

SARGASSUM MANAGEMENT STRUCTURES AND WORK IN WATERS OF THE U.S.: PERMITS, CONSULTATIONS, AND COORDINATION

**Caribbean Fisheries Management Council
Sargassum Panel Meeting**

December 6, 2023

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Antilles Regulatory Permits Section

**U.S. Army Corps of Engineers (USACE),
Jacksonville District Regulatory Division**



Photo credit: Bioimpact, Inc.

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USACE REGULATORY MISSION

To protect the Nation's aquatic resources and navigation capacity, while allowing reasonable development through fair and balanced decisions.



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USACE REGULATORY AUTHORITIES

Authority	Geographic	Permit Requirement	Examples
<p>Section 10 Rivers and Harbors Act of 1899 (RHA)</p> <p>33 U.S.C 403</p>	<p>Navigable Waters of the US</p>	<p><u>All work</u> over, through and under navigable waters (e.g. dredging, docks, and beach renourishment)</p>	<ul style="list-style-type: none"> • Booms • Docks/Piers • Dredging • Moorings/Anchors • Seawalls
<p>Section 404 Clean Water Act of 1977 (CWA)</p> <p>33 U.S.C 1344</p>	<p>Waters of the US including oceans, rivers, lakes, streams, wetlands</p>	<p>Discharge of dredged or fill material</p>	<ul style="list-style-type: none"> • Shoreline Stabilization • Utility lines • Crossings/Roads • Beach Nourishment

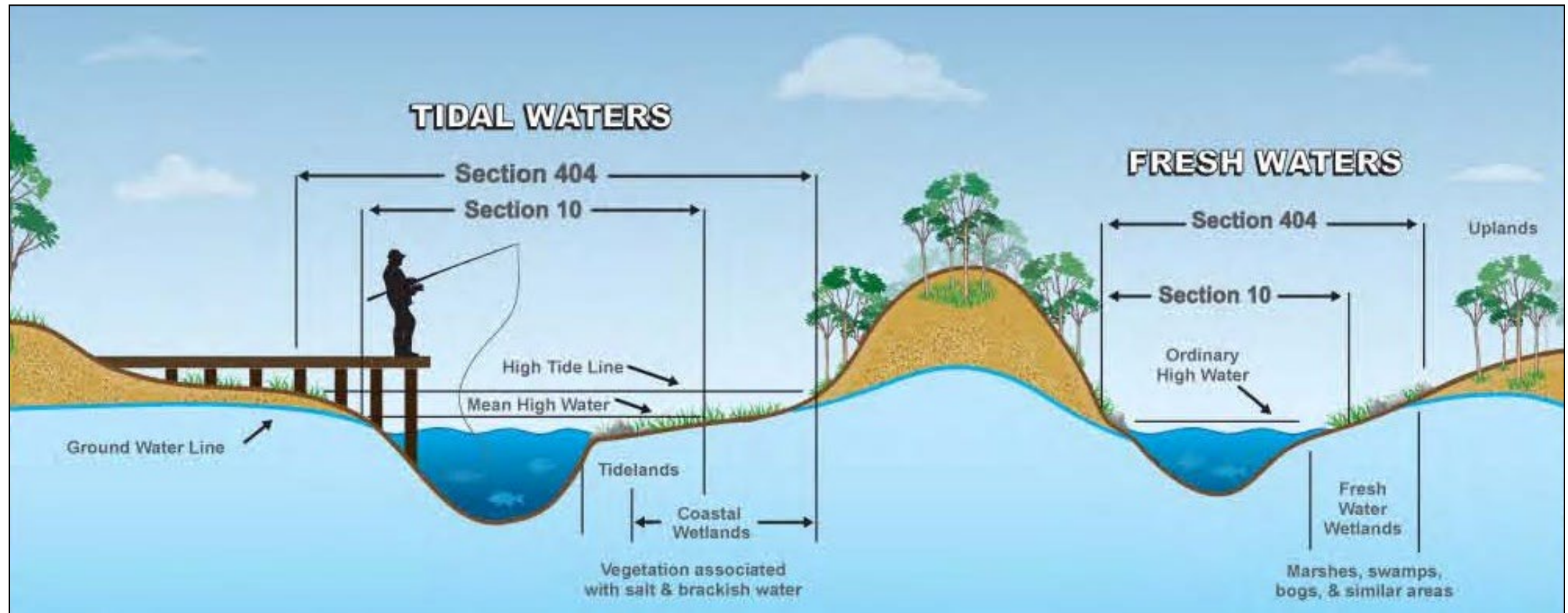
USACE Regulations for Regulatory Program at 33 C.F.R. 320-332



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LIMITS OF USACE JURISDICTION



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DOES THE USACE REGULATE SARGASSUM MANAGEMENT AND/OR SARGASSUM REMOVAL?



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REGULATED ACTIVITIES – SARGASSUM BOOMS



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REGULATED ACTIVITIES – SARGASSUM BARRIERS



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NON-REGULATED ACTIVITIES – SARGASSUM REMOVAL VESSELS



Photo credit: <https://theoceancleaner.fr/>

USACE does not regulate vessels, fishing, or harvesting/removal of seaweed using a vessel.



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IS A USACE PERMIT REQUIRED?



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IS A USACE PERMIT REQUIRED?



Photo Credit: <https://cen.acs.org/environment/sustainability/Sargassum-strangling-tourism-Caribbean-scientists/97/i/34t>



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IS A USACE PERMIT REQUIRED?



Photo Credit <https://www.sanpedrosun.com/environment/2018/08/25/sargassum-continues-to-plague-the-caribbean-including-belize-tourism-industry-affected/>



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IS A USACE PERMIT REQUIRED?



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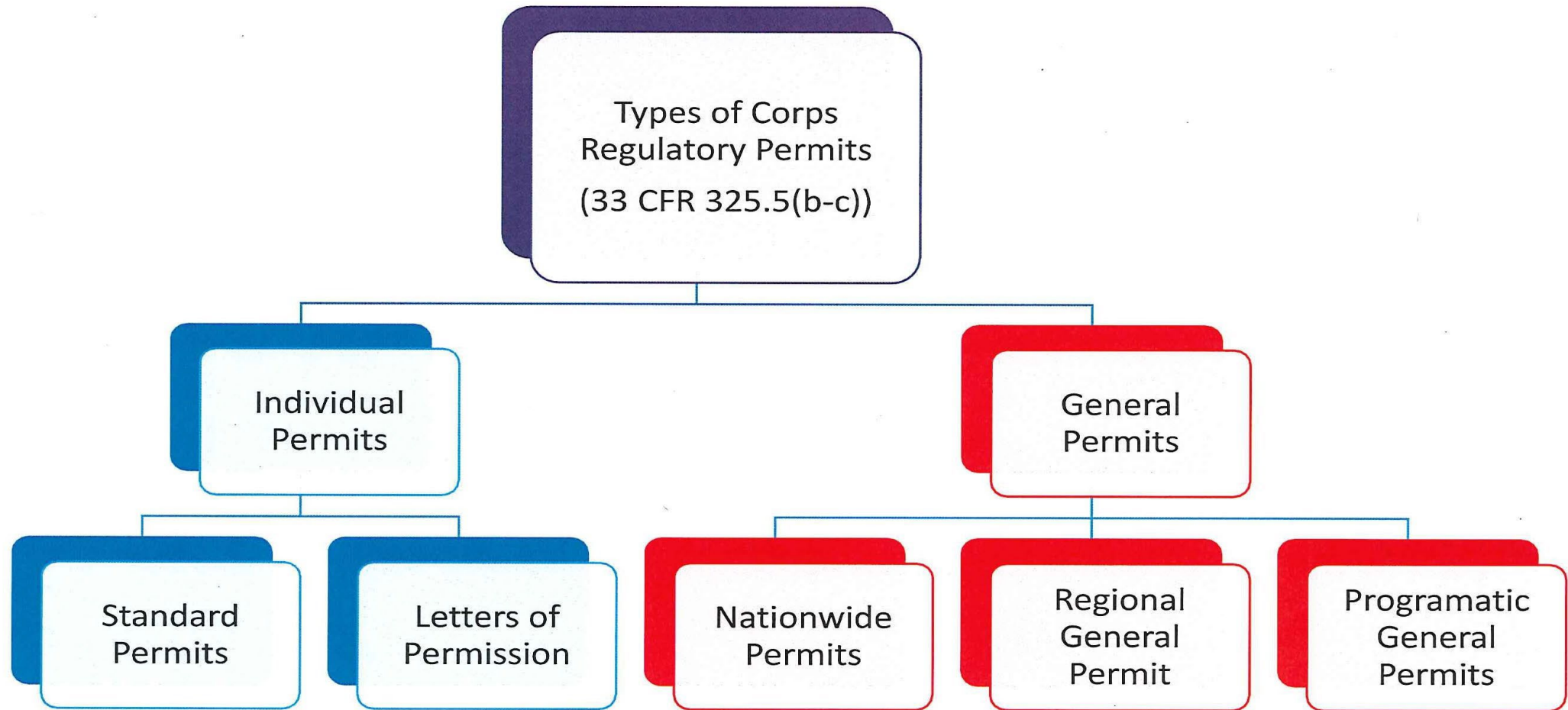
IS A USACE PERMIT REQUIRED?



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TYPES OF USACE PERMITS



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PUBLIC INTEREST REVIEW

33 CFR 320.4(A)

21 Factors, including:

1. Conservation
2. Economics
3. Aesthetics
4. General Environmental Concerns
5. Wetlands (including mangroves)
6. Historic and Cultural
7. Fish And Wildlife Values
8. Flood Plain Values
9. Flood Hazards
10. Land Use
11. Navigation
12. Shore Erosion and Accretion
13. Recreation
14. Water Supply And Conservation
15. Water Quality
16. Energy Needs
17. Safety
18. Food and Fiber Production
19. Mineral Needs
20. Consideration of Property Ownership
21. Needs and Welfare of the People

The Corps cannot permit an activity that is contrary to the public interest.



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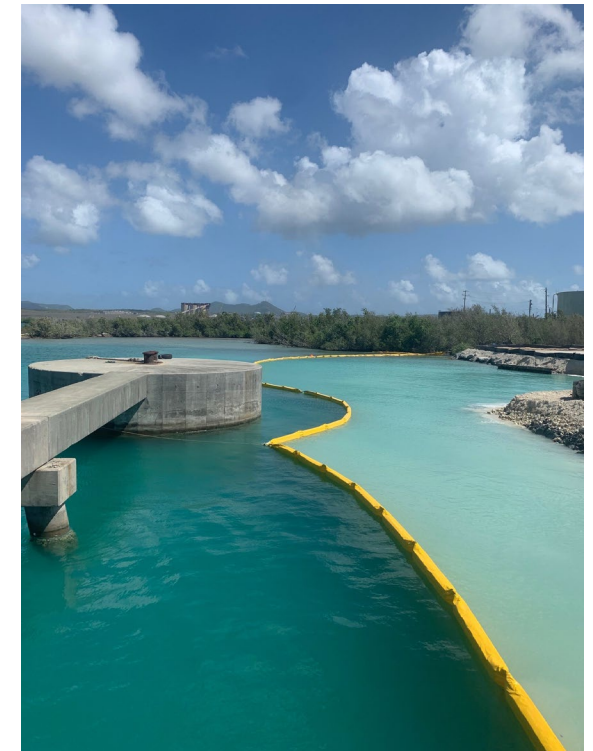
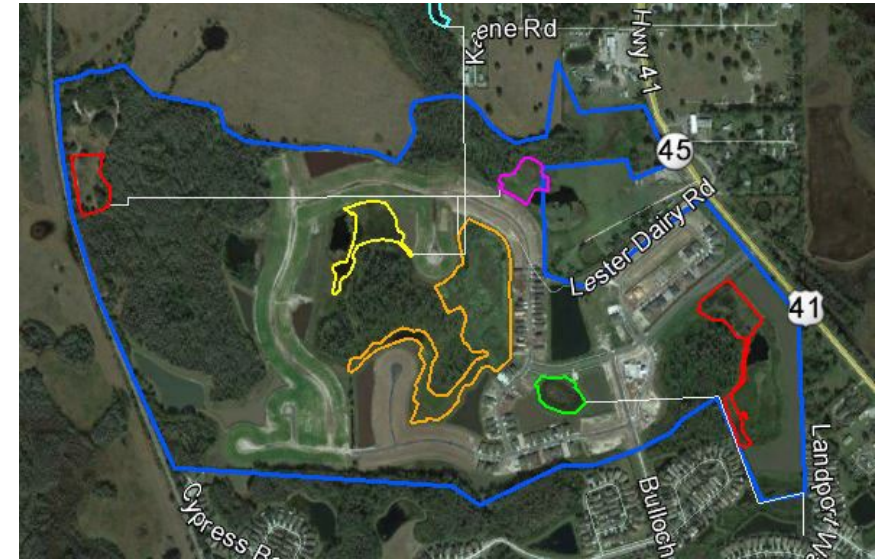
MITIGATION

Mitigation Sequencing is the first step that must occur for all projects proposing impacts to waters of the U.S.:

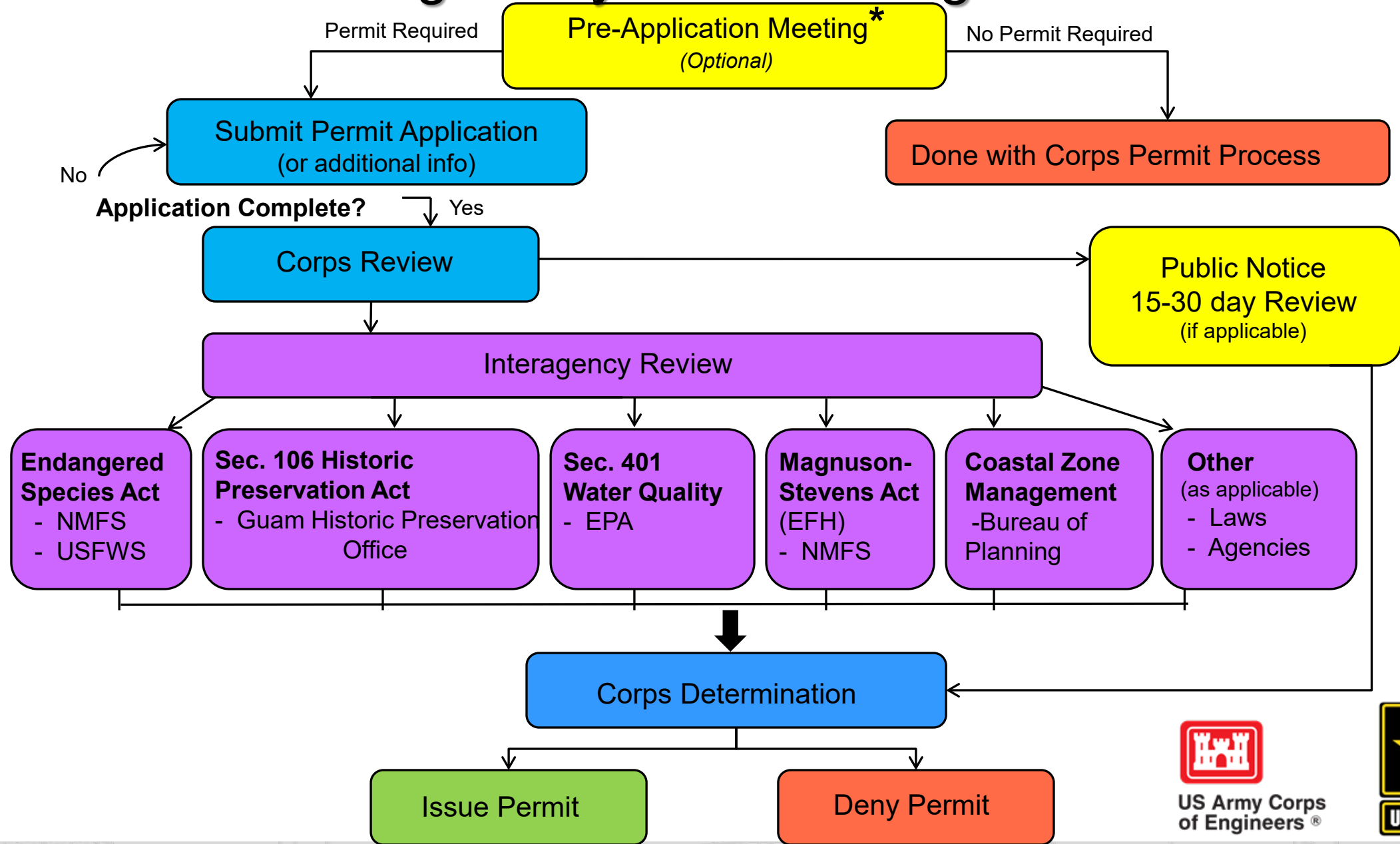
- **Avoid** – Adverse impacts are to be avoided if there is a practicable alternative with less impact.
- **Minimize** – If cannot avoid, minimization of adverse impacts must be taken.
- **Compensate** – Compensatory mitigation is required for unavoidable impacts which remain.

Mitigation Rule

- Issued in 2008 by USACE and EPA. (33 C.F.R. 332)



Regulatory Process Diagram



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COORDINATION WITH AGENCIES

Section 7 Endangered Species Act (ESA)

- Administered by the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS).
- ESA Section 7(a)(2): Requires federal agencies consult with Services to ensure federal action is not likely to jeopardize the existence of any federally listed species or destroy or adversely modify critical habitat.
- USACE permit decision cannot be made until federal action is in compliance with Section 7 ESA.



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COORDINATION WITH AGENCIES

Section 7 ESA Consultation Opportunity



Programmatic Consultation

- Consultation addressing multiple actions on a program, region or other basis (e.g., Sargassum!).
- If the Corps develops an RGP, we will consult programmatically on the actions covered.
- NMFS can determine if there is a need to develop a programmatic consultation that lays out all necessary conservation measures that must be followed for various sargassum related activities to avoid or minimize take of listed species.



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COORDINATION WITH AGENCIES

Magnuson Stevens Fishery Conservation and Management Act (MSFCMA) – Essential Fish Habitat

- Goal: Foster long-term biological and economic sustainability of nation's marine fisheries.
- Essential Fish Habitat (EFH): “..those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.”
- USACE consults on federal action that may adversely affect EFH Section 305(b)(2)
- **EFH consultations can also be done programmatically.**



NOAA Fisheries Liaison for the USVI:
Dr. Dinorah Chacin, dinorah.chacin@noaa.gov



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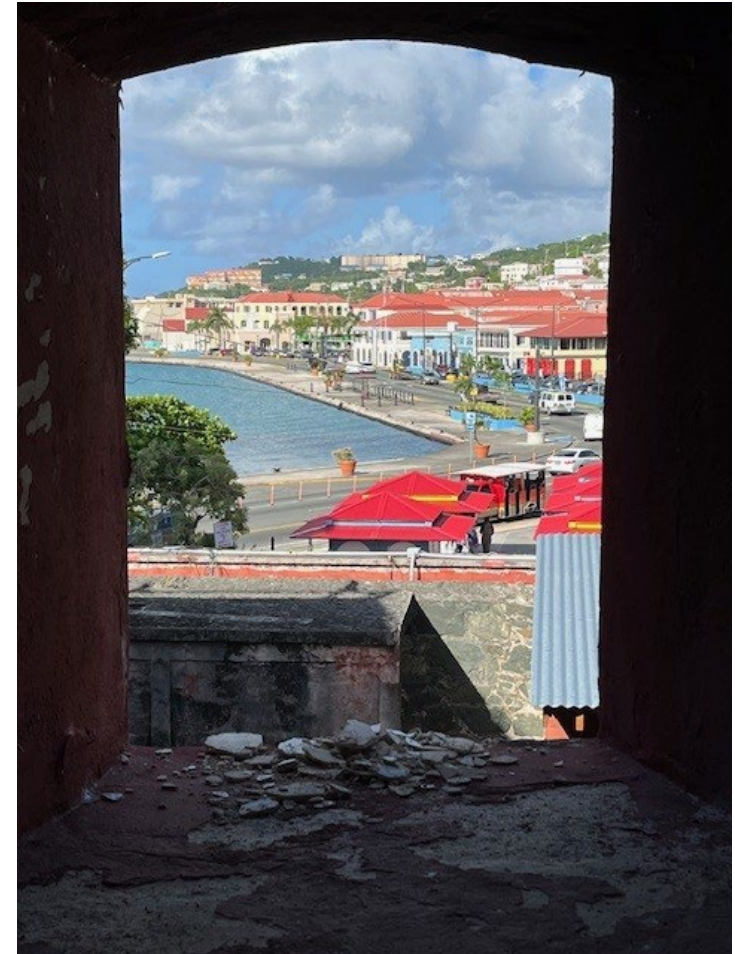


COORDINATION WITH AGENCIES

Section 106 of the National Historic Preservation Act (NHPA)

- Requires federal agency take into account the effects of a federal undertaking on any historic property

USACE permit decision cannot be made until federal action is in compliance with Section 106.



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COORDINATION WITH AGENCIES

Section 401 Water Quality Certification (WQC)

- CWA Section 401: 401 WQC required for permit or license for activity that would discharge a pollutant into waters of the U.S.
 - **401 WQC issued by the Department of Planning and Natural Resources, Division of Environmental Protection**
- USACE Regulations for 401 WQC at 33 C.F.R. 325.2(b)(1)
 - No permit granted until WQC obtained or waived
 - WQC conditions become conditions of USACE authorization.



EPA United States Environmental Protection Agency

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CWA Section 401 Certification CONTACT US

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Basic Information on Section 401 Certification

Read Section 401

Final 2023 Clean Water Act Section 401 Water Quality Certification Improvement Rule

Outreach and Engagement on CWA Section 401 Certification

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Final 2023 CWA Section 401 Water Quality Certification Improvement Rule

On September 14, 2023, the U.S. Environmental Protection Agency (EPA or the Agency) announced the final 2023 Clean Water Act Section 401 Water Quality Certification Improvement Rule (2023 Rule). The final rule is grounded in the fundamental authority granted by Congress to states, territories, and Tribes to protect water resources that are essential to healthy people and thriving communities over the past 50 years. **On September 27, 2023, the final 2023 Clean Water Act Section 401 Water Quality Certification Improvement Rule was published in the Federal Register. The final 2023 Rule went into effect on November 27, 2023.**

- Version published in the *Federal Register*: [2023 Clean Water Act Section 401 Water Quality Certification Improvement Rule \(pdf\)](#) (648.82 KB)

[Upcoming Outreach and Engagement Opportunities](#)



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COORDINATION WITH AGENCIES

Coastal Zone Management Act (CZMA) Federal Consistency

- Compliance with CZMA for projects affecting the coastal zone in states/territories operating under a CZM program approved under CZMA
 - Project must be certified by the **Department of Planning and Natural Resources Division of Coastal Zone Management** as being consistent with the CZM program prior to authorization/permit issuance.

USACE Regulations for CZMA at 33 C.F.R.
325.2(b)(2)



Photo Credit: <https://www.igymarinas.com/marinas/marina-yacht-haven-grande/>



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WHEN IN DOUBT, CONTACT US!

We are available for technical assistance and pre-application meetings

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Jacksonville District Regulatory Webpage: <https://www.saj.usace.army.mil/Missions/Regulatory>

Jacksonville District Regulatory Division Sourcebook: <https://www.saj.usace.army.mil/Missions/Regulatory/Source-Book/>

National Webpage: <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/>



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