



New England District

Persistence

"Nothing in this world can take the place of persistence. Talent will not; nothing is more common than unsuccessful men with talent. Genius will not; unrewarded genius is almost a proverb. Education will not; the world is full of educated derelicts.

Persistence and determination alone are omnipotent. The slogan 'Press On' has solved and always will solve the problems of the human race."

- Calvin Coolidge [Amherst '94]

DAM REMOVAL NEEDN'T BE DIFFICULT



New England District



CAREFUL PLANNING, THE RIGHT CONTRACTOR(S)



New England District




AND SOLID MEDIA COVERAGE



New England District





**DAM REMOVAL & PERMITTING
CORPS OF ENGINEERS
REGULATORY ISSUES**

EWRI DAM REMOVAL WORKSHOP

2/10/05 KNOXVILLE, TN

PRESENTED BY: JAY CLEMENT

US ARMY CORPS OF ENGINEERS

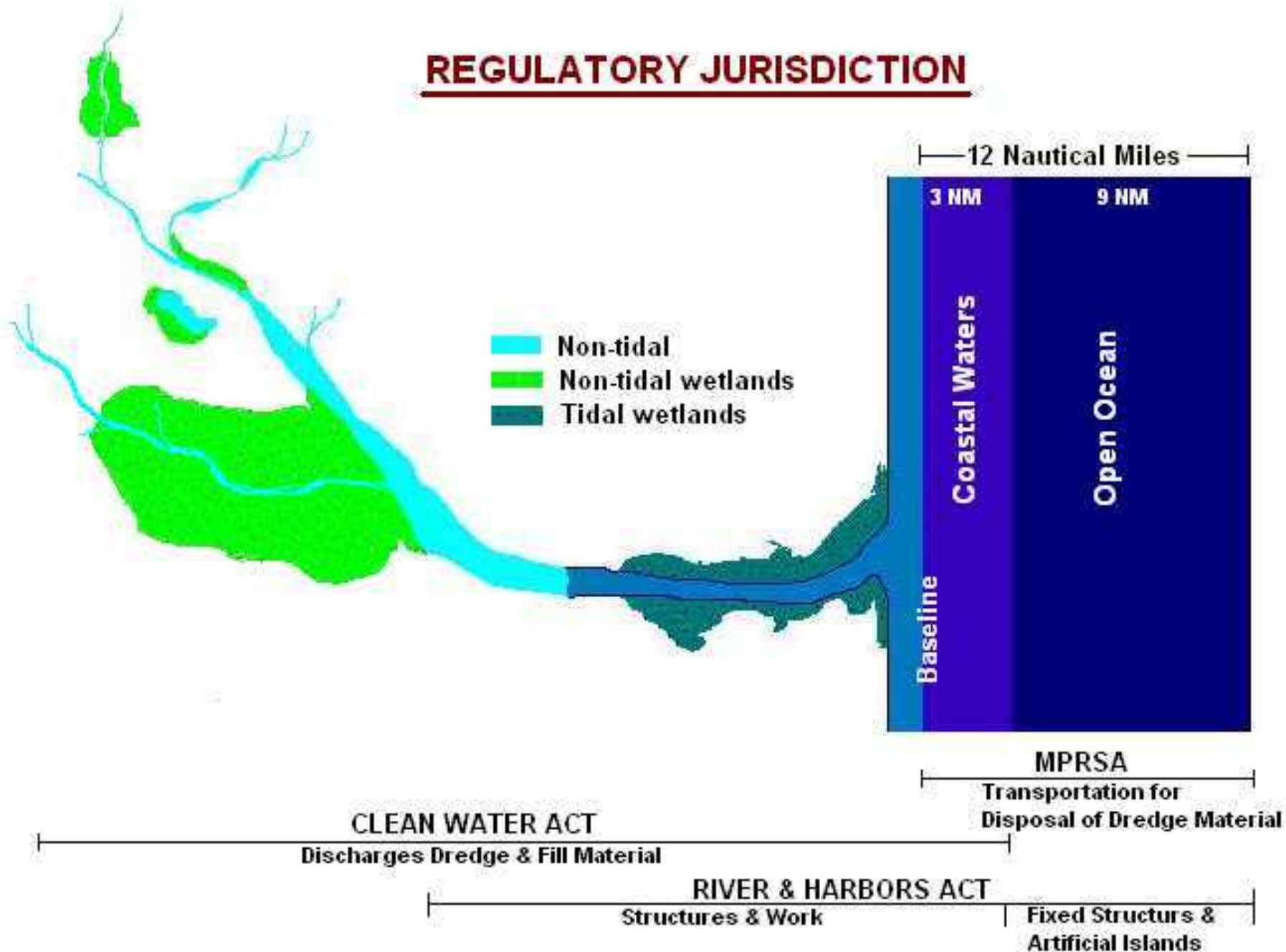


PERMIT AUTHORITIES

New England District

- **Section 10 of the Rivers and Harbors Act of 1899**
- **Section 404 of the Clean Water Act of 1972**
- **Section 103 of the Marine Protection, Research Sanctuaries Act of 1972**

REGULATORY JURISDICTION





PERMIT AUTHORITIES

What triggers Corps jurisdiction?

New England District



Section 10 of the Rivers & Harbors Act

- Work in Navigable Waters of the U.S.
- Includes virtually all temporary & permanent work
- Navigable waters = all tidal waters & other waterways that have been specifically declared navigable by Congress



Section 404 of the Clean Water Act

- The discharge of dredged or fill material into 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



DAMS & CORPS JURISDICTION

New England District

🏗️ Dam removal in *navigable waters* requires a permit under Section 10 of the Rivers & Harbors Act. Example: Edwards Dam on the Kennebec River.

🏗️ Dam removal that requires the temporary or permanent discharge of dredged or fill material into *Waters of the U.S.* to facilitate the removal process requires a permit under Section 404 of the CWA.

Most fall into this category. Fill may include:

- Temporary cofferdams
- Certain excavation e.g. bulldozing
- Temporary access roads/work pads
- Secondary work e.g. erosion control, infrastructure maintenance, recreation access

Can Dam Removal not involve the Corps? - Yes



DAMS & CORPS JURISDICTION

New England District

Corps regulatory authority cannot generally initiate dam removal unless:

- We determine that a dam's continued existence or condition potentially affects the course, location, condition or capacity of navigable waters.
- We determine that the dam was constructed without authorization from the Corps (rare case).
- We identify dam removal as an available and practicable option for compensation for some other project. This requires interagency coordination and buy in from the dam owner and possibly a separate permit.

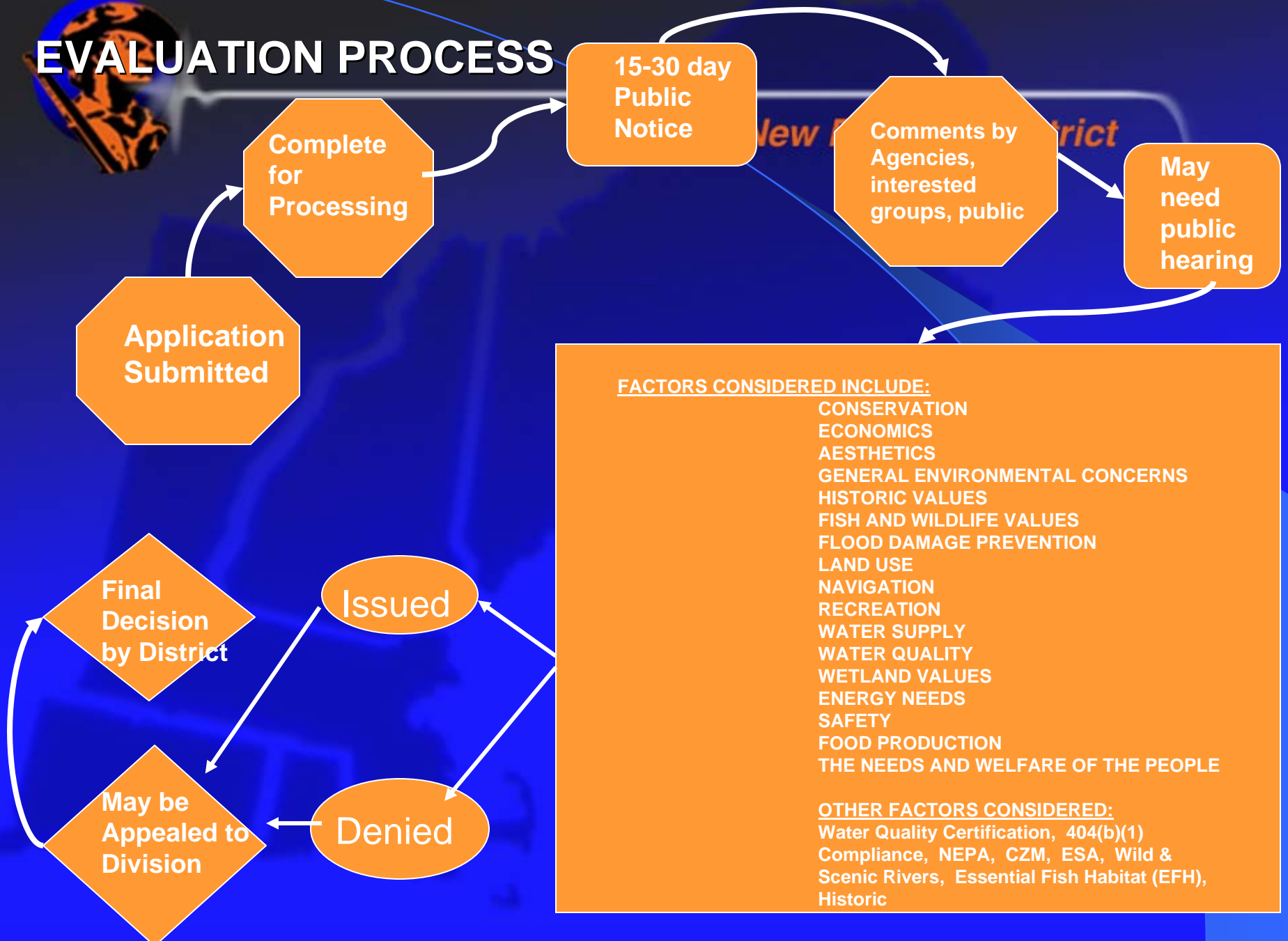


TYPES OF PERMITS

New England District

- **NATIONWIDE PERMITS (NWP)**
 - 44 CURRENTLY AVAILABLE
- **GENERAL PERMITS (GP)**
 - REGIONAL GENERAL PERMITS
 - PROGRAMMATIC GENERAL PERMITS
- **LETTERS OF PERMISSION (LOP)**
- **INDIVIDUAL PERMITS**

INDIVIDUAL PERMIT EVALUATION PROCESS



FACTORS CONSIDERED INCLUDE:

- CONSERVATION
- ECONOMICS
- AESTHETICS
- GENERAL ENVIRONMENTAL CONCERNS
- HISTORIC VALUES
- FISH AND WILDLIFE VALUES
- FLOOD DAMAGE PREVENTION
- LAND USE
- NAVIGATION
- RECREATION
- WATER SUPPLY
- WATER QUALITY
- WETLAND VALUES
- ENERGY NEEDS
- SAFETY
- FOOD PRODUCTION
- THE NEEDS AND WELFARE OF THE PEOPLE

OTHER FACTORS CONSIDERED:

- Water Quality Certification, 404(b)(1)
- Compliance, NEPA, CZM, ESA, Wild & Scenic Rivers, Essential Fish Habitat (EFH),
- Historic



PUBLIC INTEREST REVIEW

New England District

PUBLIC INTEREST REVIEW

PUBLIC INTEREST REVIEW IS THE PROCESS THE CORPS USES TO EVALUATE THE PROBABLE AND CUMULATIVE IMPACTS OF THE PROPOSED ACTIVITY AND ITS INTENDED USE ON THE PUBLIC INTEREST. THE PERMIT PROGRAM IS DESIGNED TO INSURE:

- 1. THAT OUR NATION'S WATER RESOURCES ARE SAFEGUARDED.**
- 2. THAT OUR NATION'S WATER RESOURCES ARE USED IN THE BEST INTEREST OF THE PUBLIC.**
- 3. THAT ENVIRONMENTAL, SOCIAL, AND ECONOMIC CONCERNS OF THE PUBLIC ARE CONSIDERED.**

CONTINUED....



PUBLIC INTEREST REVIEW

A balancing process.....

New England District

FACTORS CONSIDERED INCLUDE:

- **CONSERVATION**
- **ECONOMICS**
- **AESTHETICS**
- **GENERAL ENVIRONMENTAL CONCERNS**
- **HISTORIC VALUES**
- **FISH AND WILDLIFE VALUES**
- **FLOOD DAMAGE PREVENTION**
- **LAND USE**
- **NAVIGATION**
- **RECREATION**
- **WATER SUPPLY**
- **WATER QUALITY**
- **WETLAND VALUES**
- **ENERGY NEEDS**
- **SAFETY**
- **FOOD PRODUCTION**
- **THE NEEDS AND WELFARE OF THE PEOPLE**

TYPICAL ISSUES



New England District

- HISTORIC/CULTURAL
- FISHERIES IMPACTS/BENEFITS
- WILDLIFE HABITAT IMPACTS/BENEFITS
- DOWNSTREAM FLOODING
- EROSION
- UPSTREAM WETLAND LOSSES/GAINS
- SEDIMENT TRANSPORT
- LOSS OF TRADITIONAL RECREATION
- LOSS OF ENERGY PRODUCTION
- WATER QUALITY IMPACTS/BENEFITS

LESS TYPICAL ISSUES



New England District

- ICE
- ENDANGERED SPECIES IMPACTS/BENEFITS
- IMPACTS TO EXISTING INFRASTRUCTURE
- CONTAMINATED SEDIMENTS
- LAND USE CHANGES & IMPACTS TO PROPERTY VALUES
- AESTHETICS (IMPOUNDMENT V. FREE FLOWING)



WHAT FINALLY GETS A PERMIT?

New England District

- **Complies with regulations/guidelines**
- **Benefits outweigh the Impacts**
- **Unavoidable impacts are mitigated to the maximum extent practicable**
- **Not contrary to the public interest**



COORDINATION & COLLABORATION

AN ACRONYM JUNGLE.....

New England District

<u>Federal</u>	<u>State</u>	<u>Local</u>	<u>Other</u>
US EPA	DEP	Citizen Groups	NRC
US FWS	DMR	Riparian Owners	Nature Conservancy
NMFS	IF&W	Cons. Commissions	TU
NRCS/USDA	BPL	Sporting Clubs	DU
US DOT	DHS	DPW	NWF
DOI	SHPO	Planning Boards	American Rivers
BIA	DOT		Sierra Club
ACHIP	Tribes		Audubon
FERC	Legislature		NFWF
FEMA	CZM		Coastal America
NPS	SPO		
Congress			
BLM			
USGS			



REGULATORY AGENCIES

New England District

- ✚ Corps of Engineers – Section 10/404
- ✚ FERC – Licensing/Decommissioning
- ✚ EPA – NPDES/Air Emissions
- ✚ State Dept. of Environmental Protection – Permit/WQC/Stormwater Permit/Air License/Shore. Zoning
- ✚ Local – Must approve removal if Town participates in a Flood Insurance Program

IN MOST CASES, FERC WILL ASSUME LEAD FEDERAL AGENCY STATUS UNDER NEPA



DAM REMOVAL & FERC

New England District

- **FERC DAM SAFETY AUTHORITY**
- **RELICENSING PROCESS**
 - **REMOVAL ORDER DECISION**
 - **SETTLEMENT AGREEMENT DECISION**
- **LICENSE SURRENDER BY OWNER/OPERATOR**



COMMON REQUIREMENTS

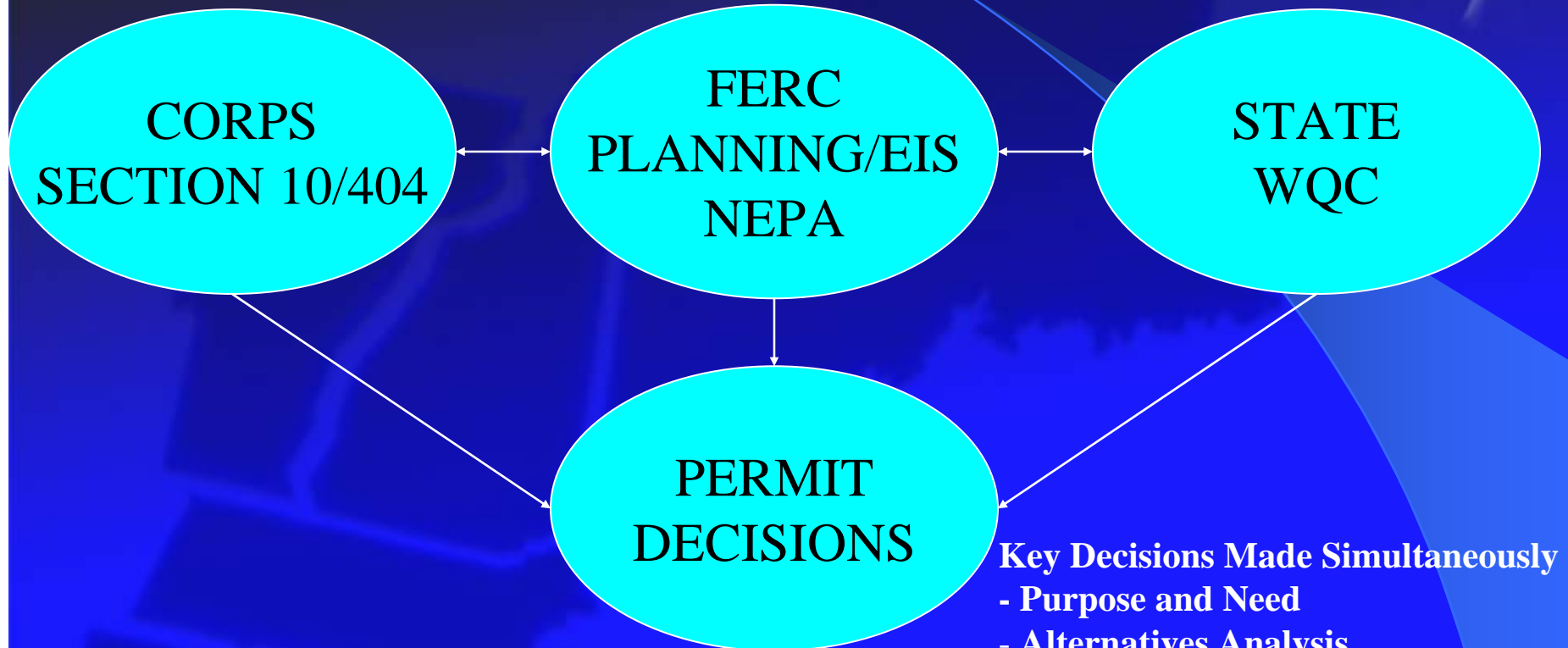
New England District

- NEPA - EA/EIS
- 404(b)(1) GUIDELINES
- PUBLIC INTEREST REVIEW
- WQC, CZM
- SECTION 7 ENDANGERED SPECIES ACT
- SECTION 106 NATIONAL HISTORIC
• PRESERVATION ACT
- PUBLIC NOTICE OR PUBLIC HEARING
- MITIGATION POLICY
- 404(q) PERMIT EVALUATION PROCEDURES

PROCESS INTEGRATION



New England District



2 YEARS +/- (Major EIS Project)

Versus

3 or more in the past

Key Decisions Made Simultaneously

- Purpose and Need
- Alternatives Analysis
- Preferred Alternative/LEDPA
- Mitigation

Integrates Federal/State Resource Agency Partners

Reduces duplication of effort and promotes Regulatory Reform



New England District

Milestones for Corps Coordination

MILESTONE

EIS STAGE

Meet with applicant

(Scoping)

Establish Cooperating Agencies

(Scoping)

Determine Purpose and Need

(Draft EIS)

Corps selects LEDPA

(Final EIS)

Corps issues 404/10 permit
w/special conditions-mitigation

(ROD)

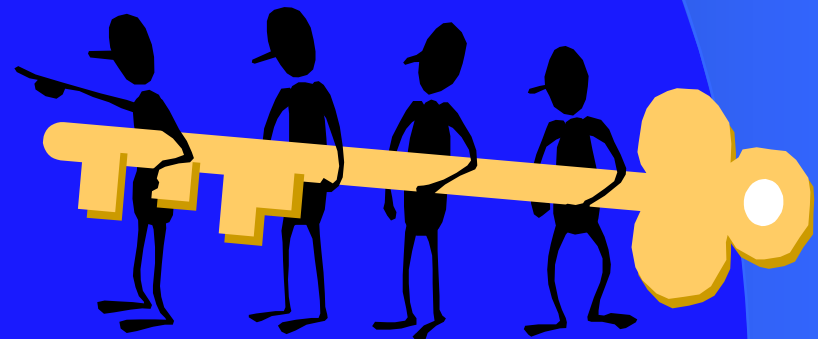
TO SUMMARIZE....

New England District

NAVIGATING THE
PERMITTING PROCESS
OR.....



THE KEY TO
PERMITTING SUCCESS





NAVIGATING THE PROCESS: TIPS FOR SUCCESS

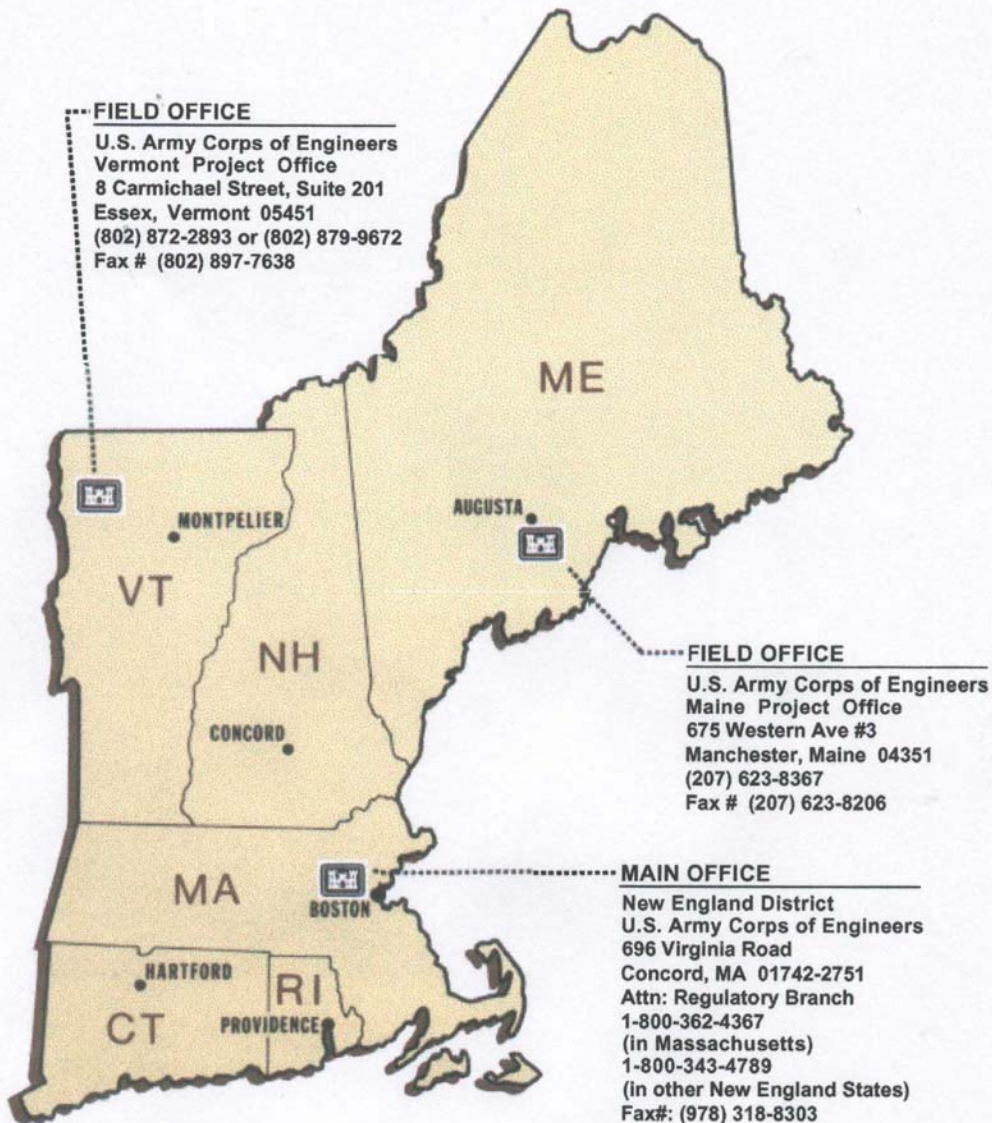
New England District

- Early coordination with permitting agencies
- Avoid duplication of effort
- Add permitting to critical path
- Early coordination with resource agencies
- Public Outreach!
- *Always remember that permitting agencies must be regulators, they can not be dam removal proponents.*

REGULATORY DIVISION PROFILE

New England District

- 50 Member interdisciplinary staff
- 6 N.E. states regulated. Boundaries along state lines.
- Field offices located in ME (5 staff members) and VT (3 staff members).
- 4,177 actions taken in CY'02 (1,135 actions in Maine)
- Over 98% of permit actions taken in less than 60 days.
- Technical support for wetland delineations and dredged material management.



**US Army Corps
of Engineers**
New England District



QUESTIONS

?????

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