U.S. Army Corps of Engineers (ACOE) – New England District

- Maine Project Office
  442 Civic Center Drive #350
  Augusta, Maine 04330
  (207) 623-8367
  *Note – this is a new location/address*

- New England District - Regulatory Division

- USACE Regulatory Branch nationally
Presentation Objectives

1. “When do I need a Corps of Engineers permit?”
   (for a stream crossing)

2. “What do I need to submit to receive a Corps of Engineers permit and what’s the process?”
What Triggers Corps Jurisdiction?

- **Section 10 – Rivers and Harbors Act of 1899**
  - Requires a permit for work in navigable waters of the U.S.
  - Includes virtually all temporary and permanent work
  - Navigable waters = all tidal waters and other waterways that have been specifically declared navigable by Congress

- **Section 404 – Clean Waters Act of 1972**
  - Requires a permit for dredged & fill material discharges in waters of the U.S.
  - Includes ANY temporary or permanent fill as well as certain excavation/demolition activities
  - Waters of U.S. = all navigable waters and all others (lakes, ponds, streams, and adjacent wetlands

**NOTE:** DEP/LUPC or town permits are not a substitute for a Corps permit. Most stream crossings are within Corps jurisdiction, but not all require a written permit.
PERMIT AUTHORITIES

Section 10 - Rivers & Harbor Act of 1899

- Requires permits for work in navigable waters of the U.S.
- Work includes the installation of permanent or temporary structures, filling activities, and dredging. Any work potentially affecting the course, location, condition or capacity of such waters.
- Navigable waters in Maine: All tidal waters; Penobscot River to Medway; Kennebec River to Moosehead Lake; & Maine portion of Lake Umbagog.
- Federal jurisdictional boundary: mean high water line

Virtually any tidal crossing requires a Corps permit.
PERMIT AUTHORITIES
Section 404 of the Clean Water Act

- Requires permits for the discharge of dredged or fill material into all waters of the U.S. including navigable waters as well as their tributaries and adjacent wetlands.
- Federal jurisdictional boundaries:
  - High tide line in tidal/navigable waters; ordinary high water line in navigable waters
  - Wetland boundaries are delineated using the Jan. ‘87 Corps Wetland Delineation Manual & Regional Supplement

Note: Crossings generally involve filling (cofferdams, abutments, bedding/backfill, riprap aprons, etc) and therefore generally require some kind of Corps permit.
TYPES OF PERMITS

- Maine General Permit (Maine GP)
  - Abbreviated permit process (60 days)
  - Reserved for minimal impact projects
  - Two categories of review; requires notification form to Corps (Cat 1) and requires permit application to Corps (Cat 2)

  Most stream crossing projects fall under general permits

- Individuals Permits
  - Reserved for more complex or controversial projects
  - Require public notice & full public interest review
  - Permits processed within 120 days
TYPES OF PERMITS

- **Stream Crossings and Maine GP (Category 1)**
  - Special Condition 45
  - **Requirements** for Category 1 Eligibility
    - Only applies to inland waters, i.e. freshwater; tidal crossings go Cat 2
    - Generally shall not impede high flows or obstruct necessary life-cycle movements of indigenous aquatic life
    - Footprint of impact in stream & wetlands must be <15,000 s.f.
    - Not in Atlantic salmon Critical Habitat or DPS and no effects to other federally listed species
    - No slip lining
    - No unconfined temporary or permanent fill in flowing waters
    - In stream work between July 15 & September 30
    - New & replacement crossings – must be spans that meet 1.2 x BFW. Spans = 3 sided boxes, arches, bridges or open bottom culverts
    - Establish/maintain a natural bottom within structure
    - Established stream bed must be appropriate to natural conditions e.g. gravel on gravel

**MUST SUBMIT CATEGORY 1 NOTIFICATION FORM & PLANS!!!!**
Diagram of the 1.2x Bank Full Width Design Standard
Stream Crossings and Maine GP (Category 2) Special Condition 45

- Recommendations for Category 2 Eligibility (requires permit application to Corps)
  - Same general requirement to pass flows & aquatic life
  - Same time of year restriction is preferred
  - Same preference for spans but oversized embedded culverts can be found acceptable (GP has recommendations for minimum embedment). 1.2 x BFW remains the target design. No multiple pipes.
  - Slip lining/Invert lining still not preferred but can be acceptable on a case-by-case basis e.g. with built-in baffles or weirs to aid in passage
  - Footprint of stream & wetland impact must be < 3 acres
  - No adverse impact to federal endangered species or Critical Habitat

Category 2 requires application to and written approval to the Corps and allows for case specific determination by reviewers
Types of Permits

- Stream Crossings and Individual Permits
  - Reserved for crossings that do not meet GP standards (rare)
  - Reserved for any crossing that adversely affects federal endangered species (formal Section 7 consultation required)
  - Case by case determination
  - Pre-application coordination and site visits critical
  - State/Federal fisheries agency input likely
  - Emphasis on avoidance & minimization
  - Compensatory mitigation may be required

Note: New programmatic approach to be presented by USFWS can streamline the individual permit and general permit processes significantly.
What do I submit; What’s the process?

- **APPLICATION**
  - DEP, LUPC or Corps application form accepted
  - Clear, reproducible, & legible plans (locus map, plan view, & cross section(s))
  - Official Species List & Historic Notifications
  - Clear summary of project purpose & need
  - Clear summary of project impact
  - Discussion of avoidance and minimization measures

- **AGENCY REVIEW** *(May require Endangered Species Consultation – new streamlined processes are now available)*

- **PERMIT ISSUANCE**

- **COMPLIANCE & ENFORCEMENT**
ACOE Contact Information

- **Jay Clement**: All Maine DOT projects.
  - [Jay.L.Clement@usace.army.mil](mailto:Jay.L.Clement@usace.army.mil) 623-8367 ext 1; or 978-318-8488

  - [Rodney.A.Howe@usace.army.mil](mailto:Rodney.A.Howe@usace.army.mil) 623-8367 ext 5; or 978-318-8496

- **Shawn Mahaney**: All counties covered by DEP’s Eastern ME & Northern ME Regional Offices; LUPC’s Ashland, Downeast, Greenville & Millinocket Offices.
  - [Shawn.B.Mahaney@usace.army.mil](mailto:Shawn.B.Mahaney@usace.army.mil) 623-8367 ext 4; or 978-318-8492

- **LeeAnn Neal**: All counties covered by DEP’s Central ME & Southern ME Regional Offices to include Kennebec (Westside of the Kennebec River), Franklin, Somerset, Sagadahoc counties; Brunswick, Freeport & Harpswell in Cumberland County; all area covered by LUPC’s Augusta & Rangeley Offices.
  - [LeeAnn.Neal@usace.army.mil](mailto:LeeAnn.Neal@usace.army.mil) 623-8367 ext 2; or 978-318-8498

- **Peter Tischbein**: All counties covered by DEP’s Central ME & Southern ME Regional Offices to include Kennebec (Eastside of the Kennebec River), Knox, Lincoln, Waldo Counties; Arrowsic & Bath in Sagadahoc County.
  - [Peter.Tischbein@usace.army.mil](mailto:Peter.Tischbein@usace.army.mil) 623-8367 ext 3; or 978-318-8497