

PROGRAMMATIC & DISTRICT CHANGES TECHNICAL INITIATIVES

CT ASSOCIATION OF WETLAND SCIENTISTS
2023 ANNUAL MEETING
Berlin, Connecticut
March 9, 2023

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Credit: C. Rose



Credit: A. Morales, USFWS



OVERVIEW OF PRESENTATION

- New England District Reorganization
- NAD Technical Execution Center
- USACE Technical Publications & Training
- USFWS ESA Consultations
- USFWS IPaC Determination Keys
- Mitigation SOP – Threshold Changes
- WOTUS 2023



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NORTH ATLANTIC DIVISION

REGULATORY TECHNICAL EXECUTION CENTER

- To serve New England, NY, Philadelphia, Baltimore and Norfolk Corps Regulatory Districts (ME to VA)
- Center of Operation in North Atlantic Division, Brooklyn, NY
- Operate as a regional production center to facilitate Regulatory decisions, reduce backlog across the Division, develop collaborative tools and provide technical expertise and identify efficiency measures across the North Atlantic region

5 SUBJECT MATTER EXPERTS

- Mitigation
- NEPA
- ESA & EFH
- Enforcement & Jurisdiction
- Section 106 & Tribal Coordination



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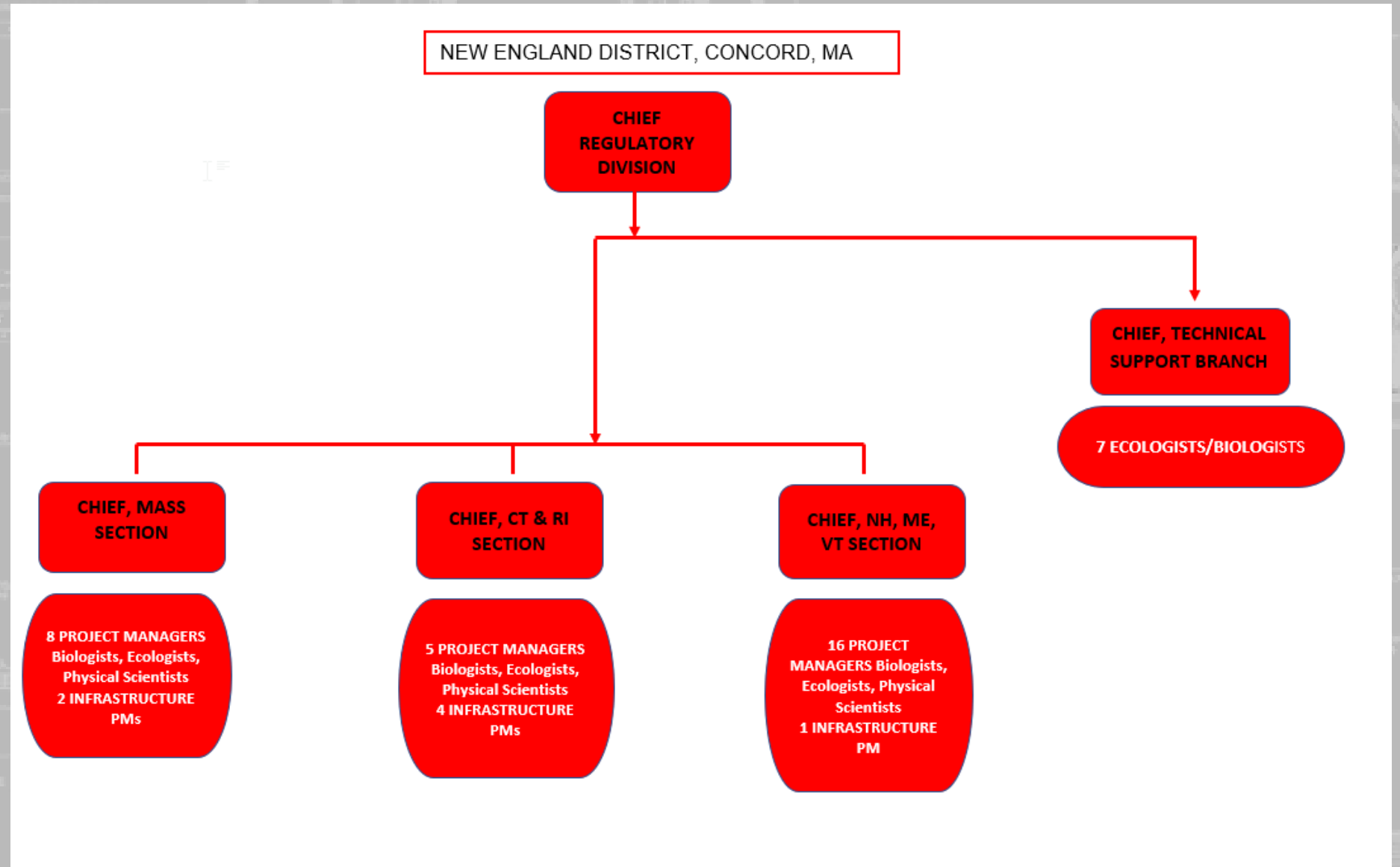
PROJECT MANAGERS WITHOUT
BOUNDARIES TO SERVE AT A
REGIONAL CAPACITY

5 REGIONAL PROJECT MANAGERS

- 5 Senior Project Managers with unique expertise
- Each will serve a Primary Assigned Corps District and up to two other Assigned Districts

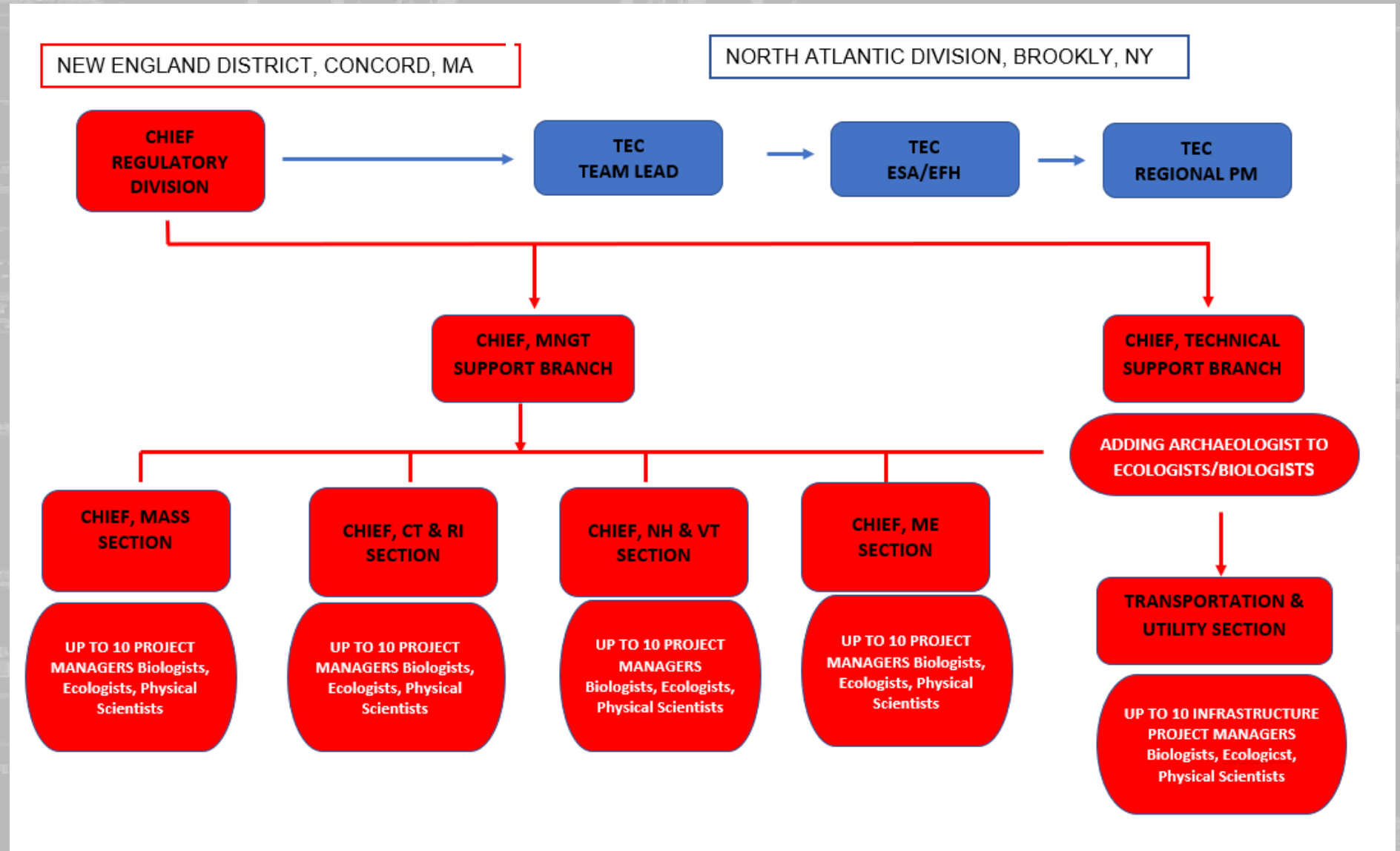
NEW ENGLAND DISTRICT REGULATORY

- Heavy with WRDA Infrastructure Funded Positions
- CT-RI down 3 PMs
- 2 Recent Loses
- 2 New Hires
- 2 TDY Biologists from other USACE Districts



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NEW ENGLAND DISTRICT REGULATORY REORGANIZATION



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TECH REPORT 22-6 FIELD GUIDE TO IDENTIFYING THE UPPER EXTENT OF STREAM CHANNELS

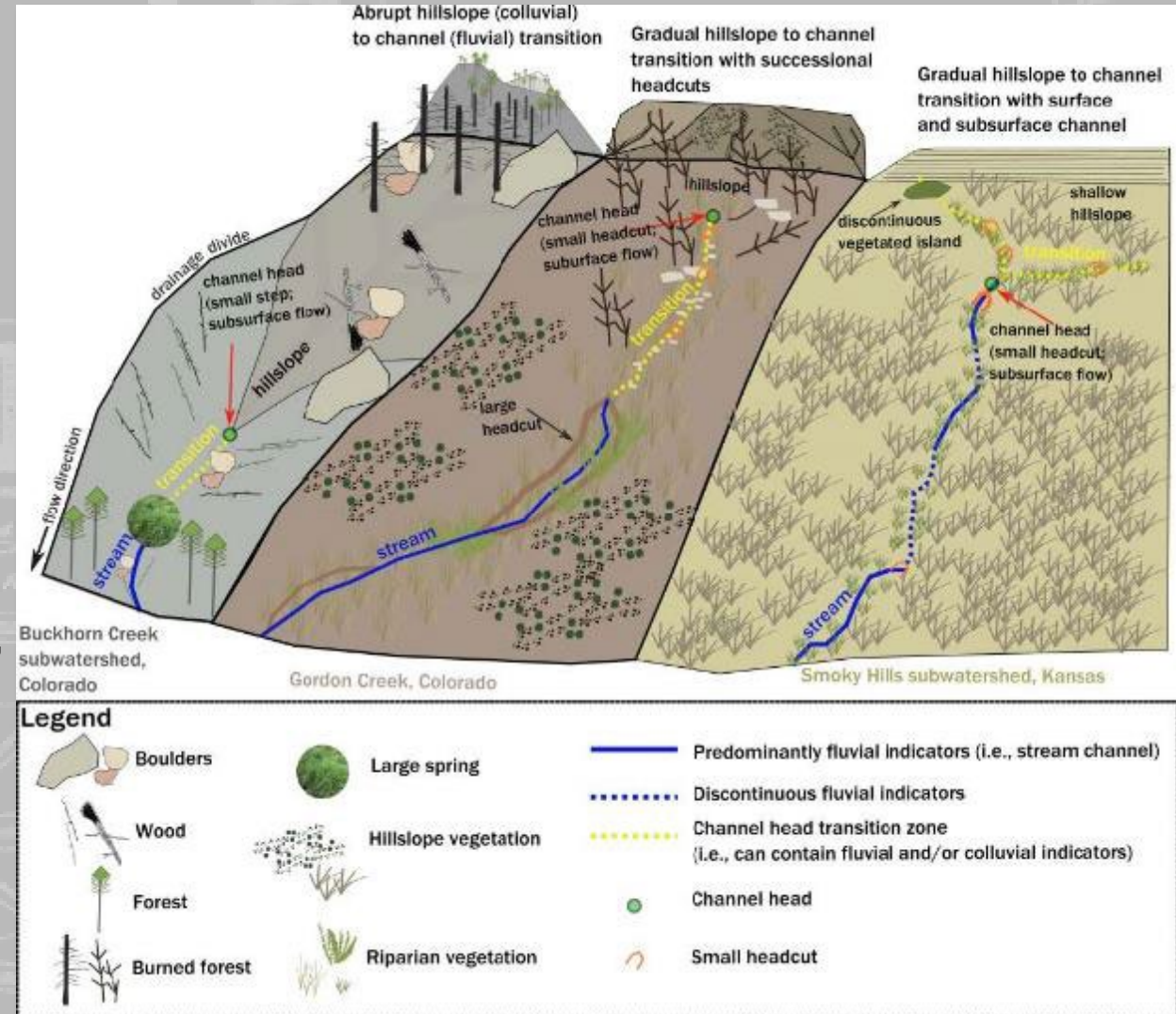
March 2022, USACE ERDC-CRREL

<https://www.erdcrdc.usace.army.mil/>

- To understand how channel heads vary over different landscapes by region
- Provides basis for USACE identification of a tributary
- Use of field and remote resources for identifying hillslope stream headwaters and tributary transitions. Tool Lists & Function analyzed
- CO, HI, KS, KY, VT, NC, TN
- Direct field observation of topography, hydrology, geomorphology, vegetation & underlying sediment is needed to identify the origin of a stream
- Identifies limitations of remote technology & data



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AVAILABLE at <https://erdcrdc-library.erdcrdc.dren.mil/jspui/handle/11681/43560>

STREAM CHANNEL DELINEATION

Applicants/consultants often focus more on wetland boundary delineation and fail to properly document the longitudinal & lateral extents of stream channels within the regulated permit area.

New England District Regulatory & EPA Region 1 currently developing & testing a regional Streamflow Duration Assessment Method (SDAM)

SDAM is a rapid field assessment method that uses hydrological, geomorphological, and/or biological indicators, observable in a single site visit, to classify streamflow duration as perennial, intermittent, or ephemeral at the reach scale & is intended to be used in documentation of federal waters jurisdiction.



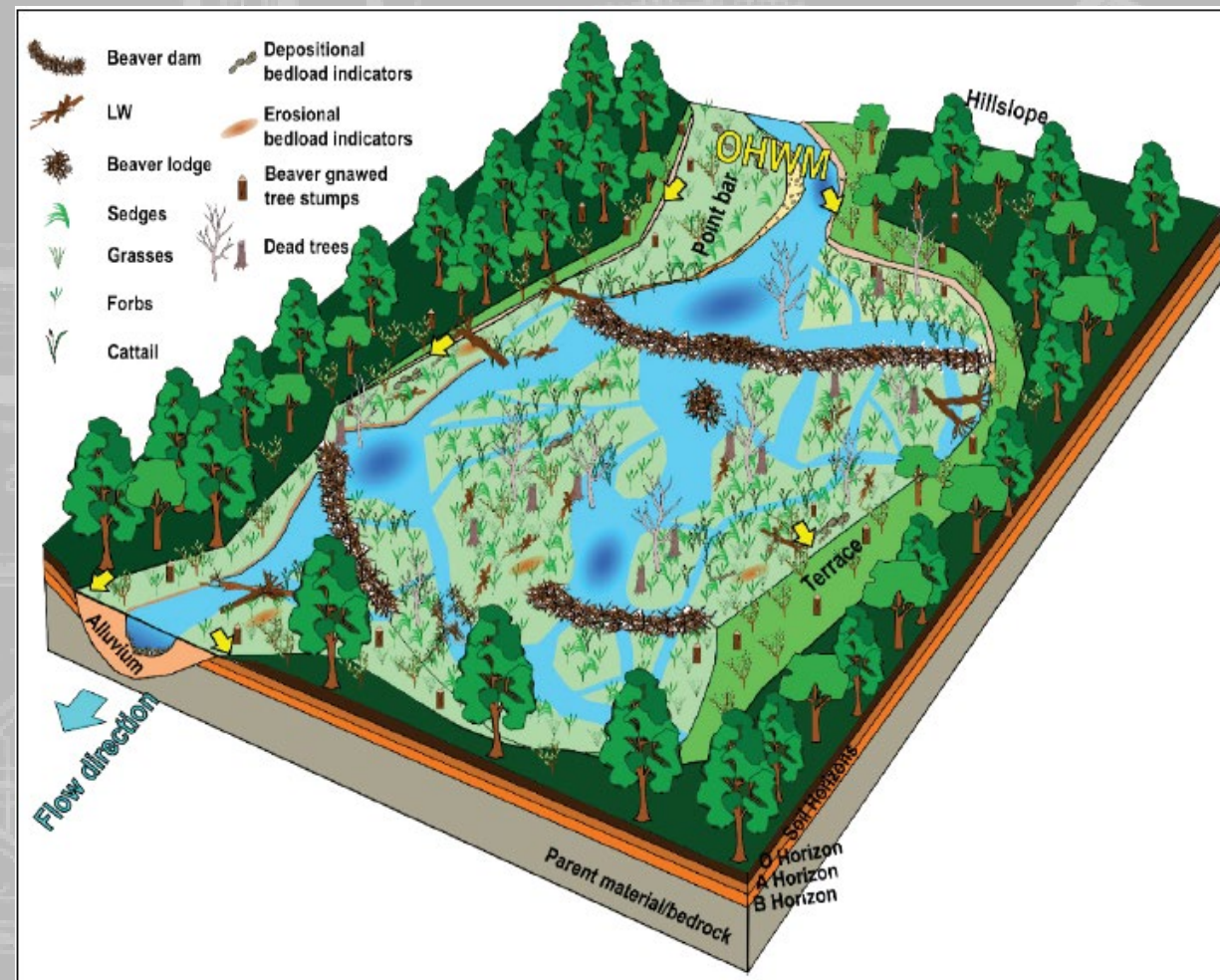
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<https://www.epa.gov/streamflow-duration-assessment/learn-about-streamflow-duration-assessment-methods-sdams>

TECH REPORT 22-26 NATIONAL ORDINARY HIGH WATER MARK FIELD DELINEATION MANUAL FOR RIVERS & STREAMS

November 2022, USACE ERDC-CRREL

- First manual to present a National level assessment and methodology for identification and delineation of the OHWM under the USACE Regulatory Program
- Identifies field indicators used to delineate the location of the OHWM
- Additional regional manuals to be developed to address local conditions & topics not fully covered



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AVAILABLE at <https://erdc-library.erdc.dren.mil/jspui/handle/11681/46102>

TECH REPORT 22-26 NATIONAL ORDINARY HIGH WATER MARK FIELD DELINEATION MANUAL FOR RIVERS & STREAMS

VIRTUAL TRAINING OPPORTUNITY ON THE OHWM DELINEATION MANUAL

- Pre-recorded (anytime)
- Live with NAWM on 3/29/2023



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OPTION 1 (RECORDED WEBINAR)

What: Introduction to the National OHWM Manual

When: Anytime

Who: Dr. Gabrielle David, Research Physical Scientist, U.S. Army Engineer Research and Development Center (ERDC) and the NTC-OHWM

Link to Video:

<https://www.dvidshub.net/video/874184/introduction-interim-draft-national-ordinary-high-water-mark-ohwm-manual>

OPTION 2 (LIVE WEBINAR WITH Q&A)

What: National Association of Wetland Managers (NAWM) Webinar Series | Introduction to the National OHWM Manual

When: March 29, 2023 (2:00 – 3:00 CST); Note: This live webinar will also be recorded and posted to the NAWM website.

Who: Dr. Gabrielle David and the NTC-OHWM

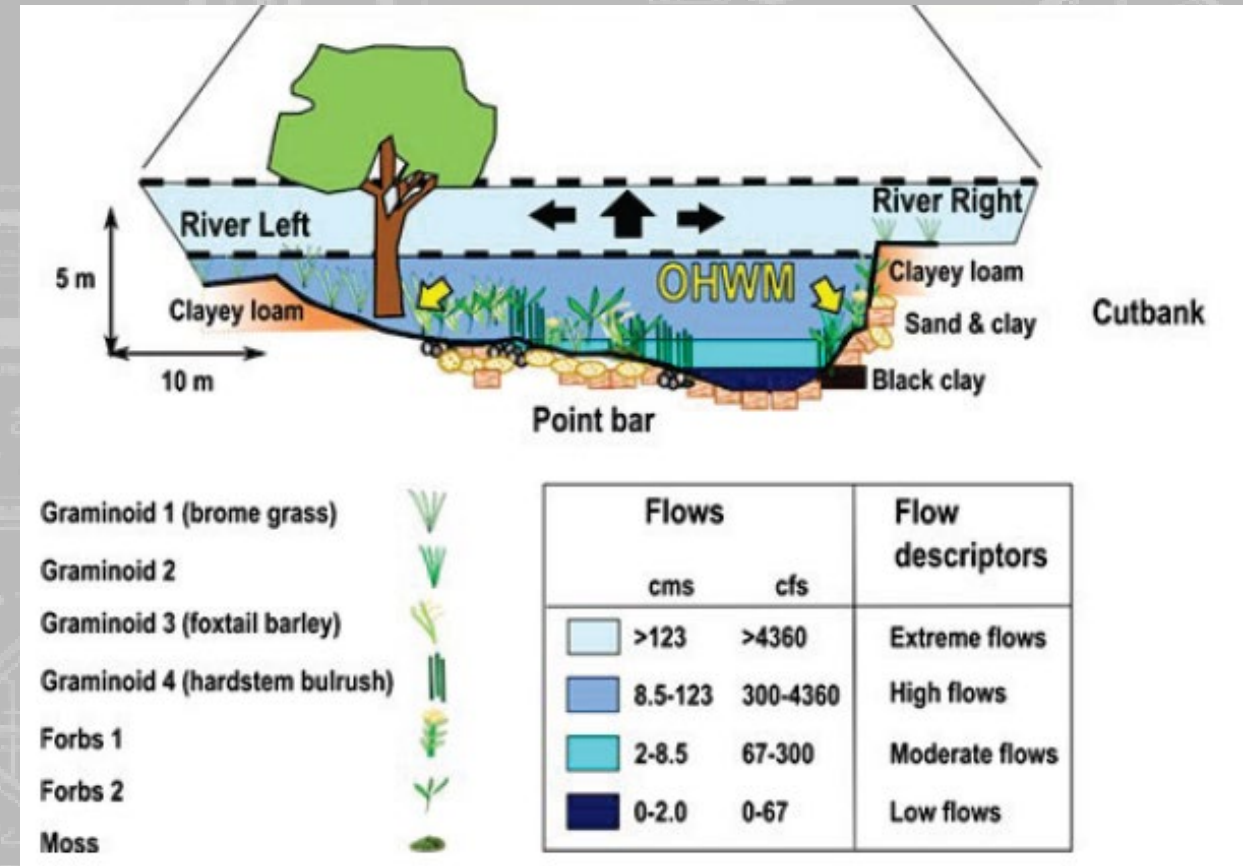
Registration Link:

<https://register.gotowebinar.com/register/89265790934816937>

TECH NOTE 23-1 REMOTE SENSING TOOLS TO SUPPORT ORDINARY HIGH WATER MARK DELINEATION

February 2023, USACE ERDC-WRAP

- Describes remote tools to support ordinary highwater mark (OHWM) identification and delineation
- Describes use of lidar-derived cross sections for identification of physical indicators of OHWM
- Compares Analysis tools: FluvialGeomorph, ArcGIS Pro, Google Earth Pro



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AVAILABLE at <https://erdc-library.erdc.dren.mil/jspui/handle/11681/46448>

USFWS ENDANGERED SPECIES ACT REVIEW AND CONSULTATION

Under section 7(a)(2) of the ESA the Federal government must consider the effects of Federal actions (includes issuance of permits) on Federally listed species and designated critical habitats, including any interrelated or interdependent activities.

- Federal agency consultation is not required if the activity will have “no effect” on listed species
- No Effect is interpreted as “no listed species or their habitats present in the action area*”

The USFWS uses the Information for Planning and Consultation (IPaC) web tool as the basis for ESA consultation in New England



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* NOTE – does not currently apply to Northern long-eared bat



USFWS ESA CONSULTATION IN IPaC

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U.S. Fish & Wildlife Service

LOG IN

IPaC Information for Planning and Consultation



IPaC is a project planning tool that streamlines the USFWS environmental review process

GET STARTED

LOG IN

AVAILABLE at <https://ipac.ecosphere.fws.gov/>

NORTHERN LONG EARED BAT ESA CONSULTATION

- Species-specific 4(d) Rule no longer available after March 31, 2023; short term transitional projects prior to March 6 covered under 4(d) Rule
- On March 6, 2023, FWS released the NLEB interim consultation framework
- Interim framework ensures no delay for 4(d) compliant activities
- IPaC to be updated with NLEB “Rangewide Determination Key” which will replace current 4(d) key

Credit: G. Jordan, USFWS



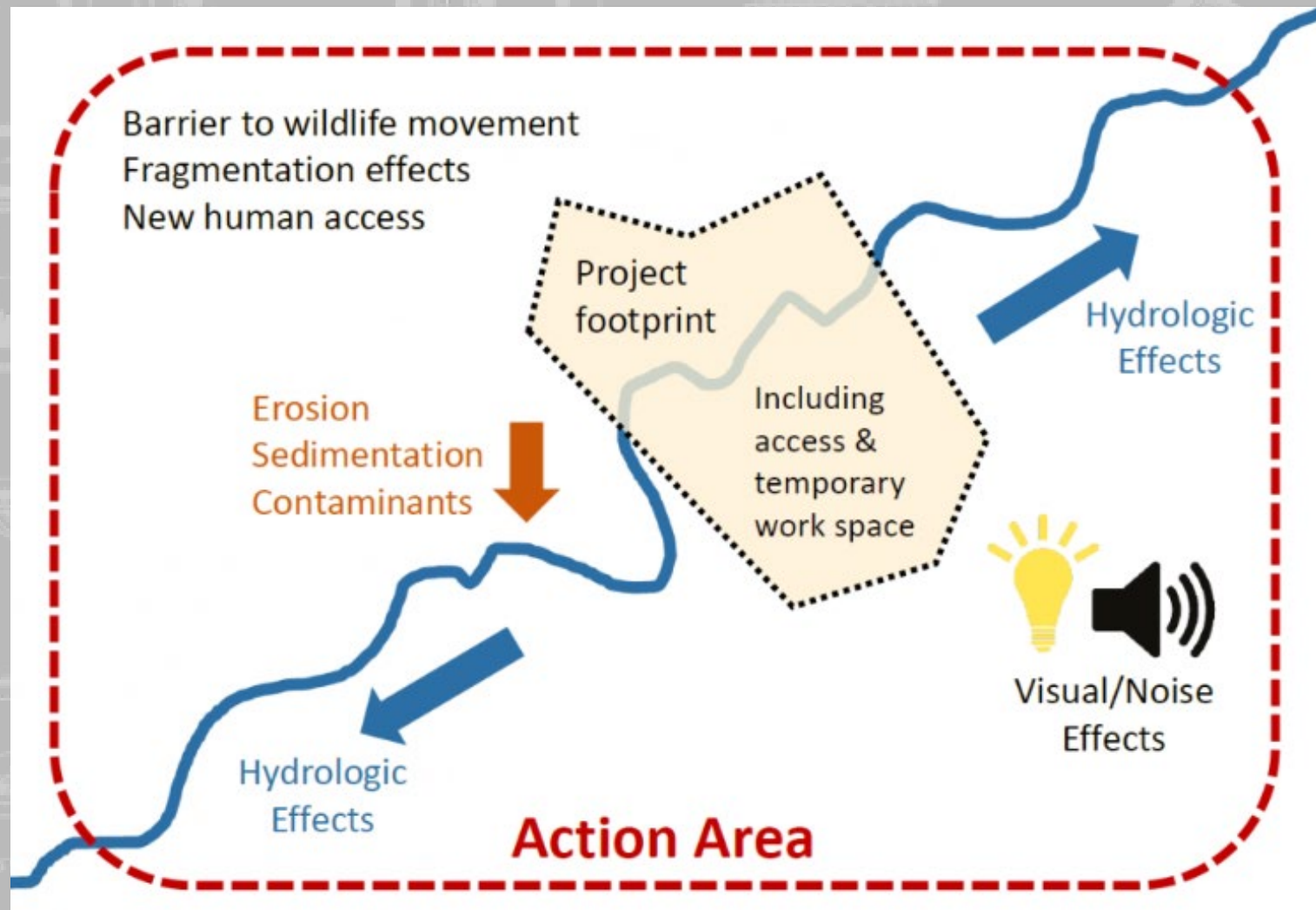
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<https://www.fws.gov/library/collections/interim-consultation-framework-northern-long-eared-bat>

<https://www.fws.gov/sites/default/files/documents/NLEB-Final-Rule-Webinar-508-Compliant-Dec-15.pdf>

USFWS ESA CONSULTATION IN IPaC

- Establish the Project Location
- The Project Location in IPaC is the same as the Action Area under ESA Regulation (50 CFR § 402.02)
- “Action Area means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action”.



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NORTHERN LONG EARED BAT ESA CONSULTATION

Scope of Analysis – Only the Corps can determine if it will enlarge the scope of its ESA Review beyond the defined permit area

CIRCUMSTANCES TO ENLARGE SOA

- Impact in upland has causal physical link to the activity to be authorized by the Corps
- Corps process can avoid impact to critical habitat outside of the Federal permit area
- Substantial number of impact areas or much of a project area is subject to Federal Control



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EVALUATION PROGRESS

Incidental take of northern long-eared bats is prohibited if it occurs as a result of removing a known occupied maternity roost tree or removing trees within 150 feet of a known occupied maternity roost tree during the pup season from June 1 through July 31 or as a result of removing trees from within 0.25 mile of a hibernaculum at any time of year. Please contact your nearest Ecological Services Field Office. To find contact information for the Ecological Services Field Offices, please see www.fws.gov/visit-us.

CONTINUE REVIEW

5. Are you including in this analysis all impacts to federally listed species that may result from the entirety of the project (not just the activities under federal jurisdiction)?

Note: If there are project activities that will impact listed species that are considered to be outside of the jurisdiction of the federal action agency submitting this key, contact your local Ecological Services Field Office to determine whether it is appropriate to use this key. If your Ecological Services Field Office agrees that impacts to listed species that are outside the federal action agency's jurisdiction will be addressed through a separate process, you can answer yes to this question and continue through the key.

☐ Yes

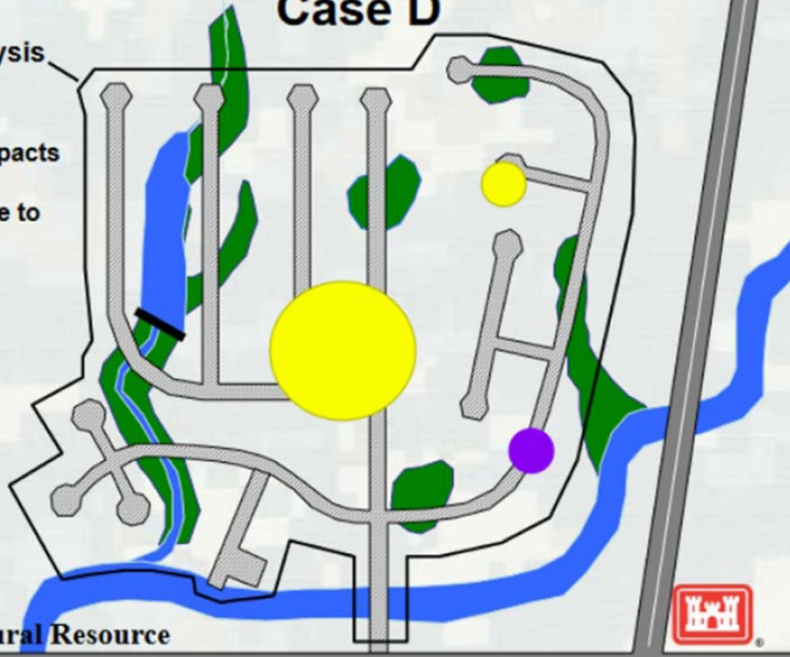
☐ No

SCOPE OF ANALYSIS

Scope of Analysis for Subdivision - Case D

Scope of Analysis

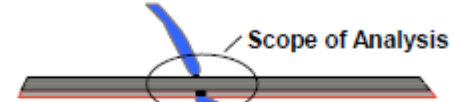
- Substantial Direct Impacts
- Indirect Impacts Close to Permitted Activities
- Several Activities Require Permits
- Federal Control Over Much of Project



● = Historical/Cultural Resource

● = T/E Species/Critical Habitat

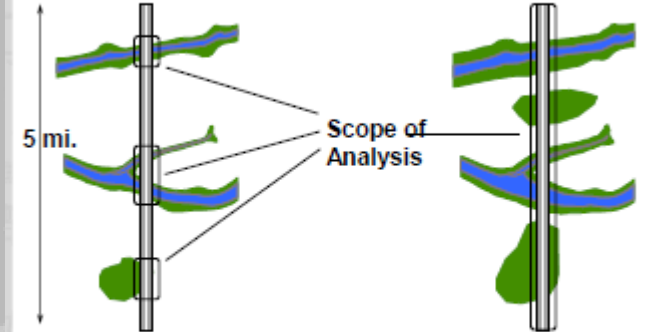
Scope of Analysis for a Simple Road Crossing



- No Federal Involvement Other than Corps Permit
- No other Impacts in Waters of U.S.
- Scope of Analysis limited to directly-affected waters of U.S., and uplands in the immediate vicinity affecting/affected by regulated activity (e.g. Adjacent road alignments, clearing for staging area, equipment access, etc.)



Scope of Analysis for Multiple Road Crossings

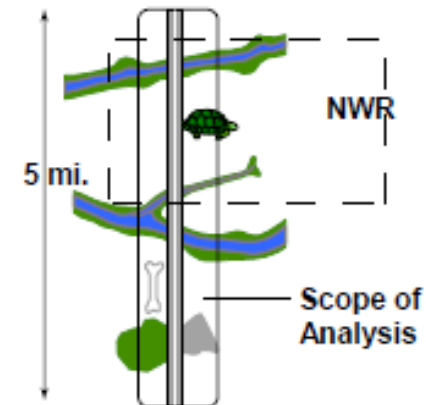


- Waters of U.S. < 1mi., Road Segment = 5mi.
- 3 Permit Areas

- Waters of U.S. 3mi., Road Segment = 5mi.
- 1 Permit Area



Scope of Analysis for Multiple Road Crossings



- Substantial Federal Control (Corps permit + NWR Land)
- Substantial Impacts (Waters of U.S., ESA, and cultural)
- One Permit Area



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USFWS ESA CONSULTATION IN IPaC

- Official Species List (will need to identify Federal permitting agency)
- Define the project

Endangered Species Act Review ◀ BACK EXIT REVIEW ▶

1 Request an official species list — 2 Evaluate Determination Keys — 3 Analyze project (optional) — 4 Download documentation

Step 1: Request an official species list

An official species list is a letter from the local U.S. Fish and Wildlife Service field office that assists in the evaluation of potential impacts of your project. It includes a list of species that should be considered under [Section 7](#) of the Endangered Species Act, a project tracking number, and other pertinent information from the field office.

Does this project require an official species list?

Federal agencies are required to "request of the Secretary of Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action" ([Section 7](#) of the Endangered Species Act).

This requirement applies to projects that are conducted, permitted, funded, or licensed by any Federal agency.

NOTE: Generating an official species list does not start the consultation clock for a project.

YES, REQUEST A SPECIES LIST **SKIP / DOES NOT APPLY**

Define the Project

Define a project at this location to evaluate potential impacts, get an official species list, and make species determinations.

Project name

IPaC Dkey Outreach Depiction

Project description

Describe the location, size, scope, and timing of this project.

To determine how your project may interact with listed or proposed species and their habitats, a detailed account of all project elements is necessary. Prepare a detailed project description, including: OPTIONAL

Project purpose.

Federal nexus, i.e. the federal agency involved and their role.

Maps with enough detail to discern project boundaries and action area. Such maps may include, but are not limited to: vicinity map with address and latitude/longitude in decimal degrees; property boundary or parcel maps; aerial and topographic maps; site plans – plan view, typical cross-sections, and engineering specifications. SHP or KML files are appreciated.

Construction methods, including equipment, materials, description of percussive activities, use of lighting (e.g., type, location), staging areas, access routes, and construction timing (time of year, time of day/night, etc.).

Project and permitting timelines, including time of work when project activities will occur.

Long-term operation and maintenance activities (e.g., mowing, herbicide, etc.).

SAVE

CANCEL



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ESA Species Effect Table AVAILABLE at <https://www.fws.gov/media/nefo-species-determination-table-template>

USFWS ESA CONSULTATION IN IPaC

- FWS recently released Northeast Endangered Species Determination Key developed in coordination with the North Atlantic/Appalachian Division & Great Lakes Ohio River Division USACE
- The Dkeys cover a total of 74 animal, plant, fish and insect species (24 of which are in New England)



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Step 2: Evaluate determination keys

The U.S. Fish and Wildlife Service has performed up-front analyses for certain project types, agencies, and species. The analyses have been compiled into *determination keys*, a simple interview process to help you arrive at a recommended determination for some species in your project area.

There are 4 determination keys that may apply to your project. Each determination key starts with a qualification interview to see if the key is appropriate for your project.

- Northeast Endangered Species Determination Key
You completed the latest version of this key, published November 4, 2022, and reached a determination of may affect for species or critical habitats covered by the key.

[VIEW / MODIFY](#)

[VIEW CONSISTENCY LETTER](#)

- Northern Long-eared Bat Rangewide Determination Key
You completed the latest version of this key, published March 6, 2023, and reached a determination of no effect for species or critical habitats covered by the key.

[VIEW / MODIFY](#)

[VIEW CONSISTENCY LETTER](#)

The following determination keys cannot be evaluated because they apply to species that already have determinations set:

- FHWA, FRA, FTA Programmatic Consultation for Transportation Projects affecting NLEB or Indiana Bat
Release date: February 2, 2023
- Northern Long-Eared Bat (NLEB) Consultation and 4(d) Rule Consistency
Release date: February 15, 2023

AVAILABLE at <https://ipac.ecosphere.fws.gov/>

USFWS ESA CONSULTATION IN IPaC

- If your Official Species List includes northern long-eared bat you will need to complete the NLEB “Rangewide Determination Key”
- If species other than the NLEB are triggered by your Action Area the “Northeast Endangered Species Determination Key” will be available.

Example of species-specific exclusion/criteria for dwarf wedgemussel in the DKey

Projects that intersect the AOI for Atlantic pigtoe, clubshell, dwarf wedgemussel, fanshell, fluted kidneyshell, James spinymussel, northern riffleshell, pink mucket, purple cat's paw, rabbitsfoot, rayed bean, round hickorynut, snuffbox, sheepnose, spectaclecase, tan riffleshell, tubercled blossom pearlymussel and yellow lance mussels must not:

1. *Make any hydrological changes*
2. *Have any direct impacts to a stream or river (e.g., Horizontal Directional Drilling (HDD), hydrostatic testing, stream/road crossings, new stormwater outfall discharge, dams, other in-stream work, etc.)*
3. *Have the potential to impact the riparian zone or indirectly impact a stream/river (e.g., cut and fill; horizontal directional drilling; construction; vegetation removal; pesticide or fertilizer application; discharge; runoff of sediment or pollutants; increase in erosion, etc.)*

Avoiding direct or indirect impacts to the stream and riparian zone, including changes to hydrology, will ensure adverse effects are insignificant and/or discountable.

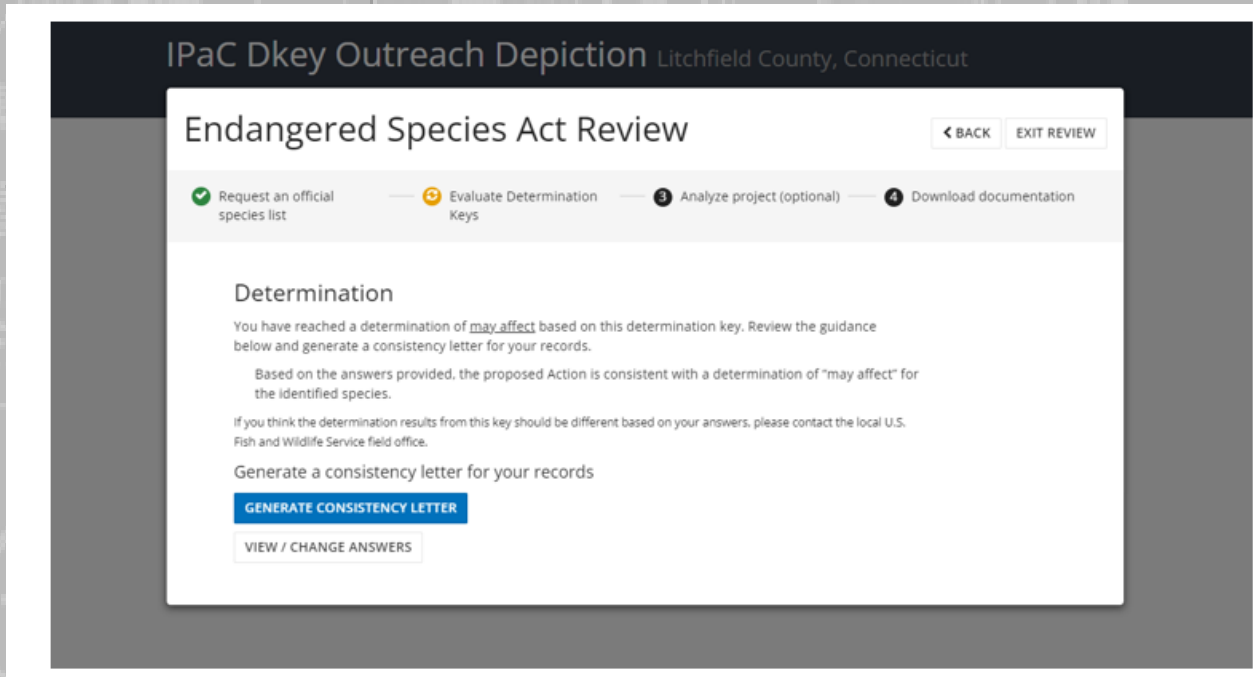


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<https://www.fws.gov/media/northeast-determination-key-standing-analysis>

USFWS ESA CONSULTATION IN IPaC

USFWS bases their Area of Interest (AOI) in the Dkey on current and historical habitat to include freshwater spring-fed wetlands and or drainages that influence such features where core habitat may be present or was historically present. All freshwater wetlands are “assumed” bog turtle wetland habitat until proven otherwise by Phase 1 Bog Turtle Survey.



Credit: M. Everson, USFWS



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USFWS ESA CONSULTATION IN IPaC

- The Corps recognizes that in the historical and extant region of western Connecticut bog turtle habitat is generally screened for areas underlain by calcareous bedrock that possesses suitable soils and hydrology. However, the Dkey for the bog turtle is a regional tool and does not make such a distinction.
- Absent a Phase 1 FWS Bog Turtle survey to document that the habitat is not suitable for the species the key will result in a “May Affect” determination of impact which means that the work is not covered by the online consultation.
- Activities with determination of “Conclusion Recommended” or “May Affect” must be subject to PCN for informal Section 7 consultation with the USFWS absent completion of the Bog Turtle Survey.

Species-specific exclusion/criteria for Bog Turtle in the Dkey:

Projects that intersect the AOI for bog turtle must not:

- *Harm the species directly by including activity within 300 feet of a freshwater wetland*
- *Harm the species indirectly by including activity that could impact the quantity or quality of water available within ½ mile of a known or assumed bog turtle wetland*



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Credit: Jonathan Mays

ESTABLISHING COMPENSATORY MITIGATION THRESHOLDS IN 2023

- To offset environmental losses which are specifically identifiable and reasonably likely to occur
- To provide predictable and consistent compensatory mitigation requirements
- Serve as starting point for development of appropriate compensatory mitigation of waters, wetlands and special aquatic sites

Resource¹ / Activity	Non-Tidal	Tidal
Stream ²	200 Linear Feet	200 Linear Feet
Bank Stabilization	500 Linear Feet ³	500 Linear Feet
Other Open Waters ⁴	Project Dependent	Project Dependent
Wetland	5000 Square Feet	1000 Square Feet
Vernal Pool ⁵	All	N/A
SAV	Project Dependent	25 Square Feet
Mudflat	N/A	1000 Square Feet
Intertidal ⁶	N/A	1000 Square Feet

¹ Loss of aquatic resource that is permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that can change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody.

² For loss of stream function because of culverting/piping/bridges and/or projects not meeting the New England District Best Management Practices for stream crossings; stream relocation; fill for dam/other structure; any discharge that involves loss or removal of the stream bed and banks.

³ Includes both banks

⁴ These waters are classified as Lacustrine, and Subtidal(Marine and Estuarine)) in the Classification of Wetlands and Deepwater Habitats of the United States, Cowardin *et al.* 1979

⁵ Assumes Corps has Jurisdiction

⁶ If pre-construction notification(or similar review permit review trigger) is/or was required as a result adverse impacts on aquatic resources



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WATERS OF THE UNITED STATES 2023 RULE



	WOTUS 2023	NAVIGABLE WATERS RULE
Traditional Navigable Waters & Territorial Seas (a)(1)	Jurisdictional by Regulation	Jurisdictional by Regulation
Interstate Waters (a)(1)	Jurisdictional by Regulation	Jurisdictional if it met one of the categories of (a)(1) –(a)(4)
Impoundments of waters above (a)(2)	Jurisdictional by Regulation	Jurisdictional if impoundment of TNW or perennial or intermittent tributary & contributes flow to TNW in “typical year”
Tributaries (a)(3)	Jurisdictional if meets “relatively permanent standard” OR “significant nexus” standard	Jurisdictional if perennial or intermittent
Adjacent Wetlands (a)(4)	Jurisdictional if meets “relatively permanent standard” OR “significant nexus” standard	Jurisdictional if touching and direct hydrologic surface connection in typical year
Other Waters – Intrastate lakes, ponds, streams & wetlands that do not fall within the prior categories (a)(5)	Jurisdictional if meets “relatively permanent standard” OR “significant nexus” standard (if wetland)	Jurisdictional if meets one of the other categories and contributes flow to NW in “typical year

WATERS OF THE UNITED STATES 2023 RULE

Final Rule Framework

Categories of Jurisdictional Waters

(a)(1)

- (i) Traditional Navigable Waters
- (ii) Territorial Seas
- (iii) Interstate Waters

(a)(2) Impoundments of Jurisdictional Waters

(a)(3) Tributaries

(a)(4) Adjacent Wetlands

(a)(5) Intrastate lakes and ponds, streams, and wetlands that do not fall within (a)(1) – (a)(4)



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WATERS OF THE UNITED STATES 2023 RULE

Key Concepts

- The “relatively permanent standard” means relatively permanent, standing or continuously flowing waters connected to paragraph (a)(1) waters, and waters with a continuous surface connection to such relatively permanent waters or to paragraph (a)(1) waters.
- The “significant nexus standard” means waters that either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of paragraph (a)(1) waters.



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WATERS OF THE UNITED STATES 2023 RULE

Significantly Affect – applies to tributaries, adjacent wetlands, and (a)(5) waters

- The final rule text specifies that “significantly affect” requires a “material influence” on the chemical, physical, or biological integrity of an (a)(1) water.
- The final rule text includes **functions** to be assessed:
 - (A) Contribution of flow;
 - (B) Trapping, transformation, filtering, and transport of materials (including nutrients, sediment, and other pollutants);
 - (C) Retention and attenuation of floodwaters and runoff;
 - (D) Modulation of temperature in waters identified in paragraph (a)(1) of this section; or
 - (E) Provision of habitat and food resources for aquatic species located in waters identified in paragraph (a)(1) of this section.



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QUESTIONS?



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