
 7. Wetlands adjacent to waters identified in 1 – 6.



JD Guidance

U.S. ARMY CORPS OF ENGINEERS JURISDICTIONAL DETERMINATION FORM INSTRUCTIONAL GUIDEBOOK

This document contains instructions to aid field staff in completing the Approved Jurisdictional Determination Form ("JD form"). This document is intended to be used as the U.S. Army Corps of Engineers Regulatory National Standard Operating Procedures for conducting an approved jurisdictional determination (JD) and documenting practices to support an approved JD until this document is revised and reissued.¹

Caribbean Sea, St. Thomas, U.S. Virgin Islands



This document was prepared jointly by the U.S. Army Corps of Engineers and the Environmental Protection Agency.

¹The CWA provisions and regulations described in this document contain legally binding requirements on EPA, the Corps, or the regulated community. This guidance does not substitute for those provisions or regulations, nor is it a recommendation of a particular situation depending on the circumstances. Any decisions regarding a particular situation based on the applicable statutes, regulations, and case law. Therefore, interested parties should consult with legal counsel regarding questions about the appropriateness of the application of this guidance to a particular situation and/or the Corps will consider whether or not the recommendations or interpretations are appropriate in that situation based on the statutes, regulations, and case law.



Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States



This memorandum provides guidance to EPA regions and U.S. Army Corps of Engineers ("Corps") districts implementing the Supreme Court's decision in the consolidated cases Rapanos v. United States and Carabell v. United States (herein referred to simply as "Rapanos") which address the jurisdiction over waters of the United States under the Clean Water Act.² The chart below summarizes the key points contained in this memorandum. This reference tool is not a substitute for the more complete discussion of issues and guidance furnished throughout the memorandum.

Summary of Key Points

The agencies will assert jurisdiction over the following waters:

- Traditional navigable waters
- Wetlands adjacent to traditional navigable waters
- Non-navigable tributaries of traditional navigable waters that are relatively permanent where the tributaries typically flow year-round or have continuous flow at least seasonally (e.g., typically three months)
- Wetlands that directly abut such tributaries

The agencies will decide jurisdiction over the following waters based on a fact-specific analysis to determine whether they have a significant nexus with a traditional navigable water:

- Non-navigable tributaries that are not relatively permanent
- Wetlands adjacent to non-navigable tributaries that are not relatively permanent
- Wetlands adjacent to but that do not directly abut a relatively permanent non-navigable tributary

The agencies generally will not assert jurisdiction over the following features:

- Swales or erosion features (e.g., gutters, small washes characterized by low volume, infrequent, or short duration flow)
- Ponds (including roadside ditches) excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water

The agencies will apply the significant nexus standard as follows:

- A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by all wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical and biological integrity of downstream traditional navigable waters
- Significant nexus includes consideration of hydrologic and ecologic factors

¹This guidance incorporates revisions to the U.S. Army memorandum originally issued on June 5, 2007, after careful consideration of public comments received and based on the agencies' experience in implementing the Rapanos decision.

²126 S. Ct. 2204 (2006).

³33 U.S.C. § 2251 (1)(2)(C).

December 01, 2009

Clean Water Act Jurisdiction



US Army Corps
of Engineers

REGULATORY GUIDANCE LETTER

No. 16-01

Date: October 2016

SUBJECT: Jurisdictional Determinations

1. **Purpose.** Approved jurisdictional determinations (AJDs) and preliminary JDs (PJDs) are tools used by the U.S. Army Corps of Engineers (Corps) to help implement Section 404 of the Clean Water Act (CWA) and Sections 9 and 10 of the Rivers and Harbors Act of 1899 (RHA). Both types of JDs specify what geographic areas will be treated as subject to regulation by the Corps under one or both statutes. This Regulatory Guidance Letter (RGL) explains the differences between these two types of JDs and provides guidance to the field and the regulated public on when it may be appropriate to issue an AJD as opposed to a PJD, or when it may be appropriate to not prepare any JD whatsoever.

The Corps has long provided JDs as a public service. In U.S. Army Corps of Engineers v. Hawkes Co., 136 S.Ct. 1807 (2016), the Supreme Court held that AJDs are subject to judicial review, and several members of the Court highlighted that the availability of AJDs is important for fostering predictability for landowners. The Corps recognizes the value of JDs to the public and reaffirms the Corps commitment to continue its practice of providing JDs when requested to do so, consistent with the guidance below. This clarification RGL does not change or modify the definitions of AJDs and PJDs included in Corps regulations, the documentation practices for each type of JD, or when an AJD is required by the terms of its definition (e.g., only an AJD can be used to determine presence/absence of waters of the U.S.). This RGL also does not address which aquatic resources are subject to CWA or RHA jurisdiction.

The aim of this RGL is to encourage discussions between Corps districts and parties interested in obtaining the Corps views on jurisdiction to ensure that all parties have a common understanding of the different options for addressing CWA and RHA geographic jurisdiction so that the most appropriate mechanism for addressing the needs of a person requesting a JD can be identified. This RGL does not limit the discretion afforded a district engineer by the regulations to ultimately determine, consistent with the guidance below, how to respond to a request for a JD. After a requestor is fully informed of the options available for addressing geographic jurisdiction, the Corps will continue its current practice of providing an AJD consistent with this guidance if the party continues to request one. The uniform understanding of the different types of JDs and the well-reasoned use of discretion in the manner described in this guidance is of substantial importance within the Regulatory Program. The district engineer should set reasonable priorities based on the district's workload and available regulatory resources. For example, it may be reasonable to give higher priority to a JD request when it accompanies a permit request. This RGL addresses similar issues included in RGLs 07-01 and 08-02. Both RGL 07-01 and 08-02 are hereby superseded by this RGL.

1



BUILDING STRONG

Wetlands

- Wetlands are those areas that are inundated or saturated by surface or groundwater 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. (33 CFR 328.3)



Delineation of Wetland Boundary


- 3 physical characteristics must be present:
 - ▶ **Hydrophytic Vegetation**
 - ▶ **Hydric Soils**
 - ▶ **Wetland Hydrology**



Two Supplements to the 1987 delineation manual are used in Alabama

ERDC/EL TR-10-20

Environmental Laboratory




US Army Corps
of Engineers®
Engineer Research and
Development Center

Wetlands Regulatory Assistance Program

**Regional Supplement to the Corps of
Engineers Wetland Delineation Manual:
Atlantic and Gulf Coastal Plain Region
(Version 2.0)**

U.S. Army Corps of Engineers November 2010



Approved for public release; distribution is unlimited.

ERDC/EL TR-12-9

Environmental Laboratory



US Army Corps
of Engineers®
Engineer Research and
Development Center

Wetlands Regulatory Assistance Program

**Regional Supplement to the Corps
of Engineers Wetland Delineation Manual:
Eastern Mountains and Piedmont Region
(Version 2.0)**

U.S. Army Corps of Engineers April 2012



Approved for public release; distribution is unlimited.



Wetlands: Some are easy...



... others can be quite difficult



Streams/Tributaries



Perennial



Ephemeral



Intermittent



Jurisdictional Determinations

- Helps identify areas subject to Corps regulatory jurisdiction.
- Provides information to help plan avoidance of aquatic resources.
- Can help determine if you need to be thinking about applying for Corps permit.

What needs a permit?

- Section 404 – Discharge of dredge or fill material into waters of the U.S.



BUILDING STRONG®

Work Involving a Discharge in 404 Waters

Examples:

- **Disposal of dredged or excavated material**
- Placement of fill for roads (including temporary access roads), building foundations, site prep, etc.
- Construction of dams & dikes
- Bank stabilization
- Buried utility lines, pipes, culverts
- **Mechanized land clearing**
- Ditching/channelization



Section 404 Activities



BUILDING STRONG®

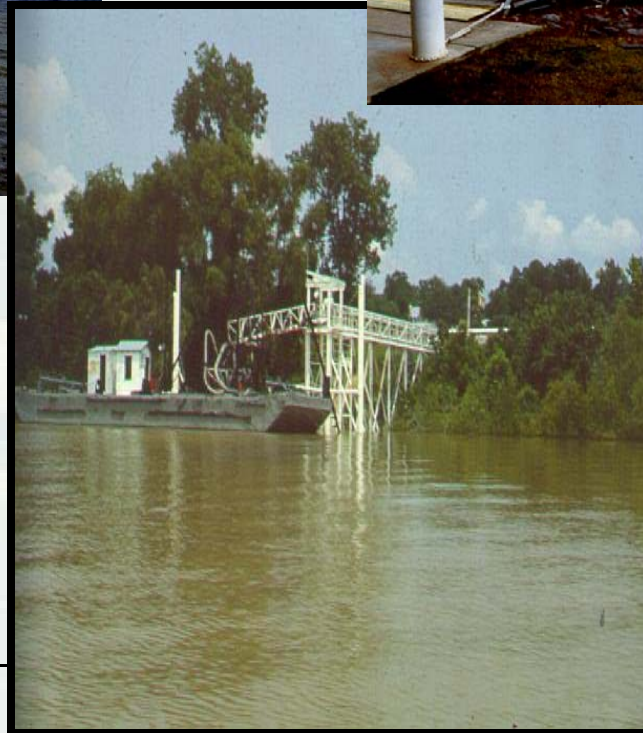
Activities Needing a Section 10 Permit

Examples:

- Boat Ramps/Slips
- Docks/Piers
- Bulkheads
- Utility lines (over and under)
- Intake and outfall structures
- Dredging/filling



Section 10 Activities



BUILDING STRONG®

Types of Permits

- Individual Permits

- ▶ Standard Permits (SPs) and Letters of Permission (LOPs)

- General Permits

- Nationwide Permits (NWP), Regional General Permits (RGP) and Programmatic General Permit (PGP)

- Purpose

- Lessen time and resources for case-specific evaluations of activities with minimal adverse impacts

- Approach

- Provide a set of “pre-approved permits” for categories of activities that are similar in nature and that would result in minimal adverse impacts



General Permits

- **Nationwide Permits (NWP)**

- Proposed and issued by HQ at National level
 - Full NEPA Review
 - Public Notice in Federal Register
 - Full 404(b)(1) evaluation (CWA)
- Issued for categories of activities similar in nature (e.g. roads, utility lines, etc.)
- Include 3 Types of Conditions
 - **Special Conditions** to define the category of activity and allowed limits of impacts to Waters of the US.
 - **General Conditions** to insure protection of other Public Interest factors
 - **Regional Conditions** to address specific local issues and important resources
- Issued on 5-year cycles



2017 Nationwide Permits

- 1) Aids to Navigation
- 2) Structures in Artificial Canals
- 3) Maintenance & Repair
- 4) Fish & Wildlife Harvesting, Enhancement & Attraction Devices and Activities
- 5) Scientific Measurement Devices
- 6) Survey Activities
- 7) Outfall Structures and Maintenance
- 8) Oil & Gas Structures
- 9) Structures in Fleeting and Anchorage Areas
- 10) Mooring Buoys
- 11) Temporary Recreational Structures
- 12) Utility Line Activities
- 13) Bank Stabilization
- 14) Linear Transportation Projects
- 15) U.S. Coast Guard Approved Bridges
- 16) Return Water from Upland Contained Disposal Areas
- 17) Hydropower Projects
- 18) Minor Discharges
- 19) Minor Dredging
- 20) Oil Spill Clean Up
- 21) Surface Coal Mining Activities
- 22) Removal of Vessels
- 23) Approved Categorical Exclusions
- 24) State Administered Section 404 Programs
- 25) Structural Discharges
- 26) [Reserved]
- 27) Aquatic Habitat Restoration Activities
- 28) Modifications of Existing Marinas
- 29) Residential Developments
- 30) Moist Soil Management for Wildlife
- 31) Maintenance of Existing Flood Control Facilities
- 32) Completed Enforcement Actions
- 33) Temporary Construction, Access and Dewatering
- 34) Cranberry Production Activities
- 35) Maintenance Dredging of Existing Basins
- 36) Boat Ramps
- 37) Emergency Watershed Protection and Rehabilitation
- 38) Cleanup of Hazardous and Toxic Waste
- 39) Commercial and Institutional Developments
- 40) Agricultural Activities
- 41) Reshaping Existing Drainage Ditches
- 42) Recreational Facilities
- 43) Storm water Management Facilities
- 44) Mining Activities**
- 45) Repair of Uplands Damaged by Discrete Events
- 46) Discharges in Ditches
- 47) Pipeline Safety Program Repairs
- 48) Existing Commercial Aquaculture Activities
- 49) Coal Remining Activities
- 50) Underground Coal Mining Activities
- 51) Land-Based Renewable Energy Generation Facilities
- 52) Water-Based Renewable Energy Generation Pilot Projects
53. Removal of Low-Head Dams
54. Living Shorelines



Nationwide Permits

General Conditions

- 1) Navigation
- 2) Aquatic Life Movements
- 3) Spawning Areas
- 4) Migratory Bird Breeding
- 5) Shellfish Beds
- 6) Suitable Material
- 7) Water Supply Intakes
- 8) Adjacent Effects from Impoundments
- 9) Management of Waters Flows
- 10) Fills Within 100-Year Floodplains
- 11) Equipment
- 12) Soil Erosion and Sediment Controls
- 13) Removal of Temporary Fills
- 14) Proper Maintenance
- 15) Single and Complete Project
- 16) Wild and Scenic Rivers
- 17) Tribal Rights
- 18) Endangered Species
- 19) Migratory Birds and Bald and Golden Eagles
- 20) Historic Properties
- 21) Discovery of Previously Unknown Remains and Artifacts
- 22) Designated Critical Resource Waters
- 23) Mitigation
- 24) Safety of Impoundment Structures
- 25) Water Quality
- 26) Coastal Zone Management
- 27) Regional Case-by-Case Conditions
- 28) Use of Multiple Nationwide Permits
- 29) Transfer of Nationwide Permit Verifications
- 30) Compliance Certifications
- 31) Activities Affecting Structures or Works Built by the United States
- 32) Pre-Construction Notification



Nationwide Permit 44: Mining Activities (10/404)

Discharges of dredged or fill material into non-tidal waters of the United States for mining activities, except for coal mining activities, provided the activity meets all of the following criteria:

- (a) Mining that involves discharges of dredged or fill material into non-tidal wetlands, the discharge must not cause the loss of greater than 1/2-acre of non-tidal wetlands;
- (b) Mining that involves discharges of dredged or fill material in non-tidal open waters (e.g., rivers, streams, lakes, ponds) the mined area, including permanent and temporary impacts due to discharges of dredged or fill material into jurisdictional waters, must not exceed 1/2-acre;
- (c) Acreage loss under paragraph (a) plus acreage impact under paragraph (b) does not exceed 1/2-acre.
 - Must not cause loss of more than 300 linear feet of stream bed
 - Loss of stream bed plus any other losses of wetlands and waters cannot exceed 1/2-acre.
 - Must submit a pre-construction notification prior to commencing the activity. (See general condition 32.) If reclamation is required by other statutes, a copy of the final reclamation plan must be submitted with the pre-construction notification.



Regional General Permits

- Proposed and issued by Districts
 - Full NEPA Review
 - Public Notice in Federal Register
 - Full 404(b)(1) evaluation (CWA)
- Issued for categories of activities similar in nature (e.g. roads, utility lines, etc.)
- Include “Special Conditions” and “General Conditions” to insure adverse impacts do not exceed minimal levels
- Issued on 5-year cycles
- Clean Water Act Section 401 water quality certification (WQC) is requested for each RGP every five years
- Conditions of the WQCs are incorporated as conditions of the RGPs



2016 Alabama General Permits

(None are Applicable to Mining)

- ALGP-01 Excavated Boat Slips
- ALGP-02 Maintenance Dredging
- ALGP-03 New Work Channel Dredging
- **ALGP-04 Debris Removal**
- **ALGP-05 Piers, Pile-Supported Structures, and Dolphins**
- **ALGP-07 Boat Ramps and Marine Ways**
- ALGP-10 Living Shorelines
- **ALGP-11 Shoreline and Bank Stabilization and Protection**
- ALGP-13 Filling of Previously Dredged Areas
- ALGP-24 Piers and Pile-Supported Structures in Weeks Bay



Programmatic General Permits

(None are Applicable to Mining)

- Similar to Regional General Permits
- Alabama PGPs are for minor activities and structures within Alabama Power Lakes within the Coosa, Tallapoosa, and Warrior River Basins.
- APCO assumes responsibility for reviewing applications and verifying it complies with the corresponding PGP.



BUILDING STRONG®

Individual Permits

- Definition:
 - ▶ Required for activities which may cause more than minimal adverse effects to the aquatic environment;
 - ▶ Exceeds terms and conditions of a General Permit.



Types of Individual Permits

- **Standard Permits**
 - **Public notice describing specific project**
 - **Activities with more than minimal impacts**
 - **Comments received from agencies & public**
 - **Decision Document of evaluation process**
- **Letters of Permission – Typically for Section 10**
 - **Minor activities (structures and dredging, no fill)**
 - **Typically not applicable for Mining**
 - **Agency coordination required (15 day review period)**
 - **No public notice**



Standard Permits

Key Points of Process:

- Requires complete project description and adjacent property owners
- Public Notice describing project issued for 30 days
 - PN goes to Tribes, State and Federal Resource Agencies, adjacent property owners, other interested parties
- Water Quality needs to be issued by ADEM before 404 authorization can be issued
 - If WQC is denied, project authorization is denied without prejudice



Factors in Permit Evaluation

- Conservation
- Economics
- Aesthetics
- Wetlands
- Historic Properties
- Flood Hazards
- Floodplain Issues
- Land Use
- Navigation
- Recreation
- Energy Needs
- Prime and Unique Farmland
- Safety
- Water Quality
- Fish and Wildlife Values
- Shore Erosion and Accretion
- Water Supply and Conservation
- Food and Fiber Production
- Property Rights
- Environmental Concerns
- Welfare of the People
- Mineral Needs
- Endangered Species

AND COMPLIANCE WITH THE 404(B)(1) GUIDELINES



BUILDING STRONG®

Compliance with other Federal Laws

- Native American Graves Protection and Repatriation Act
- Clean Water Act - Section 401 – (ADEM)
- Clean Water Act - Section 402 – (ADEM)
- Coastal Zone Management Act of 1972 – (ADEM)
- Endangered Species Act - (US Fish & Wildlife Service)
- Marine Mammal Protection Act
- National Environmental Policy Act
- National Historic Preservation Act - (Alabama Historical Commission)
- Wild & Scenic Rivers Act
- Marine Protection Research and Sanctuaries Act of 1972 - Section 302
- Fish and Wildlife Coordination Act



Compensatory Mitigation

Compensatory mitigation is used to offset the **adverse impacts** associated with a permitted project.

The Corps of Engineers is responsible for determining the appropriate form and amount of compensatory mitigation required.

Acceptable methods of compensatory mitigation include **restoration, creation, enhancement and preservation.**

Mitigation Banks are currently the favored approach to compensatory mitigation.

Mitigation requirements based upon impacted wetland quality/quantity



BUILDING STRONG®

Sequencing

- **Compensatory mitigation** is actually the third step in a sequence of actions that must be followed to offset impacts to aquatic resources. The 1990 Memorandum of Agreement (MOA) between the Environmental Protection Agency (EPA) and the Department of Army establishes a three-part process, known as the mitigation sequence to help guide mitigation decisions and determine the type and level of mitigation required under Clean Water Act Section 404 regulations.
- Step 1. **Avoid** - Adverse impacts to aquatic resources are to be avoided and no discharge shall be permitted if there is a practicable alternative with less adverse impact.
- Step 2. **Minimize** - If impacts cannot be avoided, appropriate and practicable steps to minimize adverse impacts must be taken.
- Step 3. **Compensate** - Appropriate and practicable **compensatory mitigation** is required for *unavoidable* adverse impacts which remain. The amount and quality of compensatory mitigation may not substitute for avoiding and minimizing impacts.



Mitigation Hierarchy

- Preferred compensatory mitigation hierarchy:
 - ▶ First - Mitigation banks
 - ▶ Second - In-lieu fee programs
 - ▶ Third - Permittee-responsible mitigation under a watershed approach
 - ▶ Fourth - Permittee-responsible mitigation through on site and in kind
 - ▶ Fifth - Permittee-responsible mitigation through off-site and/or out-of-kind mitigation
- This is still a “soft” preference. Corps able to choose what is most ecologically beneficial to the aquatic resources in a watershed.
- Applicant proposes and Corps determines acceptability



WETLAND FUNCTIONAL ASSESSMENT METHODS

- Ratio Method (typically only Mobile & Baldwin Co.)
- Wetland Rapid Assessment Method (WRAP)
- HGM – Pine savannah, bottomland hardwood, tidal marsh



Department of the Army
Mobile District Corps of Engineers

COMPENSATORY STREAM MITIGATION
STANDARD OPERATING PROCEDURES
AND GUIDELINES

TABLE OF CONTENTS

1.0 INTRODUCTION

2.0 REGULATORY AUTHORITIES AND GUIDELINES

3.0 ORGANIZATION OF STANDARD OPERATING PROCEDURE

4.0 ADVERSE (STREAM) IMPACTS

- 4.1 Stream Types
- 4.2 Priority Area
- 4.3 Existing Condition – Channel Condition Parameter
- 4.4 Impact Duration
- 4.5 Dominant Impact
- 4.6 Scaling Factor

5.0 IN-STREAM WORK – MITIGATION CREDITS

- 5.1 In-Stream Net Benefit
- 5.2 Streambank Stability
- 5.3 In-stream Habitat
- 5.4 Timing of Mitigation

6.0 RIPARIAN BUFFER WORK – MITIGATION CREDITS

- 6.1 Riparian Buffer Widths
- 6.2 Riparian Buffer Net Benefit
- 6.3 System Protection Credit
- 6.4 Mitigation Factor

7.0 STREAM RELOCATION

8.0 DEFINITIONS

Appendix A Stream Mitigation Worksheets:

- 1. Adverse Impact Worksheet
- 2. In-Stream Work Worksheet
- 3. Riparian Buffer Worksheet

Appendix B Guidelines for Stream Mitigation Design

Appendix C Guidelines for Development of Performance Standards

Appendix D Stream Mitigation Monitoring Requirements

Appendix E Example Credit Release Schedule for Mitigation Banks

- Currently Using 2012
Mobile District Stream SOP
- Addresses ephemeral streams
- Existing Condition simplified
- Scaling Factor bounded
- Compensation more appropriate



Requirements of a Mitigation Plan (33 CFR 332)

- Provide draft mitigation plan including, where necessary:
 - ▶ Objective(s)
 - ▶ Site selection information
 - ▶ Site protection instrument to be used
 - ▶ Baseline information (impact site and mitigation project site)
 - ▶ How the project will mitigate for lost functions and values
 - ▶ Work plan (specifications and work descriptions)
 - ▶ Maintenance plan (ensuring continued viability)
 - ▶ Performance standards (ecologically-based)
 - ▶ Monitoring requirements
 - ▶ Long-term management plan (post-monitoring management)
 - ▶ Adaptive management plan (address unforeseen changes)
 - ▶ Financial assurances (ensure high level of confidence of successful completion)
- Level of information must be commensurate with the scope and magnitude of impacts
- Need maps showing where the mitigation would take place
- Permittee is responsible for assuring mitigation is successful



Pitfalls....

- **Failure to be responsive – applicants must be timely and candid to move process along, otherwise, time schedules (e.g. request to advertise, etc) could be delayed!**
- **Alternatives analysis – non-water dependent projects will need one (404(b)(1) Guidelines)**
- **Mitigation – loss of waters of the U.S. requires mitigation**
- **Potential to harm your neighbors – applicant must show their work won't harm adjacent property owners**
- **Failure to submit required information to make a permit decision**

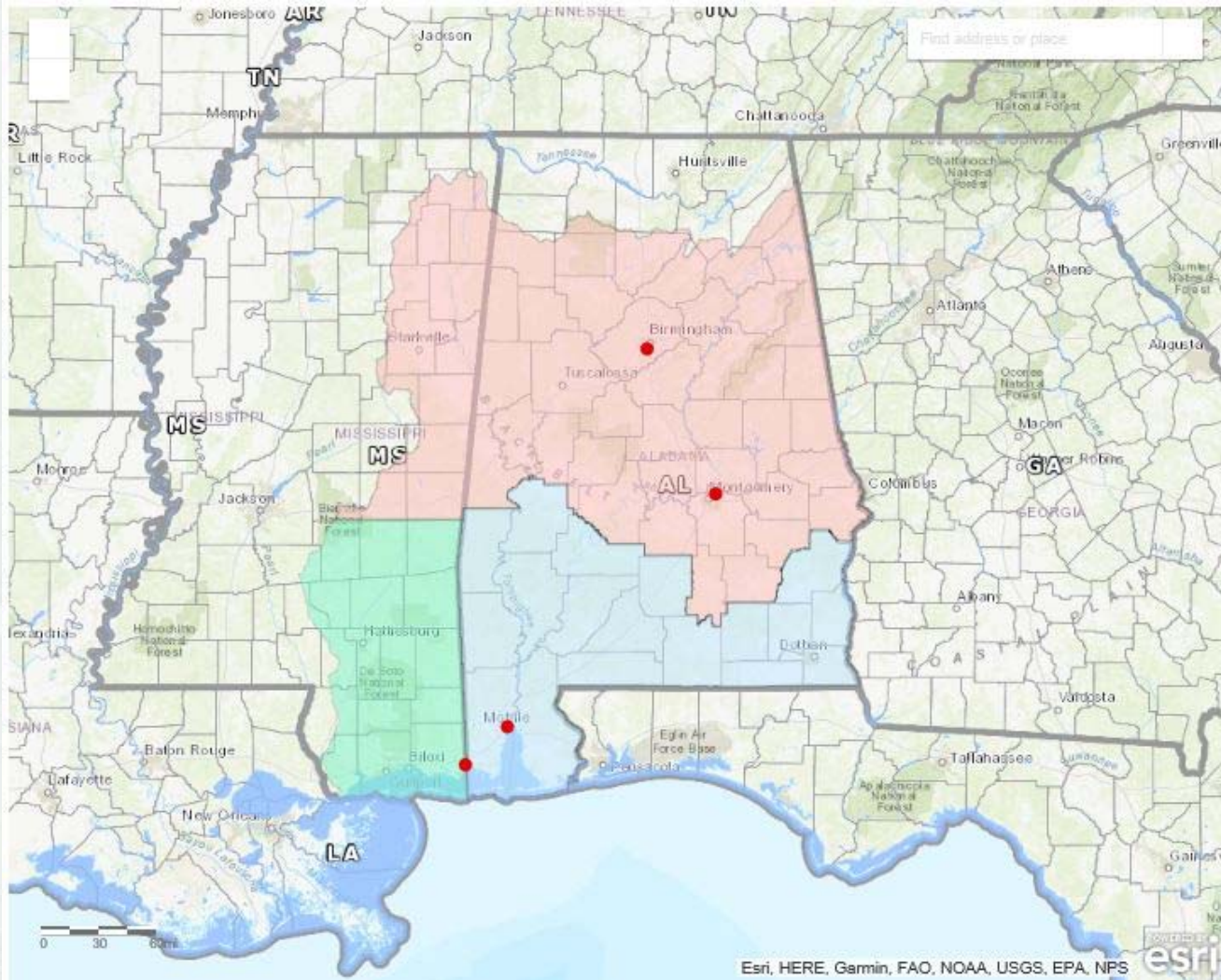


What to do to make the process go smoother....

- Pre-application meeting
- Where possible, minimize project impacts to waters of the U.S. in the design.
- Describe the project purpose and include reasons other sites with less impacts to aquatic resources are not available.
- **Apply for the permit well in advance of construction date.**
- Be responsive when we need more information.



Regulatory Service Area



BUILDING STRONG®

Addresses

- For those projects in the areas shown in pink:

US Army Corps of Engineers

Birmingham Field Office

218 Summit Parkway, Suite 222

Homewood, AL 35209



BUILDING STRONG®

Addresses

- For those projects in the areas shown in blue and green:

US Army Corps of Engineers
Regulatory Division
109 St. Joseph Street
Mobile, AL 36602



BUILDING STRONG®

Contact Info

James Cherry

James.S.Cherry@usace.army.mil

Courtney Shea

Courtney.M.Shea@usace.army.mil

Leslie Turney

Leslie.E.Turney@usace.army.mil

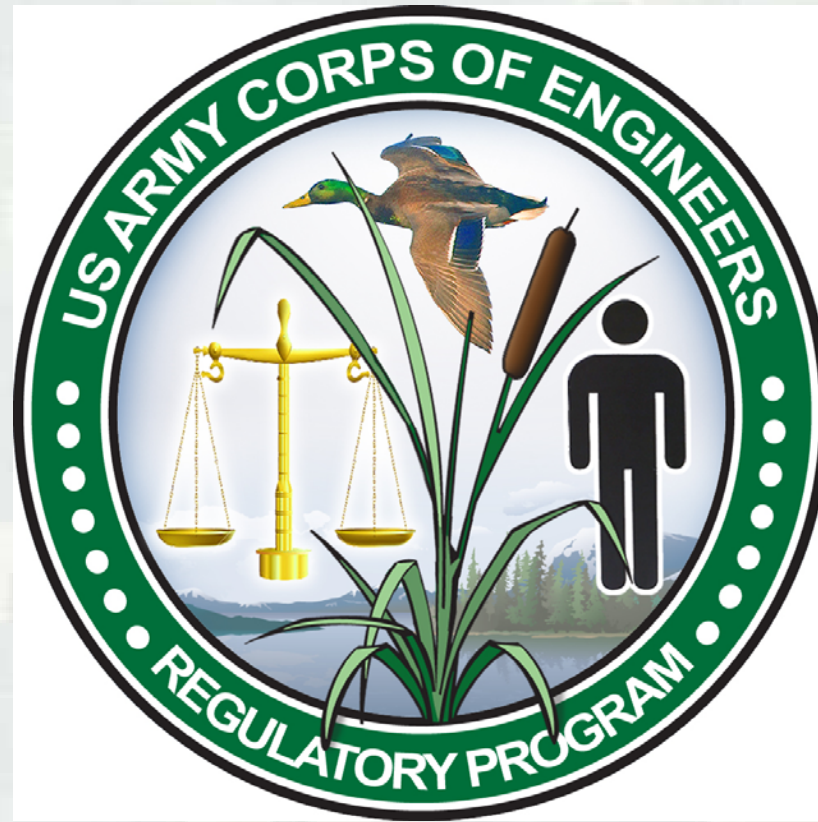
(205) 290-9096

<http://www.sam.usace.army.mil/Missions/Regulatory>



BUILDING STRONG®

Questions?



BUILDING STRONG®