

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED STATES COAST GUARD
AND
THE UNITED STATES ARMY CORPS OF ENGINEERS**

SUBJECT: Bridges and Causeways Over, In, or Affecting Navigable Waters of the United States

1. PARTIES: The Parties to this Memorandum of Understanding (MOU) are the United States Coast Guard (USCG) and the United States Army Corps of Engineers (USACE).

2. APPLICABILITY: This MOU applies to USCG and USACE review of activities associated with bridge and causeway projects proposed by external parties in navigable waters of the U.S., which may be subject to the USCG and/or USACE authorities listed in paragraph 4. This MOU does not apply to USCG and USACE coordination on USACE Civil Works Planning studies.

3. PURPOSE: The purposes of this MOU are:

a. To recognize the common and mutual interests of USCG and USACE relative to their respective responsibilities under certain federal statutes to regulate certain activities pertaining to bridges and causeways over, in, or affecting navigable waters of the U.S.;

b. To clarify jurisdiction and responsibilities of USACE and USCG with respect to:

(1) The construction, maintenance, operation, modification, and removal of bridges and causeways as distinguished from other types of structures over, in, or affecting navigable waters of the U.S.;

(2) The closure of waterways and the restriction of passage through or under bridges in connection with their construction, maintenance, operation, modification, or removal;

c. To provide for timely coordination and consultation on bridge, causeway, and other activities over, in, or affecting navigable waters of the U.S.; and

d. To clarify USACE and USCG responsibilities related to coordination and streamlining of the planning (to the extent either agency has such a role), environmental review, and decision-making process for permit/permission decisions associated with bridge and causeway activities over, in, or affecting navigable waters of the U.S.;

4. AUTHORITIES:

a. USCG enters this MOU pursuant to the authority of 14 United States Code (U.S.C.) §§ 701 and 504 (a)(20).

(1) The Department of Transportation Act (also known as the Act of October 15, 1966 and Public Law (PL) 89-670), transferred to and vested in the Secretary of Transportation certain functions, powers, and duties previously vested in the Secretary of the Army and the Chief of Engineers. By delegation of authority from the Secretary of Transportation (49 Code of Federal Regulations (CFR) § 1.46(c)), and subsequently delegated by the Secretary of Homeland Security by Department of Homeland Security Delegation Number 0170.1 under the Homeland Security Act of 2002 (PL 107-296), the Commandant, USCG, is authorized to exercise jurisdiction over bridges and causeways in or over navigable waters of the U.S. in accordance with the following acts/statutes:

(a) Act of August 18, 1894, c. 299, § 5, 28 Stat. 362, *as amended and classified to 33 U.S.C. § 499*;

(b) Act of March 3, 1899, c. 425, § 9, 30 Stat. 1151, *as amended and classified to 33 U.S.C. §§ 401, 502 (commonly referred to as the "RHA of 1899")*;

(c) Act of March 23, 1906, c. 1130, § 1, 34 Stat. 84, *as amended and classified to 33 U.S.C. §§ 491-498 (commonly referred to as the "General Bridge Act of 1906")*;

(d) Act of June 21, 1940, c. 409, 54 Stat. 497, *as amended and classified to 33 U.S.C. §§ 511-524 (commonly referred to as the "Truman-Hobbs Act")*;

(e) Act of August 2, 1946, 60 Stat. 847, *as amended and classified to 33 U.S.C. §§ 525-533 (commonly referred to as "the General Bridge Act of 1946")*;

(f) An Act to give the consent of Congress to the construction of certain international bridges, and for other purposes, PL No. 92-434 (H.R. 15577), 86 Stat. 731-733 (September 26, 1972), *as amended and classified to 33 U.S.C. §§ 535-535i (commonly referred to as "the International Bridge Act of 1972")*; and

(g) 33 CFR Chapter 1, Subchapter J, 114-118.

b. USACE enters this MOU pursuant to 33 U.S.C. § 1344 (Section 404 of the Clean Water Act (CWA)), 33 U.S.C. §§ 401, 403 and 408 (Sections 9, 10, and 14 of the Rivers and Harbors Act of 1899 (RHA)), 33 U.S.C. § 1413 (Section 103 of the Marine Protection Research and Sanctuaries Act of 1972 (MPRSA)), and 33 CFR 320-332.

5. REFERENCES:

a. Commandant Publication (COMDTPUB) P16591.3 (series), USCG Bridge Permit Application Guide, July 2016, or current version.

b. Commandant Instruction (COMDTINST) 16590.5D, USCG Bridge Program Instruction, July 2022, or current version.

c. USACE Civil Works Director's Policy Memorandum (DPM) for Designation of a Lead USACE District for Permitting of Non-USACE Projects Crossing Multiple Districts or States; DPM CW 2018-06, May 15, 2018, or current version.

d. USACE Civil Works Director's Policy Notice (DPN) for Section 408 and Changes in Drawbridge Operation Schedule under USCG 33 CFR § 117; DPN 1165-2-1, September 2, 2022, or current version.

e. USACE Regulatory Program Regulations, 33 CFR §§ 320-332.

f. USCG Bridge Regulations, 33 CFR §§ 114-118; Ports and Waterway Safety, 33 CFR §§ 160-169.

g. USCG Office of Bridge Programs Glossary of Bridge Terms ("USCG Glossary"), <https://www.dco.uscg.mil/Office-of-Bridge-Programs/>.

6. UNDERSTANDINGS OF THE PARTIES ON JURISDICTION:

a. In accordance with the statutes listed in paragraph 4.a.(1) above, USCG has jurisdiction over the review and approval of the location and plans of bridges and causeways in or over navigable waters of the U.S.¹ and may impose conditions on the construction, maintenance, operation, modification, and removal of bridges and causeways in the interest of preserving the public right of navigation. All integral features of a bridge or causeway subject to USCG jurisdiction, such as the bridge superstructure, bridge piers, fenders, approaches, pier protection systems, and appurtenances are within the purview of USCG. Any structures temporarily or permanently affixed to the bridge or causeway shall also be considered part of the bridge or causeway and under USCG jurisdiction. Further, permanent structures, temporary bridges, and/or other temporary structures that are integral features of a bridge or causeway or used to facilitate bridge or causeway construction, maintenance, operation, modification, or removal in or over navigable waters of the U.S., such as navigational lighting, floating work platforms, falsework, dolphins, and mooring buoys, are also within USCG jurisdiction.

b. The Secretary of the Army, acting through the Chief of Engineers and as delegated to USACE District Engineers, has jurisdiction over the discharge of dredged material and fill material into waters of the U.S. under Section 404 of the CWA. As such, any permanent or temporary discharge(s) of dredged or fill material into waters of the U.S. associated with bridge or causeway projects would require a Section 404 permit from USACE, unless the discharge(s) are exempt under Section 404(f) of the CWA. Such discharges associated with bridge or causeway projects that may require a Section 404 permit include, but are not limited to, permanent discharges of dredged or fill material associated with bridge piers, abutments, approaches, or riprap, and/or temporary discharges of dredged or fill material associated with temporary bridges, structures, or work required for the bridge or causeway's construction, maintenance, operation, modification, or removal.

¹ See Appendix A for the USCG and USACE definitions of navigable waters of the U.S.

c. The Secretary of the Army, acting through the Chief of Engineers and as delegated to USACE District Engineers, has jurisdiction over certain structures and work² in or affecting navigable waters of the U.S. under Section 10 of the RHA. Work that would facilitate the construction, maintenance, operation, modification, or removal of integral features of a bridge or causeway (e.g., dredging to facilitate the installation of cofferdams or bridge piers) is within the purview of USCG Bridge Program; such work will not, as a matter of general policy, require a USACE Section 10 RHA permit, but may require a USACE Section 404 CWA permit and/or Section 408 permission (see paragraphs 6.b. and 6.d.). Other work in navigable waters of the U.S. that may be associated with bridge or causeway projects, such as dredging to facilitate navigation of barges, may be subject to USACE Section 10 RHA, Section 404 CWA, and/or Section 408 authorities. Similarly, permanent and temporary structures in or affecting navigable waters of the U.S. that are integral features of a bridge or causeway, used in the construction, maintenance, operation, modification, or removal of a bridge or causeway in navigable waters of the U.S., and/or are affixed to a bridge or causeway subject to USCG Bridge Program permit requirements, are under the purview of the USCG Bridge Program as discussed in paragraph 6.a. above. Such structures will not, as a matter of general policy, require a Section 10 RHA permit from USACE, although such structures and/or related activities may be subject to USACE Section 404 CWA and/or Section 408 authorities. Utilities connected to bridge and causeway projects are discussed further in paragraph 6.k. below. USACE also has jurisdiction over the construction of dams and dikes over or in navigable waters of the U.S. under Section 9 of the RHA.

d. The Secretary of the Army, acting through the Chief of Engineers and as delegated to USACE Division and District Engineers, has jurisdiction over the alteration, occupation, or use of its USACE projects under Section 14 of the RHA (33 U.S.C. § 408, or “Section 408”). As such, bridge or causeway projects or associated work that cross a USACE Civil Works project (such as a federal navigation channel or federal levee), including any temporary structures needed to facilitate the work, may require permission from USACE under Section 408.

e. The Secretary of the Army, acting through the Chief of Engineers and as partly delegated to USACE District Engineers, has jurisdiction over the transportation of dredged material by vessel or other vehicle for the purpose of dumping the material in ocean waters pursuant to Section 103 of the MPRSA. As such, any bridge or causeway project that involves the transportation of dredged material for the purpose of ocean dumping would require a Section 103 MPRSA permit from USACE.

f. The approval of horizontal and vertical clearances for navigation through or under bridges is within the jurisdiction of the USCG. This authority extends to, and may be exercised in connection with, the construction, maintenance, operation, modification, and removal of bridges, and includes the authority to authorize the temporary restriction of passage through or under a bridge by use of falsework, piling, floating equipment, closure of draws, or any works or activities that temporarily reduce the navigation clearances and design flood flows, including closure of any or all spans of the bridge. Regarding design flood flows, USCG will consider how hydrologic conditions and associated current velocities may impact the ability of mariners to safely transit the navigation opening of a bridge. When USACE’s Section 408 authority applies,

² See Appendix A for the definitions of structure and work in USACE regulations.

USACE's determination of whether the proposed horizontal and vertical clearances will impact the usefulness of a federal navigation project or other USACE Civil Works project, will inform USCG's final permit decision. When a project involves removal of a bridge in a federal navigation channel, USACE will determine the required depth of removal.

g.e The USCG has authority under 33 USC § 499 and 33 CFR § 117 to establish and amend operating schedules for movable bridges (drawbridges) across navigable waters of the U.S. Section 408 provides USACE the authority to evaluate if modifications to such drawbridges could impact the usefulness of a federal navigation channel; however, because 33 CFR § 117 requires that drawbridges be maintained in a fully operable condition, such changes are not expected to impact the usefulness of federal navigation channels. Therefore, a Section 408 decision will not be required for modifications to drawbridge operating schedules subject to USCG's 33 CFR § 117 authority (USACE DPN 1165-2-1).

h.e Under the Ports and Waterways Safety Act of 1972, PL 92-340, 86 Stat. 424 (now codified at 46 U.S.C. Chapter 700), USCG exercises broad powers in navigable waters of the U.S. to control vessel traffic in areas USCG determines to be especially hazardous, and to establish safety zones and other types of limited access areas when necessary to prevent damage to or the destruction or loss of, any vessel, bridge, or other structure on or in the navigable waters of the U.S. In the event that work in connection with the construction, maintenance, operation, modification, or removal of a bridge or causeway is of such a nature that for the protection of life and property, navigation through or in the vicinity of the bridge or causeway must be temporarily prohibited, USCG may include that part of the affected waterway within a safety zone or other limited access area while such work is being performed. The Secretary of the Army and the Chief of Engineers also have authority under Section 4 of the Act of August 18, 1894, as amended (33 U.S.C. § 1), to prescribe and implement regulations for the use, administration, and navigation of the navigable waters of the U.S. (33 CFR § 207), and authority under Section 408 to authorize alterations, occupations, or uses of federal navigation projects. In recognition of these authorities, USCG will notify USACE when contemplating any significant restriction of passage through or under a bridge or causeway project area, or the temporary establishment of a safety zone associated therewith.

i.e Conversion of a highway and/or railroad bridge to a pedestrian bridge does not change the fundamental characteristic of the structure as a "bridge"; therefore, such a bridge will remain under USCG jurisdiction. Replacement or modification of a bridge so that it loses the characteristics of a bridge (e.g., the removal of a portion of a bridge to convert the structure to a fishing or recreational pier) will result in the structure falling under USACE Section 10 RHA jurisdiction. If either agency receives a request for such a replacement or modification, the receiving agency will notify the other agency to initiate discussions on proper jurisdictional authority in accordance with paragraph 8.a. Should USACE approve the conversion of a bridge to a structure under Section 10 of the RHA, no residual jurisdiction will remain with the USCG Bridge Program, although such structures may be subject to other USCG authorities and requirements, such as those for lighting and other signals at 14 U.S.C. § 85. Consequently, such a permit decision should be coordinated with USCG prior to a decision, per paragraph 8.f. below. Should a USACE Section 10 RHA permit for the proposed conversion of a bridge to another

structure not be issued, the bridge would remain under the purview of the USCG Bridge Program. The USCG will prescribe removal unless the owner proposes to retain it as a bridge.

j. The following paragraphs outline where statutes have modified USCG jurisdiction or exempted certain bridge or causeway projects from the requirement to obtain a Bridge or Causeway Permit from the USCG Bridge Program³, and where USACE authorizations may be required for such projects.

(1) Pursuant to Section 107 of PL 97-322 (Coast Guard Authorization Act of 1982, CGAA 1982), the requirements for USCG approval of the location and plans of bridges and causeways (or the modification of such plans) do not apply to any bridge or causeway over waters that are not subject to the ebb and flow of the tide and that are not used and not susceptible to use in their natural condition or by reasonable improvement to transport interstate or foreign commerce. Accordingly, non-tidal waters that would be considered navigable only due to historic use to transport interstate or foreign commerce are not subject to USCG bridge jurisdiction.

(2) Under 23 U.S.C. § 144(c)(2), a Department of Transportation authority, certain bridges subject to 23 U.S.C. are excepted from the requirement to obtain a USCG Bridge Permit, including those that are located over waters that are not used and are not susceptible to use in their natural condition or by reasonable improvement to transport interstate or foreign commerce, and are not tidal; or if tidal, are used only by recreational boating, fishing, and other small vessels less than 21 feet in length.

(3) Under 33 CFR § 115.40, repairs to a bridge over navigable waters of the U.S. that do not alter the clearances, type of structure, or any integral part of the substructure or superstructure or navigation conditions but consist only of the replacement of worn or obsolete parts, may, if the bridge was appropriately authorized, be made as routine maintenance without approval by USCG.

(4) In accordance with 33 CFR § 115.70, the Commandant of the USCG has given advance approval to the location and plans of bridges to be constructed across reaches of waterways navigable in law, but not actually navigated other than by logs, log rafts, rowboats, canoes, and small motorboats. In such cases, USCG considers the clearances provided for high-water stages to be adequate for the purposes of meeting the reasonable needs of navigation.

(5) In areas where a bridge or causeway project is outside of USCG jurisdiction in accordance with the provisions of the CGAA 1982 but is located within waters considered navigable by USACE, USACE will not, as a matter of general policy, require a Section 10 RHA permit for the bridge or causeway, including any work that would facilitate the construction, maintenance, operation, modification, or removal of the bridge or causeway or its integral features. Similarly, when the USCG Bridge Program has jurisdiction over a bridge project but

³ Bridge and causeway projects over, in, or affecting navigable waters of the U.S. that don't require a USCG Bridge/Causeway Permit in accordance with 33 CFR § 115.40, 33 CFR § 115.70, or 23 U.S.C. § 144(c)(2) (see paragraphs 6.j.(2), (3), and (4)) may still be subject to other USCG authorities, such as the requirements for lights and signals on structures and bridges at 14 U.S.C. 545 and USCG Ports and Waterways responsibilities outlined in 46 USC Chapter 700, among others.

does not require a Bridge Permit (e.g., the bridge work qualifies as routine maintenance under 33 CFR § 115.40, or the project is located in an “advance approval” waterway as defined in 33 CFR § 115.70, or qualifies for an exemption under the provisions of 23 U.S.C. § 144(c)(2)), USACE will not, as a matter of general policy, require a Section 10 RHA permit for the proposed bridge, including any work that would facilitate the construction, maintenance, operation, modification, or removal of the bridge or its integral features. Such bridge or causeway projects may be subject to other USACE authorities (e.g., Section 404 of the CWA, Section 408, and/or Section 103 of the MPRSA as discussed in paragraphs 6.b., 6.d., and 6.e. above). Bridge/causeway maintenance and repair activities do not require Section 408 permission; however, coordination or concurrence from USACE may be required to verify the construction approach, and Section 408 permission may be required for temporary structures necessary to conduct the work.

k. Utilities and Bridge Projects:

(1) Elevated pipelines crossing navigable waters of the U.S. are considered bridges⁴ by USCG and are under the purview of the USCG Bridge Program. This includes pipelines connected to bridges and otherwise. Elevated pipelines that require a USCG Bridge Permit will not, as a matter of general policy, require a Section 10 RHA permit from USACE, but may be subject to other USACE authorities (e.g., Section 408 and/or Section 404 CWA).

(2) Utilities that are integral features of a bridge or causeway over or in navigable waters of the U.S., and/or are used in a bridge or causeway’s construction, maintenance, operation, modification, or removal, are within USCG jurisdiction. Utilities connected to a bridge or causeway that is subject to USCG Bridge Program permit requirements⁵ are also within USCG jurisdiction regardless of where [on the bridge or causeway] or when the utilities are installed or modified. USCG considers such utilities to take on a secondary characteristic of the bridge or causeway (e.g., apart from dedicated pipeline bridges, a typical bridge is primarily a conveyance for pedestrian, vehicular, or train traffic, and any utilities connected to that bridge, although considered a component of the structure, are ancillary in nature) and thus are not approved separately from the bridge or causeway by USCG. However, if the installation or modification of such utilities would impact the horizontal or vertical clearances of the bridge, the new clearance(s) would require approval from USCG. The utilities described in this paragraph will not, as a matter of general policy, require a Section 10 RHA permit from USACE⁶, but may be subject to other USACE authorities (e.g., Section 404 CWA and/or Section 408).

(3) Utilities connected to a bridge or causeway over or in navigable waters of the U.S. that is not subject to USCG Bridge Program permit requirements⁷, are not integral features of the bridge or causeway, and are not used or installed as part of the bridge or causeway’s construction, maintenance, operation, modification, or removal, fall under USACE’s Section 10

⁴ See definition of bridge in Appendix A.

⁵ A bridge or causeway is considered subject to USCG Bridge Program permit requirements if the bridge or causeway requires a USCG Bridge or Causeway Permit or was previously authorized by a USCG Bridge or Causeway Permit. See paragraphs 6.j.(1), (2), and (4) for instances when a Bridge or Causeway Permit is not required from USCG.

⁶ This general policy does not pertain to USACE Section 10 RHA jurisdiction over other portions of the utility line that may cross navigable waters of the U.S. in other locations beyond the bridge crossing.

⁷ See footnote 5.

RHA jurisdiction (and may also require USACE Section 408 and/or Section 404 CWA authorizations).

(4) The installation or alteration of submerged cables in association with the construction, maintenance, operation, modification, or removal of a bridge (e.g., to provide power to a movable bridge, allowing the bascule leaves or swing span to open) fall under the jurisdiction of the USCG Bridge Program as appurtenances to the bridge. The installation of such cables may also require Section 404 CWA authorization and/or Section 408 permission from USACE.

7. RESPONSIBILITIES:

a. When a jurisdictional determination is necessary for a given site from either or both agencies, USCG and USACE are separately responsible for determining the presence or absence of waters within their respective jurisdiction, in accordance with respective agency regulations, policies, and procedures. USCG and USACE are also separately responsible for determining the permit or permission requirements of their respective agencies. In instances where it is unknown if the other agency will be involved in the review of a given bridge or causeway project, the agencies will consult each other per paragraphs 8.a. and 8.b. below.

b. When a stand-alone bridge or causeway project requires a permit or permission from more than one USACE district, the lead USACE district, established by DPM CW 2018-06, will be responsible for ensuring appropriate coordination with USCG. When proposed bridge or causeway activities are part of a larger linear transportation project that requires permits or permissions by more than one USACE district, the involved USACE districts will determine which district is most appropriate to lead coordination with USCG.

c. For alteration of bridges that unreasonably obstruct navigation, USCG will endeavor to implement the Truman-Hobbs Act, to the extent funds are appropriated by Congress for that purpose. This MOU will in no way affect, impair, or modify the powers or duties conferred by that Act.

d. Where USCG or USACE is the lead agency for the development of an environmental impact statement (EIS) for a bridge or causeway project that requires authorization decisions from both agencies, the lead agency (in consultation with the cooperating agency(ies)) will be responsible for ensuring that the EIS satisfies the requirements of both agencies to the maximum extent practicable. When applicable, USCG and USACE will fulfill the lead and cooperating agency responsibilities as outlined in the Council on Environmental Quality's (CEQ) National Environmental Policy Act (NEPA) regulations and in any other applicable NEPA-related laws, policies, and regulations. Where appropriate, USACE and USCG may also agree to designate a lead agency for the development of an environmental assessment (EA) for a bridge or causeway project requiring USCG and USACE permit/permission decisions.

e. When USCG or USACE is the designated lead agency for Section 7 of the Endangered Species Act (ESA) of 1973, Section 106 of the National Historic Preservation Act (NHPA), and/or Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act

(MSA) compliance for a bridge or causeway project that requires permit/permission decisions from both agencies, the agencies will coordinate on the activities to be included in the lead agency's evaluation(s) to ensure that the compliance obligations of both agencies are fulfilled. The role of the non-lead agency will be limited to ensuring that the effects of the activity(ies) requiring a decision by the non-lead agency are fully considered within the lead agency's evaluation(s) and any resulting consultations, and receiving compliance documentation from the lead agency. If the lead agency's Section 7 ESA, 106 NHPA and/or Section 305(b)(2) evaluations cover the entire scope of effects associated with the non-lead agency's permit/permission action, the non-lead agency will not duplicate or supplement the compliance efforts of the lead agency in any way. In cases when the lead agency's Section 7 ESA, Section 106 NHPA, and/or Section 305(b)(2) MSA compliance will not fully satisfy the compliance obligations of the non-lead agency, the non-lead agency will be responsible for completing the required compliance that is not covered by the lead agency. Any disputes will follow the dispute resolution procedure in paragraph 8.r. of this document.

f. Lead and Cooperating Agency Determinations:

(1) Lead and cooperating agency determinations for the development of EISs (and EAs, where the agencies agree a lead agency(ies) would benefit the environmental review process) under NEPA for bridge or causeway projects subject to USCG and USACE authorities will be made in writing and in accordance with 40 CFR § 1501.7 and 1501.8 (or the current version of CEQ's NEPA regulations). USCG typically assumes responsibility as the lead agency in accordance with NEPA for environmental reviews associated with the proposed construction, maintenance, operation, modification, or removal of bridges or causeways across navigable waters of the U.S. falling under USCG jurisdiction if/when no federal expenditures for the same have been dedicated or obligated (e.g., the Federal Highway Administration (FHWA) is not involved with the project). USACE typically assumes responsibility as the lead agency for NEPA compliance when USACE has the greatest amount of federal control and responsibility over a project considering its statutory authorities. Where appropriate, USCG and USACE may also decide to jointly lead the preparation of an EIS or EA. In the event of a disagreement regarding which agency should assume the lead agency role, the agencies will consult the factors at 40 CFR § 1501.7(c) (or the most current version of CEQ's NEPA regulations) and will follow the dispute resolution procedure in paragraph 8.r. of this document.

(2) 50 CFR § 402.07, 36 CFR § 800.2(a)(2), and 50 CFR § 600.920(b) allow for the designation of a lead agency to coordinate compliance with Section 7 ESA, Section 106 NHPA, and Section 305(b)(2) MSA, respectively. Such determinations amongst USACE and USCG will be made in writing. Generally, the agency that is lead for NEPA compliance will also be the lead agency for fulfilling these requirements, though when the agencies differ substantially in scopes of review for their respective authorities, the agencies may determine lead agency responsibilities for Section 7 ESA, Section 106 NHPA, and Section 305(b)(2) MSA compliance (as applicable) on a case-by-case basis. In the event of a disagreement, the agencies will follow the dispute resolution procedure in paragraph 8.r. of this document. In cases where a lead agency is not designated, each agency will remain individually responsible for compliance with Section 7 ESA, Section 106 NHPA, and/or Section 305(b)(2) MSA, as applicable.

(3) When USCG and USACE both have permit/permission decisions that require a water quality certification or waiver under Section 401 of the CWA, and an applicant will be submitting one request for certification to the certifying agency for both agencies' permit/permission decisions, the agencies can determine a lead agency for satisfying the responsibilities of the federal permitting agency under Section 401 to the extent allowed by current regulation.

(4) USCG will not be lead agency for a bridge or causeway project review process under NEPA, Section 7 ESA, Section 106 NHPA, Section 305(b)(2) MSA, or Section 401 CWA when a Bridge or Causeway Permit is not required pursuant to 33 CFR 115.40, 33 CFR § 115.70 or 23 U.S.C. § 144(c)(2) (see paragraph 6.j.(2)-(4)).

(5) USACE will not be lead agency for a bridge or causeway review process under NEPA when all activities requiring USACE authorization would be authorized under a general permit, letter of permission, and/or categorical permission.

8. COORDINATION: USCG and USACE agree to the below coordination protocol for the review of bridge or causeway projects over, in, or affecting navigable waters of the U.S.:

a. USCG and USACE Districts will coordinate upon receipt of a pre-application meeting request, permit application, pre-construction notification, or Section 408 request for a bridge or causeway construction, maintenance, operation (i.e., changes in moveable bridge operations), modification, or removal project, over, in, or affecting a navigable water of the U.S. When such requests are received, the agencies will designate and share points of contact (POCs) for their respective evaluations. To ensure rapid identification of an appropriate POC for a bridge or causeway project review, USACE and USCG Districts will regularly (e.g., annually) exchange appropriate USACE Regulatory, USACE Section 408, and USCG Bridge Office contact information, including postal addresses, email addresses, and telephone numbers. Maps overlaying the 38 USACE District boundaries⁸ with the nine USCG Districts are included in Appendix B.

b. USCG and USACE agree to coordinate on the extent of their involvement for a given bridge or causeway project (e.g., jurisdiction, type of authorization required, applicability of a permit exemption, etc.) as early as is practicable in the review process. In cases where it is likely that USACE will require a permit under Section 10 of the RHA, Section 404 of the CWA, Section 103 of the MPRSA, and/or a permission under Section 408, and the USCG will require a Bridge or Causeway Permit, the agencies will seek to: a) determine lead agency responsibilities (when applicable) as early and as expeditiously as possible, b) coordinate on and conduct concurrent reviews to the maximum extent practicable, and c) participate jointly in pre-application/early coordination meetings and other such meetings with the applicant, as appropriate.

c. When USCG determines that a proposed bridge project will not require a USCG Bridge Permit due to its location on an "advance approval waterway" pursuant to 33 CFR § 115.70, the

⁸ In Appendix B, USACE Regulatory District boundaries are shown separately from USACE Civil Works District boundaries; USACE Civil Works District boundaries apply to the location of the appropriate Section 408 POC.

applicability of 33 CFR § 115.40, or lack of jurisdiction (CGAA 1982), the responsible USCG District Bridge Office will notify USACE in accordance with paragraph 8.l. below.

d. In accordance with 23 U.S.C. § 144(c)(2), the FHWA may make a preliminary determination that a USCG Bridge Permit is not required for a bridge to be constructed, reconstructed, rehabilitated, or replaced if the bridge is over navigable waters of the U.S. that are not used and are not susceptible to use in the natural condition of the water or by reasonable improvement as a means to transport interstate or foreign commerce; and are either not tidal or, if tidal, used only by recreational boating, fishing, and other small vessels less than 21 feet in length. In the event USCG concurs with FHWA's preliminary determination, USCG will copy USACE on the concurrence letter to be sent to the FHWA in accordance with paragraph 8.l. below.

e. When a proposed bridge or causeway project has the potential to affect a federal navigation channel, the appropriate USACE District Section 408 Coordinator and USCG Bridge Program staff will collaboratively determine at the earliest time practicable the navigational information each agency will provide to the other agency, in order to analyze the navigational impacts associated with proposed design alternatives (including determining which, if any, bridge design concepts would unreasonably obstruct navigation). As part of the Section 408 review, USACE Navigation staff will determine any necessary requirements to reduce impacts to federal navigation projects, such as the lateral extent and depth of removal of an existing bridge, and will coordinate such requirements with the USCG and USACE Section 408 and Regulatory project POCs. USCG will provide the USACE POCs (see paragraph 8.a. above) with a copy of USCG's preliminary navigation clearance determination (i.e., vertical and horizontal clearances for the proposed bridge) based on a Navigation Impact Report furnished by the applicant. USCG will produce the preliminary navigation clearance determination concurrent with the NEPA scoping process whenever possible. The final USCG Bridge Permit decision will be informed by USACE's determination under Section 408 regarding whether the proposed bridge activities will impact the usefulness of the federal navigation project.

f. When USACE is reviewing permit applications, preconstruction notifications, or permission requests for bridge or causeway-related activities over, in, or affecting navigable waters of the U.S., USACE Districts will ensure the appropriate USCG District has an opportunity to provide input (e.g., on navigation and port/waterway safety), regardless of whether a USCG Bridge or Causeway Permit would be required. The USACE Regulatory Program will generally defer to USACE Section 408, USACE Navigation, and/or the USCG's assessment of navigation impacts, and USCG's assessment of port and waterway safety, when applicable.

g. USCG and USACE will provide the other agency with an electronic copy(ies) of any public notice issued under their respective authorities for the review of a bridge or causeway project over, in, or affecting navigable waters of the U.S. Specifically, USCG District Bridge Offices will share such public notices with the appropriate USACE District project POC(s), and USACE will share such public notices with the appropriate USCG District Bridge Office POC⁹. USACE Districts will also continue to share electronic copies of public notices issued by

⁹ Pursuant to 33 CFR § 325.3(d)(1), USACE also sends public notices to USCG District Commanders.

USACE for other proposed activities¹⁰ over, in, or affecting navigable waters of the U.S. with the appropriate USCG Sector/Captain of the Port. The agency in receipt of the public notice will provide any agency comments, information, or recommendations within its areas of jurisdiction and/or special expertise within the timeframe provided in the public notice. In cases when more time is necessary to provide comments, information, or recommendations, the agency in receipt of the public notice will alert the other agency, along with an estimate of the earliest time a response can be provided. When a public notice is required for the evaluation processes of both agencies for a given bridge or causeway project, the agencies will issue concurrent or joint public notices whenever practicable and appropriate.

h. When USCG or USACE determines that a public meeting or public hearing is necessary for their respective evaluations related to a bridge or causeway project, the agencies will invite the other agency to attend, participate in, or otherwise jointly host such a meeting or hearing. Each agency may participate in the public meeting or hearing convened by the other agency, as necessary and appropriate based on the scope of any associated agency reviews. Any joint public meetings or hearings should meet the requirements of both agencies.

i. When USCG or USACE is the designated lead agency for Section 7 ESA, Section 106 NHPA, and/or Section 305(b)(2) MSA compliance for a bridge or causeway project that requires authorization decisions from both agencies, the lead agency will copy the other agency on effect determinations and any required consultation correspondence, and will share documentation of final compliance with the other agency as soon as is practicable upon completion (e.g. copies of effect concurrence letters, biological opinions, executed memorandums of agreement, etc.).

j. When a lead agency is designated to fulfill USCG and USACE's collective federal responsibilities associated with Section 401 CWA, USCG and USACE will cooperatively advise the applicant to include both agencies' respective permit authorities in the applicant's request for Section 401 certification to the relevant certifying agency. The lead agency will coordinate closely with the non-lead agency to ensure that the non-lead agency is informed of major milestones in the Section 401 process (e.g., the amount of time given to the certifying agency to respond to the certification request, any extension requests from the certifying agency, receipt of the certification or waiver, etc.).

k. Either agency may proceed to a permit or permission decision for an application associated with a bridge or causeway project when that agency has enough information to do so. When both agencies require a permit or permission decision for a bridge or causeway project, one agency may need information from the other agency to inform its decision (e.g., USACE may need horizontal and vertical clearance information from USCG as discussed above, USCG may need input on the bridge removal depth in the navigation channel or information on potential compensatory mitigation requirements for wetland functional losses from USACE, etc.). When such information has not already been received, the agency needing information will request such information from the other agency, and the agency receiving the request will respond as expeditiously as possible. Where necessary, the agencies will coordinate on the

¹⁰ Refer to the "2000 MOA Between USACE and the USCG" for the public notice coordination procedures that are to be followed by USACE Districts and USCG Sectors in the evaluation of USACE Regulatory Program permit applications involving the construction of fixed and floating structures in navigable waters of the U.S.

anticipated timeline and status of their decision-making process, as well as any substantial concerns associated with their respective reviews of the project.

l. When a jurisdictional determination, exemption, request for information letter, or permit or permission decision is provided by either agency to the applicant for a proposed bridge or causeway project, USACE and USCG will copy the other agency on the correspondence. If such determination(s) have been made by either agency but will not be provided to the applicant in writing, the agency making the determination will notify the other agency of its determination via other written means, such as email, memorandum, or letter.

m. USCG will notify the appropriate USACE Section 408 POC (see paragraph 8.a. above) upon receipt of any such request(s) to modify operating regulations/schedules for moveable bridges (drawbridges) pursuant to 33 CFR § 117 as early as is practicable for situational awareness.

n. Permanent conversion of a movable bridge over a federal navigation channel into a fixed bridge through removal of the operating mechanisms (or otherwise rendering the operating mechanisms completely and irreversibly inoperable) will be considered by USCG to be a full Bridge Permit amendment action and will also require a Section 408 permission from USACE. USCG's final decision on such proposals will be informed by USACE's determination under Section 408 regarding whether the proposed modification will impact the usefulness of the navigation project.

o. The agencies agree, upon request, to share the results of any compliance efforts for issued permits/permissions associated with bridge or causeway projects over navigable waters of the U.S. (e.g., USCG bridge completion reports). The agencies will alert the appropriate district POCs (see paragraph 8.a. above) of permit non-compliance issues or potential unauthorized activities associated with bridge or causeway projects over navigable waters of the U.S. that may be relevant to each agency's respective authorities. Each agency retains discretion regarding the pursuit of an alleged violation, and retains responsibility for determining whether a violation of its authorities has occurred and any subsequent agency actions. Where appropriate, the agencies may, at their discretion, cooperate on violation investigations and resolutions.

p. The agencies agree to conduct the coordination envisioned in this MOU in a timely manner.

q. USCG and USACE Districts or Divisions are encouraged to develop local agreements or standard operating procedures that would further the goals of this MOU. See paragraph 9.i. below for limitations.

r. Dispute resolution procedure: USCG and USACE will seek to resolve any disputes or issues that arise between the agencies regarding the review of bridge or causeway projects in an expeditious manner and at the lowest level possible. In the absence of an existing dispute or issue resolution process established in an applicable law, regulation, legally binding agreement, or policy, disputes or issues that cannot be resolved will be elevated to the next level in each agency's chain of command until the dispute or issue is resolved, as described below.

(1) Field staff will have 15 business days following the date a dispute or issue is identified to resolve the dispute or issue at the staff level. If the dispute or issue is not resolved in this timeframe, the dispute or issue will be elevated to the appropriate USACE District supervisory chief and the USCG District Bridge Manager for resolution. To facilitate elevation of the dispute or issue, field staff will provide a written notice to their chain of command that clearly describes the specific dispute or issue, the consequence of failing to resolve the dispute or issue, and the recommended resolution.

(2) In the event the dispute or issue is not resolved by the USACE District supervisory chief and the USCG District Bridge Manager within 10 business days of receipt, the dispute or issue will be elevated to the USACE District Commander and the USCG District Chief of Prevention for resolution.

(3) In the event the dispute or issue is not resolved by the USACE District Commander and the USCG District Chief of Prevention within 10 business days of receipt, the dispute or issue will be elevated to the appropriate USACE Division Commander and USCG District Commander to facilitate resolution.

(4) In the event the dispute or issue is not resolved by the USACE Division Commander and the USCG District Commander within 10 business days of receipt, the dispute or issue will be elevated to the Chief, Operations and Regulatory at USACE Headquarters and/or Chief of Engineering and Construction at USACE Headquarters, as appropriate, and the USCG Director of Marine Transportation Systems to facilitate resolution within 10 business days.

9. LIMITATIONS:

a. Nothing in this MOU is intended to conflict with current law or regulation or the directives of USCG or USACE. If a term of this MOU is inconsistent with such authority, that term shall be invalid, but the remaining terms and conditions of this MOU shall remain in full force and effect.

b. This MOU does not affect the 2000 Memorandum of Agreement between USCG and USACE on the evaluation of permits for fixed or floating structures in the navigable waters of the U.S., or the 2012 Memorandum of Understanding between USACE and USCG Regarding the Mitigation of Obstructions to Navigation.

c. This MOU does not create any right or benefit, substantive or procedural, enforceable by law or equity, against the U.S., any party, Federal officers or employees, or any other person. This MOU does not direct or apply to any person outside the parties to this MOU.

d. This MOU neither expands nor is in derogation of those powers and authorities vested in the participating agencies by applicable laws, statutes, or regulations.

e. As required by the Antideficiency Act, 31 U.S.C. §§ 1341 and 1342, all commitments made by the parties in this MOU are subject to the availability of appropriated funds and budget

priorities. Nothing in this MOU, in and of itself, obligates the parties to expend appropriations or to enter any contract, assistance agreement, interagency agreement, or to incur other financial obligations. Any transaction involving transfers of funds between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements. This MOU does not document nor provide for the exchange of funds or labor between the parties, nor does it make any commitment of funds or resources.

f.e This MOU does not apply to any party outside of the signatory agencies. The terms of this MOU are not intended to be enforceable by any party other than the signatories hereto.

g.e The signatory agencies intend to fully carry out the terms of this MOU.e

h.e This MOU does not limit the ability of the signatory agencies to review and respond to final applications.

i.e This MOU does not limit the parties from developing programmatic agreements at the field or headquarters level for specific procedures and processes that would further improve the efficiency and effectiveness of interactions between the agencies and the permit decision-making process for bridge and causeway projects or other activities over, in, or affecting navigable waters of the U.S. Any agreements made between the parties in furtherance of this MOU must be consistent with the terms and provisions of this MOU.

10.e GENERAL PROVISIONS:e

a.e This MOU supersedes the Memorandum of Agreement between USCG and USACE signed by USCG on March 21, 1973, and USACE on April 8, 1973. It also supersedes USACE Regulatory Guidance Letters 85-02 and 82-15.

b. Personnel:e Each party is responsible for all costs of its personnel, including pay and benefits, support, and travel. Each party is responsible for supervision and management of its personnel.e

c. Modification:e This MOU may only be modified by duly signed written agreement of the parties. This MOU will be reviewed annually on or around the anniversary of its effective date, and triennially in its entirety by points of contact in the Programs/Division identified in paragraph 0.g.e

d. Termination:e This MOU may be terminated by either party by providing 30 calendar days written notice to the other party.e

e. Effective Date:e This MOU takes effect beginning on the day after the last party's signature.e

f. Expiration Date:e This MOU shall expire ten years from the effective date, unless the document is resigned by both parties prior to expiration in conjunction with the third triennial review.e

g. Points of Contact: POCs from the following Programs/Division will be used by the parties to communicate in the implementation of this MOU.

U.S. Coast Guard
Office of Bridge Programs (CG-
BRG)
US Coast Guard Stop 7418
2703 Martin Luther King Jr Ave, SE
Washington, DC 20593-7418
202-372-1511

U.S. Army Corps of Engineers, HQ
Civil Works – Regulatory Program and
Engineering & Construction Division
411 G Street, NW
Washington, DC 20314-1000
202-761-0099

11. APPROVED:



WILLIAM H. GRAHAM, JR.
Major General, USA
Deputy Commanding General
for Civil and Emergency Operations

(Date)



W. R. ARGUIN
Rear Admiral, U.S. Coast Guard
Assistant Commandant for Prevention Policy

January 11, 2023

(Date)

APPENDIX A: DEFINITIONS

The definitions below are provided for the purposes of facilitating the interagency coordination envisioned by this MOU, and reflect terminology that either USACE or USCG may employ when coordinating on the review of applications associated with bridge or causeway projects over, in, or affecting navigable waters of the U.S. These definitions may not be appropriate outside of the context of the coordination activities envisioned by this MOU. Definitions not referenced in the body of the MOU are included for clarity.

a. **Alteration**: Alterations are defined separately by USACE and USCG, as follows:

(1) Under USACE's 33 U.S.C. § 408 authority, an alteration is any action by any entity other than USACE that builds upon, alters, improves, moves, obstructs, or occupies an existing USACE project either permanently or temporarily. USACE Section 408 decisions for alterations are referred to as Section 408 permissions.

(2) Under the USCG Bridge Program, alterations include structural changes, replacement, or removal of a bridge (USCG Glossary). Alteration of a bridge under the provisions of the Truman-Hobbs Act "includes changes of any kind, reconstruction, or removal in whole or in part" that may be required by USCG when USCG determines that a bridge is an unreasonable obstruction to navigation. Unreasonably obstructive bridges may be subject to alterations in accordance with the provisions of 33 U.S.C. §§ 511-523.

b. **Advance Approval Waterway**: Waterways that meet USCG's definition of navigable waters of the U.S. (see below), but that the USCG determines are not navigated other than by logs, log rafts, rowboats, canoes, and small motorboats, pursuant to 33 CFR § 115.70 (USCG Bridge Program Instruction, COMDTINST 16590.5D).

c. **Bridge**: Any structure constructed over, on, across, or in navigable waters of the U.S. used for transporting persons, vehicles, commodities, or other physical matter and providing for the passage or flow of water through or under the structure. The term bridge includes all integral elements including (but not limited to) approaches and appurtenances, regardless of the materials used. This definition includes, but is not limited to, highway, rail, or transit bridges; drawbridges; footbridges; zip lines; aerial aqueducts; aerial tramways and conveyors; overhead pipelines; gauging cables; and similar structures of the same function, along with their approaches, fenders, foundations, bridge protective systems (see definition below), and other appurtenances (COMDTINST 16590.5D). This definition does not include causeways, aerial power transmission lines, tunnels, submerged pipelines and cables, dams, dikes, wharves, piers, breakwaters, bulkheads, jetties, and similar structures (except as they may be integral features of a bridge; used in its construction, maintenance, operation, modification, or removal; and/or when they are affixed to the bridge).

d. **Bridge abutment**: A substructure composed of stone, concrete, steel, brick, or timber supporting the ends of a single span bridge or the shoreline edge of a multi-span bridge. The abutment usually supports the approach embankment (USCG Glossary).

e. **Bridge appurtenance:** An attachment or accessory to a bridge, such as the bridge protective system (bridge pier fenders, dolphins, sheer booms, sheer fences, pile clusters, floating protection systems, etc.), clearance gauges, lighting, and other similar fixtures and structures needed for the bridge to safely operate or function (USCG Glossary).

f. **Bridge Permit:** The formal approval by the USCG of the location and plans of a bridge, pursuant to the Federal Bridge Statutes listed in paragraph 4.a.(1), and Acts of Congress authorizing the construction of bridges. A Bridge Permit includes the approved bridge plans. Specifications for plans reviewed and approved by USCG are included in the USCG's Bridge Permit Application Guide.

g. **Bridge pier:** A substructure composed of stone, concrete, brick, steel, or wood built in shaft or block-like form to support the ends of the spans of a multi-span superstructure bridge at intermediate location(s) between its abutments (USCG Glossary), and which transfers the loads from the superstructure to the foundation.

h. **Bridge/Pier protective system:** Protective structures provided on a bridge to fully or partially absorb the vessel collision impact forces or redirect the aberrant vessel away from the pier. The protective structures may be located directly on the bridge such as bridge pier fenders, or independent of the bridge such as dolphins. General types of bridge protective systems include fenders, pile clusters, dolphins, sheer booms, sheer fences, island protection systems, and floating protection systems (USCG Glossary). This term does not include riprap.

i. **Causeway:** A raised road or railway of solid fill across water or marshland, constructed so that the water or wetlands is on both sides of the road or railway, where there are no openings for navigation or water transfer. USCG considers a raised road with any openings as a "bridge" with solid fill approaches, and not a "causeway". Congressional approval is required before USCG may approve a causeway (USCG Glossary).

j. **Culvert:** A conduit or passageway under a road, trail, or other waterway obstruction. A culvert differs from a bridge in that it usually consists of structural material around its entire perimeter (FHWA Publication HIF-11-008, *Hydraulic Engineering Circular No. 26, Culvert Design for Aquatic Organism Passage*). A culvert is not typically conducive for navigation purposes. A culvert could be considered a bridge when it is built in a navigable waterway, where the opening can safely accommodate any navigation, and has a transportation function.

k. **Discharge of dredged material:** Under USACE regulations, any addition of dredged material into, including redeposit of dredged material other than incidental fallback within, the waters of the U.S. (33 CFR § 323.2(d)).

l. **Discharge of fill material:** Under USACE regulations, the addition of fill material into waters of the U.S. This term generally includes, without limitation, the placement of fill necessary for the construction of any structure or infrastructure in a water of the U.S.; the building of any structure, infrastructure, or impoundment requiring rock, sand, dirt, or other material for its construction; causeways or road fills; dams and dikes; and property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments (see 33 CFR § 323.2 (f)) for more details).

m. Drawbridge: Under USCG regulation, a bridge with an operational span that is intended to be opened for the passage of waterway traffic (33 CFR § 117.4).

n. Dredged material: Under USACE regulation, material that is excavated or dredged from waters of the U.S. (33 CFR § 323.2(c)).

o. Falsework: Any temporary structure that facilitates the construction, modification, or removal of a bridge. Types of “falsework” include work platforms, temporary bents, erection towers, and cofferdams (USCG Glossary).

p. Fill material: Under USACE regulation, material placed in waters of the U.S. where the material has the effect of (i) replacing any portion of a water of the U.S. with dry land, or (ii) changing the bottom elevation of any portion of a water of the U.S. Examples of such fill material include, but are not limited to, the following: rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in the waters of the U.S. The term “fill” does not include trash or garbage (33 CFR § 323.2(e)(1)).

q. High Tide Line: The high tide line is the landward lateral extent of USACE Section 404 CWA geographic jurisdiction in tidal waters, when adjacent non-tidal waters of the U.S. are not present (33 CFR § 328.4(b)(1)). It is defined under USACE regulations as the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. 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. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm (33 CFR § 328.3(d)).

r. Horizontal clearance: The horizontal distance, measured normal to the axis (centerline) of the channel, through which the stated vertical clearance is available. Clearance may be between piers (full width of the span), between the bridge protective system, within the margins of the navigation channel, or bank-to-bank in the case of a bridge having no piers or bridge pier protective fender system within the waterway (USCG Permit Application Guide, COMDTPUB P16591.3D).

s. Independent Utility: A project is considered by USACE to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility (33 CFR § 330, F). When determining what constitutes a single and complete project in the USACE Regulatory

Program, independent utility only applies to non-linear projects or when combining nationwide permit and individual permit authorizations for a project per 33 CFR 330.6(d).

t. Least Environmentally Damaging Practicable Alternative (LEDPA): A practicable alternative that demonstrates compliance with the Section 404(b)(1) Guidelines of the CWA (i.e., the practicable alternative that would have the least adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences). Practicable means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of the overall project purpose (33 CFR § 230.10).

u. Local Notice to Mariners: A weekly notice issued by each USCG District to distribute important information affecting navigational safety within the district. The “Local Notice to Mariners” (LRM) reports changes to and deficiencies in aids to navigation maintained by and under the authority of the USCG.

v. Mean High Water: The mean (average) high water line is the lateral shoreward extent of USACE Section 10 RHA geographic jurisdiction in tidal waters. Where a precise determination of the actual location of the line becomes necessary, it should be established by survey with reference to the available tidal datum, preferably averaged over a period of 18.6 years (see 33 CFR § 329.12 for more information). The USCG definition of mean high water is the average of the height of the diurnal high water at a particular location measured over a lunar cycle of 19 years (33 CFR § 2.34). USCG uses mean high water as a reference for measuring waterway depth and width in tidal waters and in determining vertical clearances. USCG requires this on elevation and plan drawings for Bridge Permit applications in tidal areas (COMDTPUB P16591.3D).

w. Mean Low Water: The average height of diurnal low waters at a location measured over a lunar cycle of 19-years (USCG Glossary). USCG requires this on elevation and plan drawings for Bridge Permit applications in tidal areas and may reference this water level in a Bridge Permit review, e.g., in relation to vertical clearances or bridge removal depths (COMDTPUB P16591.3D and COMDTINST 16590.5D).

x. Mean Lower Low Water: The average height of the lower low waters over a 10-year period (USACE, EM 1110-2-1100, Glossary of Coastal Terminology, Change 1, July 31, 2003).

y. Mud Line: The limit of wave action on a coastal seabed below which mud will settle permanently on the bottom. Used as a benchmark by the USCG to reference bridge removal depths (COMDTINST 16590.5D).

z. Natural bottom: The bed or stream bed of a waterway. Used as a benchmark by the USCG to reference bridge removal depths (COMDTINST 16590.5D).

aa. Navigation: The role of USACE with respect to navigation is to provide safe, reliable, and efficient waterborne transportation systems for movement of commerce, national security needs, and recreation (USACE Engineering Regulation 1105-2-100). Per USCG COMDTINST 16590.5D, navigation consists of commerce upon the waterway, as applied by the courts and

law, with recreational boating normally considered as falling within the term “commerce”. USCG makes no distinction between commercial and recreational vessels when evaluating the navigability of a waterway or determining the clearances for a proposed bridge project.

bb. Navigable waters: Navigable waters are defined separately in USACE and USCG regulations, as follows:

(1) Navigable waters of the U.S. are defined in USACE regulations at 33 CFR § 329.4 as those waters 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.

(2) Navigable waters of the U.S., navigable waters, and territorial waters are defined in USCG regulations at 33 CFR § 2.36(a), except where Congress has designated them not to be navigable waters of the U.S., as (a) the territorial seas of the U.S.; (b) internal waters of the U.S. subject to tidal influence; and (c) internal waters of the U.S. not subject to tidal influence, that (i) are or have been used, or are or have been susceptible for use, by themselves or in connection with other waters, as highways for substantial interstate or foreign commerce, notwithstanding natural or man-made obstructions that require portage; or (ii) a governmental or non-governmental body with expertise in waterway improvement determines, or has determined to be, capable of improvement at a reasonable cost (a favorable balance between cost and need) to provide, by themselves or in connection with other waters, highways for substantial interstate or foreign commerce.

cc. Ordinary High Water Mark: Under USACE regulation, that line on the shore established by the fluctuations of water and indicated by physical characteristics such as 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 (33 CFR § 328.3(e) and 33 CFR § 329.11(a)(1)). This is the lateral extent of USACE Section 10 RHA geographic jurisdiction in non-tidal waters (33 CFR § 329.11(a)). When adjacent wetlands are not present, it is also the lateral extent of USACE Section 404 CWA geographic jurisdiction in non-tidal waters (33 CFR § 328.4(c)(1)). USCG uses the ordinary high water (OHW) elevation as a reference for measuring waterway depth and width in non-tidal waters and determining vertical clearances. USCG requires OHW on elevation and plan drawings for Bridge Permit applications in non-tidal areas (COMDTPUB P16591.3D).

dd. Ordinary Low Water Mark: The usual and common or ordinary stage of a river, when the volume of water is not increased by rains or freshets, nor diminished below such usual stage or volume by long continued drought to extreme low water mark. USCG requires this on elevation and plan drawings for Bridge Permit applications in non-tidal areas and may reference this water level in a Bridge Permit review, e.g., in relation to vertical clearances (COMDTPUB P16591.3D).

ee. Pipeline: A conduit of pipe that transports any liquids (e.g., water or petroleum), gas (e.g., natural gas), or slurry (e.g., crushed coal mixed with water) substance. Pipelines crossing navigable waters of the U.S. that are not submerged nor installed below ground (i.e., “overhead”

or elevated pipelines) are considered “pipeline bridges” subject to USCG jurisdiction (COMDTINST 16590.5D).

ff. Safety Zone: A water area, shore area, or water and shore area to which, for safety or environmental purposes, USCG limits access to authorized persons, vehicles, or vessels. A safety zone may be stationary and described by fixed limits, or it may be described as a zone around a vessel in motion (33 CFR § 165.20).

gg. Single and Complete Project: As defined in USACE regulations for the Nationwide Permit (NWP) program, a single and complete project is the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. For example, if construction of a residential development affects several different areas of a headwater or isolated water, or several different headwaters or isolated waters, the cumulative total of all filled areas should be the basis for deciding whether the project will be covered by an NWP. For linear projects, the “single and complete project” (i.e., single and complete crossing) will apply to each crossing of a separate water of the United States (i.e., single waterbody) at that location; except that for linear projects crossing a single waterbody several times at separate and distant locations, each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly-shaped wetland or lake, etc., are not separate waterbodies (33 CFR § 330.2(i)).

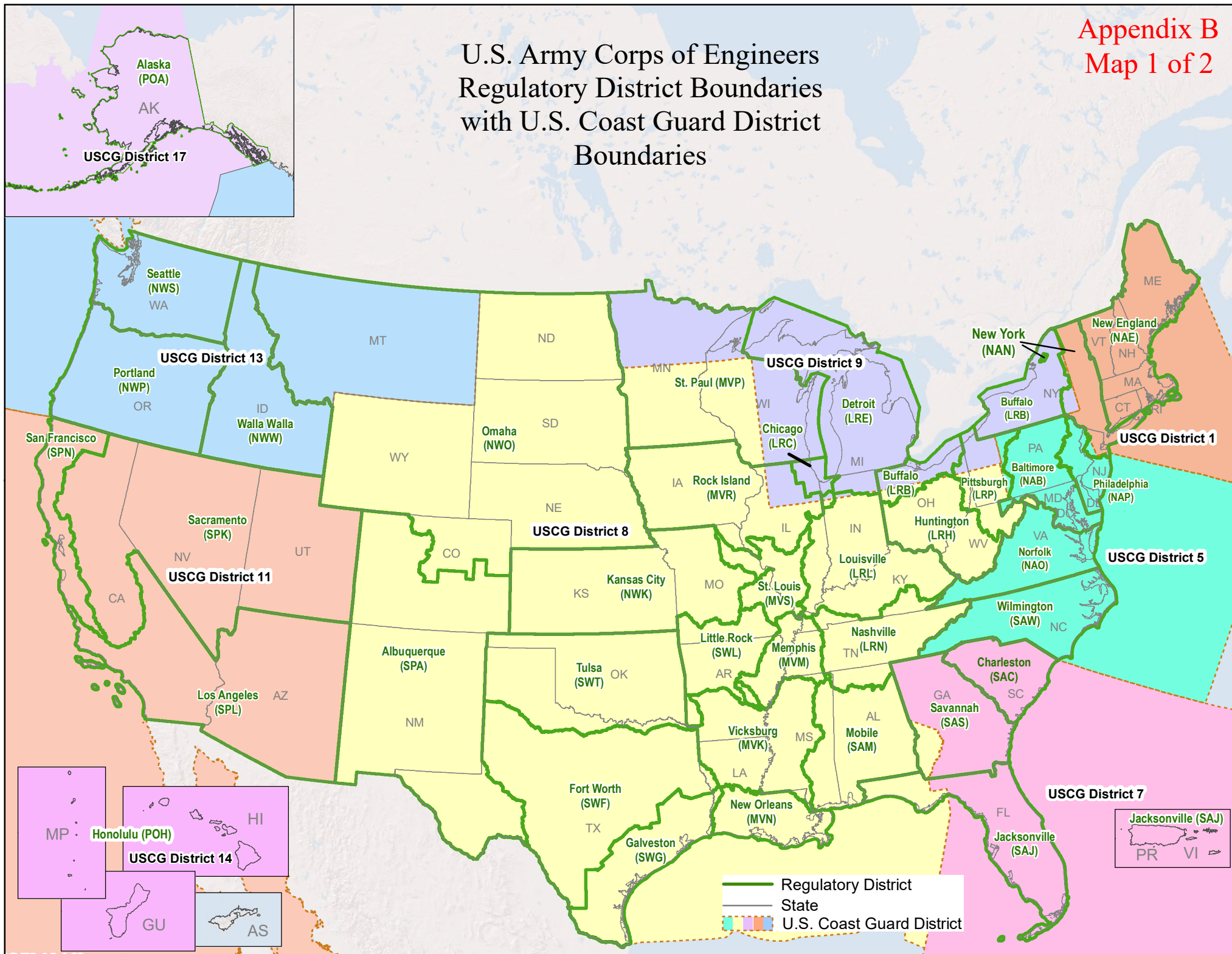
hh. Structure: As regulated by USACE under Section 10 of the RHA, this definition includes, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other obstacle(s) or obstruction (33 CFR § 322.2(b)).

ii. Vertical Clearance: The minimum vertical distance between the lowest part (e.g., member, chord, or steel) of the superstructure spanning the navigation channel and the recognized datum (e.g., MHW, 2% flow line, etc.) at the bridge site, including clearances above the appropriate high water elevation and low water elevation, and in the case of movable bridges, clearances in the open and closed positions. In some situations, vertical clearances should be cited at the margins of the navigation channel and for a bascule bridge, clearances at the tip of the leaves, if not fully open (COMDTPUB P16591.3D).

jj. Waters of the U.S.: The definition refers to the USACE geographic jurisdiction under Section 404 of the CWA and is defined in 33 CFR § 328.

kk. Work: This definition refers to work regulated by USACE under Section 10 of the RHA, and includes any dredging or disposal of dredged material, excavation, filling, or other modification of a navigable water of the U.S. (33 CFR § 322.2(c)).

U.S. Army Corps of Engineers Regulatory District Boundaries with U.S. Coast Guard District Boundaries



U.S. Army Corps of Engineers Civil Works District Boundaries with U.S. Coast Guard District Boundaries

