



Back to the Basics: Bridge Permitting

When should a State Department of Transportation (DOT) call their United States Coast Guard (USCG) District Bridge Office (DBO) about bridge permits?

Why should State DOTs call their USCG DBO, and which DBO oversees their State?

What does the USCG have to do with Federal Highway Administration (FHWA) jurisdiction?

These are questions the FHWA Office of Project Development and Environmental Review, the USCG, State DOTs, and FHWA Division Offices are working together to answer.

In 2014, FHWA, USCG, the Federal Transit Administration, and the Federal Railroad Administration signed a Memorandum of Understanding and the FHWA and USCG signed a Memorandum of Agreement (MOA) outlining the following steps to accelerate Federal bridge permitting and prevent unnecessary and unexpected delays caused when bridges are not designed to meet USCG navigation requirements:

1. Determine bridge design concepts that would unreasonably obstruct navigation prior to or concurrent with the National Environmental Policy Act (NEPA) scoping process;
2. Complete concurrent environmental evaluation and bridge permit application processing; and
3. Prepare coordinated environmental documents that result in a shared or joint environmental decision document, where practicable, and concurrent decision documents at all other times.

Look What's New!

The Office of Project Development and Environmental Review recently released [eNEPA 2.0](#), the latest version of the free, web-based interagency collaboration tool for developing environmental documentation, such as an environmental impact statement or environmental assessment, needed for projects. Utilizing feedback received from users, the updated tool includes customizable workflows, improved document review functions, and a dashboard.

This issue of Successes in Stewardship discusses the impetus behind the coordination between FHWA and USCG, describes the components of the MOA, explains the USCG bridge permit review and approval process, and lists information about recent trainings and additional resources.

Confusion over USCG Jurisdiction and Project Delays Prompt FHWA and USCG to Review Bridge Permit Process

Many State DOTs are simply unaware that they need to involve the USCG or they involve them too late in the bridge permitting process, leading to project delays. Additionally, some agencies make assumptions based on misunderstandings of the history and development of USCG jurisdiction and implement their own bridge permitting procedures. In many cases when these misunderstandings or miscommunications occur, the final bridge designs lack sufficient vertical and horizontal clearances to meet the reasonable needs of navigation, meaning the permits cannot be issued.

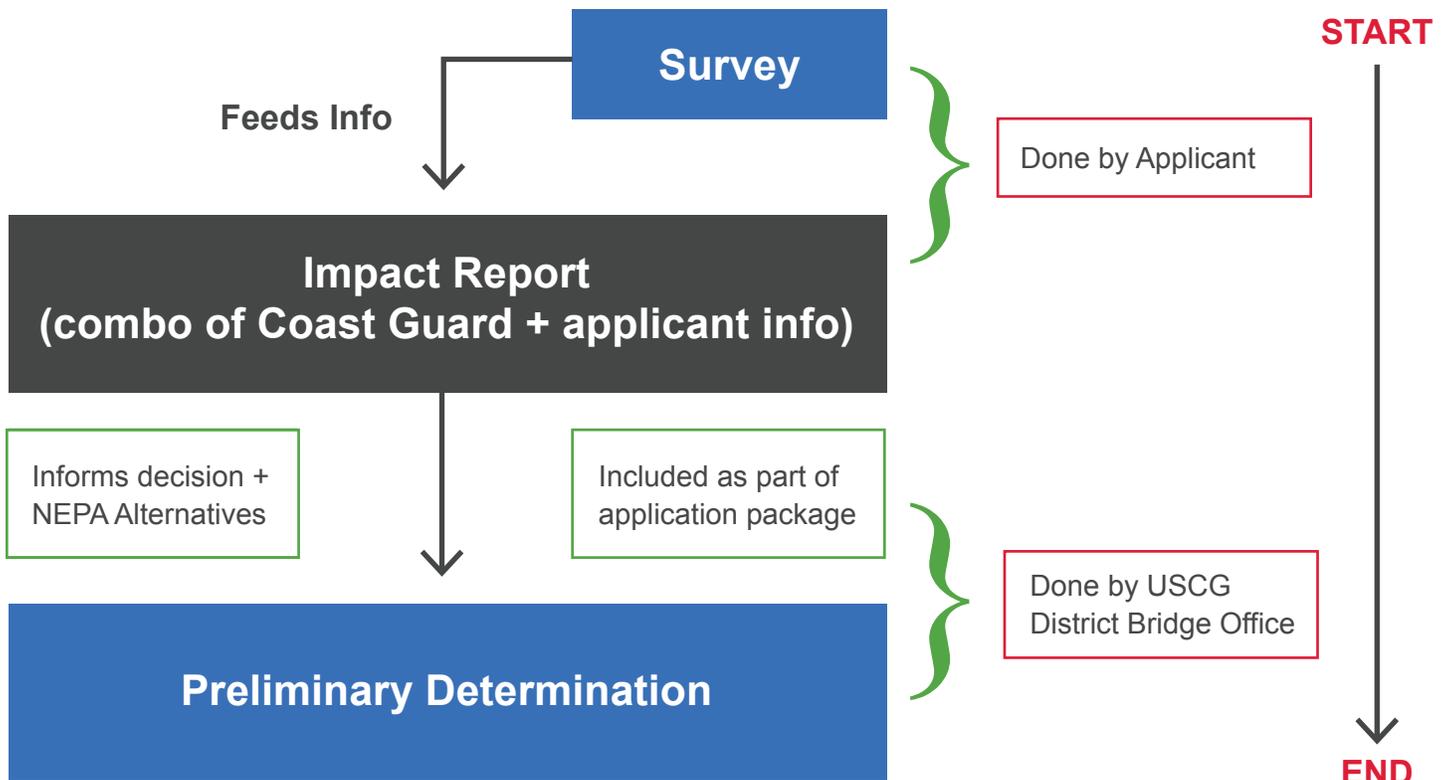
The USCG has an obligation to ensure a bridge's final permitted design does not impinge upon the "reasonable needs of navigation" for that specific waterway, while serving the needs of land transportation. The USCG has jurisdiction over "navigable waters" of the United States, as defined in 33 C.F.R. § 2.36 as well as by specific congressional and judicial designations. Any time a State DOT or other bridge owner is planning a bridge project over water of any type, they should contact their local DBO to verify if the waterway falls under USCG jurisdiction, and if the project will require a USCG bridge permit. In addition, if a bridge project involves the U.S. Army Corps of Engineers, the applicant should contact their DBO to validate USCG jurisdiction.

After a DBO determines the waterway is under USCG jurisdiction, the applicant might be required to complete a Navigation Impact Report (NIR) in consultation with the DBO. This report informs the DBO's preliminary determination of the reasonable needs of navigation at the project site. This determination provides the vertical and horizontal clearance requirements for the bridge project and can be used to then inform the NEPA alternatives that will be analyzed during the NEPA process.

What Are Navigable Waters? (33 C.F.R. § 2.36)

1. Territorial seas of the U.S.;
2. Internal waters of the U.S. that are subject to tidal influence;
3. 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, having expertise in waterway improvement, determined to be capable of improvement at reasonable cost (a favorable balance of cost and need) to provide, by themselves or in connection with other waters, highways for substantial interstate or foreign commerce.

Preliminary Navigation Clearance Determination Process

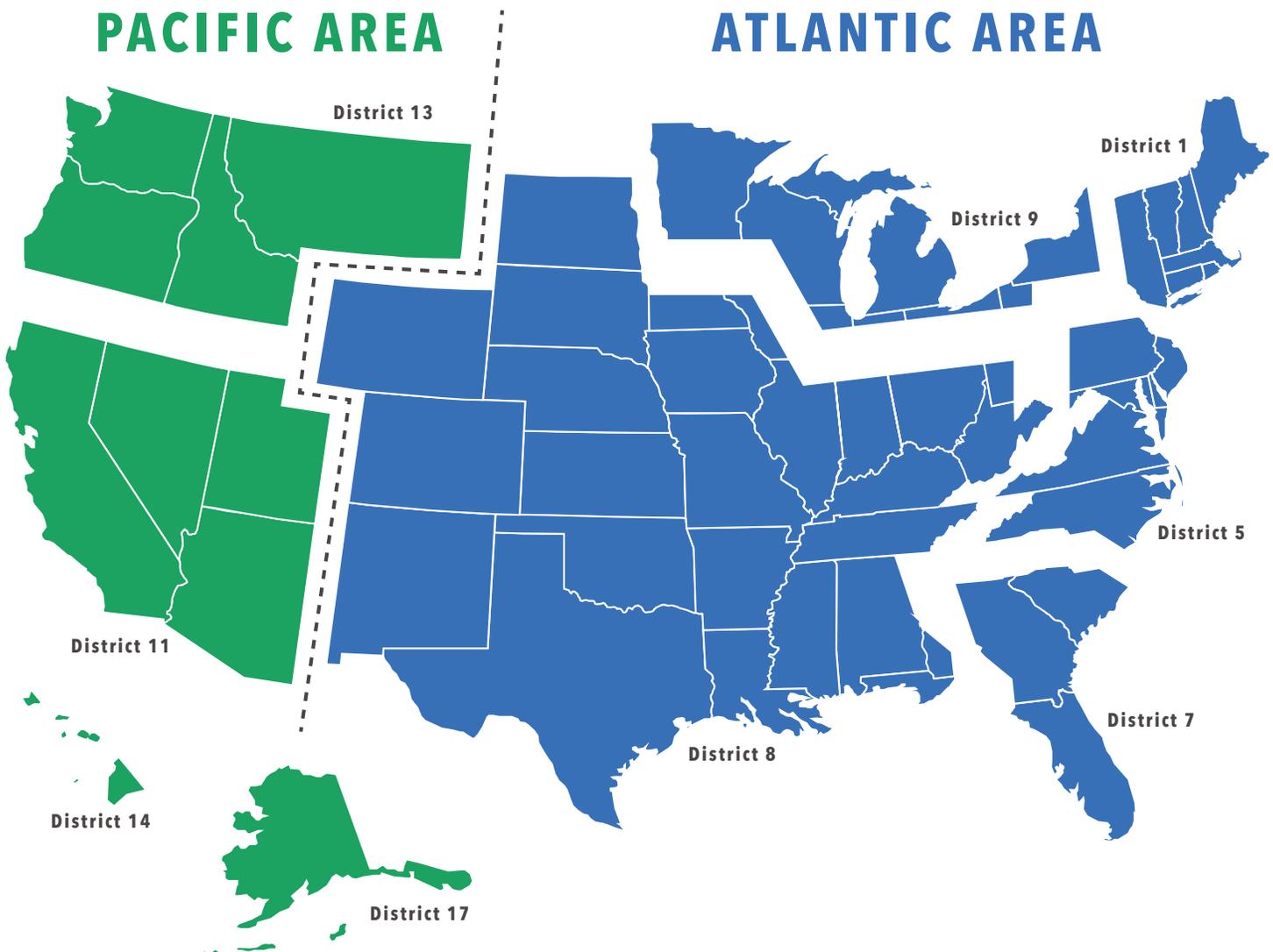


Before 2014, lack of awareness and understanding of USCG jurisdiction, procedures, and requirements led to several high-profile bridge projects being delayed. These project delays prompted the USCG and FHWA to review and revise the bridge permitting MOA signed by the agencies in 1981. The 2014 MOA outlines the process for successfully acquiring a USCG bridge permit, including:

- Describing the FHWA and USCG procedural responsibilities;
- Coordinating environmental documentation and concurrent reviews;
- Explaining the importance of involving USCG in reviews;
- Defining the Section 106 process;
- Calling for navigation and evaluation surveys to be conducted early in the bridge design process; and
- Establishing a process for identifying a reasonable range of alternatives that do not obstruct navigation.

Revised Permit Process Outlines Clear Roles and Responsibilities for USCG, FHWA, and State DOTs

Prior to NEPA scoping, FHWA and/or the State DOT should establish a point of contact and notify the USCG DBO of any bridge projects, including those listed in the State Transportation Improvement Program that they are reasonably certain will move forward. The earlier the USCG is involved, the easier it is to make critical decisions later in the process. The best way to involve the USCG is for the State DOT or FHWA Division Office to contact their DBO. There are ten DBOs with 57 staff across the U.S. District 8 has two offices, one in New Orleans and one in St. Louis.



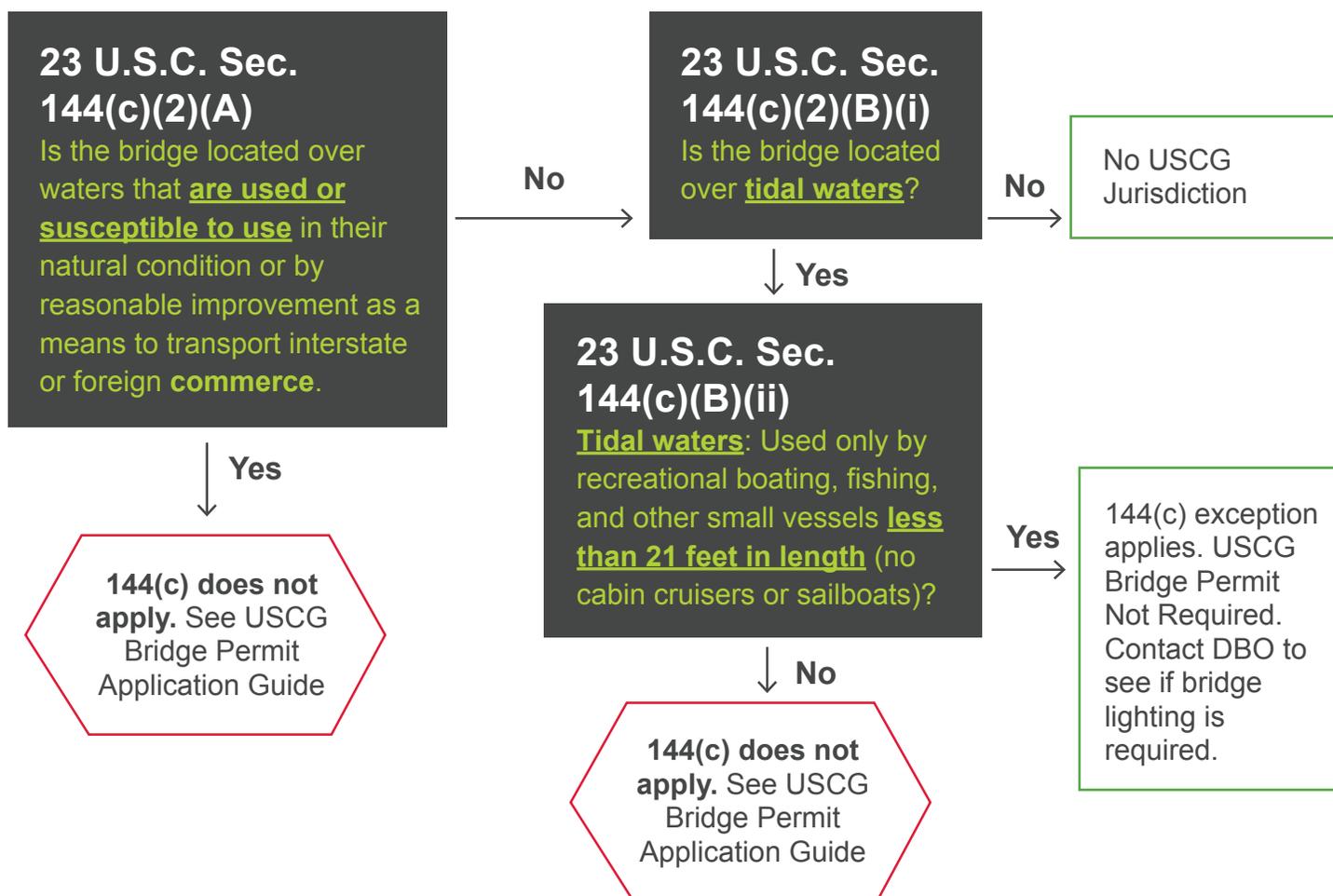
Coordinating prior to NEPA scoping can also identify and address jurisdictional issues before they can slow down the permitting process. When serving as the lead agency, FHWA or the USCG will formally request that the other be a cooperating or participating agency and they will continue coordination regardless of the NEPA class of action.

There are three types of exceptions from a USCG bridge permit, all of which require USCG jurisdiction over the waterway. These exceptions include:

- [23 U.S.C. 144\(c\)\(2\)](#) (“STAA” or “144c”)
- [1982 Coast Guard Authorization Act](#) (CGAA)
- [Advance Approval Waterway](#)

Though FHWA maintains authority for 144(c), such waterways fall under USCG jurisdiction and are covered in the MOA. FHWA agreed that USCG will have an informative and effectual role in the determination process. The FHWA determination is preliminary and USCG input on navigability and commerce is influential to FHWA’s determination. The USCG and FHWA have jointly developed a new 144(c) checklist; it is in the pilot stage and is intended to be deployed nationally by the end of 2017. This checklist streamlines, standardizes, and expedites the exception process while preserving communications and deliberations for the administrative record.

144(c) PROCESS FLOWCHART



Once the USCG determines they have jurisdiction, FHWA and the State DOT work with the USCG to determine what navigational information each agency will provide. FHWA and the State DOT will work with the DBO to prepare a NIR, if necessary, prior to or concurrent with the NEPA scoping process. The DBO then provides a preliminary navigation clearance determination to the State DOT in writing. The determination states how long it is valid if navigation does not change on the waterway. By providing preliminary navigation clearance determinations early enough in the project's life cycle to influence the alternatives that are evaluated under NEPA, the USCG has become more involved during the project scoping phase. It has also greatly improved the transparency and predictability in the bridge permit application process. These outcomes expedite the planning, environmental review, and decisionmaking process for bridge permit applications.

Environmental Reviews Are an Important Component of the Permitting Process

This new process enhances environmental stewardship by allowing the project sponsor to concentrate their analysis of impacts and mitigation on those alternatives that meet the reasonable needs of navigation, leading to a more streamlined project development process.

FHWA (or the State DOT for NEPA Assignment States) will then prepare the environmental document utilizing the preliminary navigation determination to inform the design alternatives. The USCG and FHWA will either prepare a coordinated environmental document that results in a shared or joint environmental decision document, to the maximum extent practicable, or the USCG will prepare a concurrent decision document. USCG will also adopt the bridge-related portions of FHWA's environmental document if all environmental requirements as part of the USCG permitting process are met.

Updated Bridge Permit Application Guide Helps Agencies Better Navigate the Permit Process

Application requirements for USCG bridge permits are listed in the Bridge Permit Application Guide (BPAG). The USCG revised its [BPAG](#) to assist agencies in successfully completing the bridge permitting process. The July 2016 revision incorporates procedures provided for in the MOA. Appendix A of the BPAG provides a checklist that highlights the variables the USCG uses to make preliminary navigation clearance determinations. FHWA and USCG are committed to the 180-day timeframe for permitting projects that qualify for the [Federal Permitting Dashboard](#). USCG will notify the applicant whether or not bridge permit applications are complete within 30 days of receipt. Applications are not considered complete by the USCG until all materials listed in the BPAG have been received and meet USCG requirements.

Once a complete application has been received, the DBO will make a permit recommendation to USCG headquarters, or if appropriate, issue a bridge permit to the State DOT. If the project is a headquarters action, the case file is sent to Coast Guard headquarters for the permit decision. When a Coast Guard Headquarters final agency action is required, the staff of the Permits Division within the Bridge Program Office reviews and evaluates the case file submitted by the District Commander and makes the final permit decision.

FHWA and USCG Provide Trainings and New Resources to Help State DOTs and Division Offices Improve the Permitting Process

USCG and FHWA developed a training for State DOT and FHWA Division Office staff that explains the roles, responsibilities, and procedures described in the bridge permitting MOA. The training provides an overview of USCG responsibilities; describes the technical considerations USCG makes regarding bridge jurisdiction; reviews the roles of State DOTs, FHWA, and USCG in the revised bridge permit process; and offers best practices for improved coordination among all agency partners. The training also facilitates in-person introductions among the State DOT and FHWA Division Office, and USCG DBO staff. FHWA and USCG hope these introductions will facilitate more collaboration and coordination in the future. To date, 29 States have received the training.

Early and Frequent Coordination Is Essential to Successfully Permitting Bridge Projects with USCG

FHWA and USCG will continue to collaborate to ensure bridge permitting is successful nationwide. The most important way State DOTs and FHWA Division Offices can improve bridge permitting is by contacting their DBO to notify them about bridge projects early in the process. When in doubt about jurisdiction, it is a best practice to call the DBO for their input. Doing so avoids project delays during the design or construction phases and involving USCG from the start of the project should accelerate the entire bridge permitting process.

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