



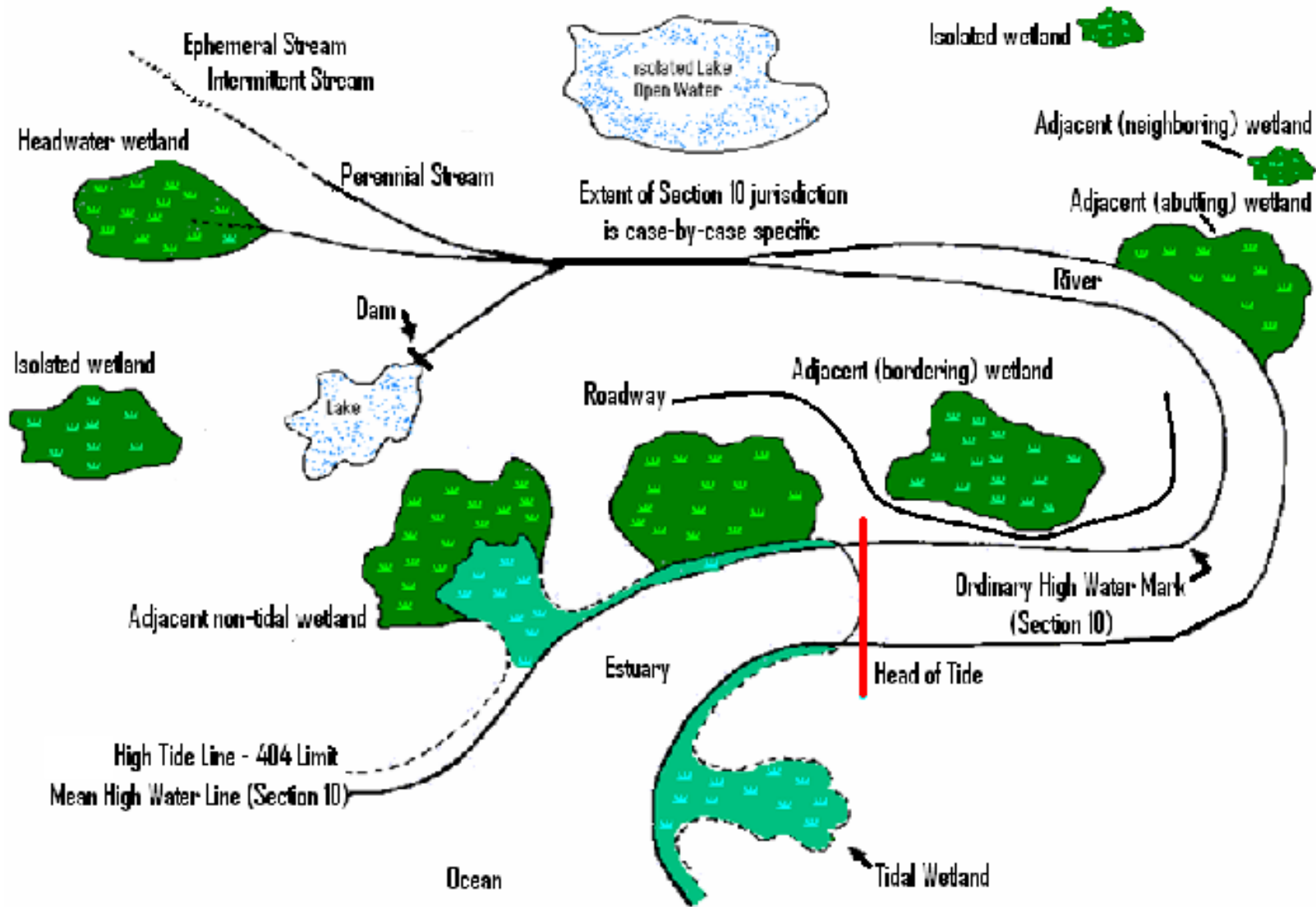
**Section 404**  
**Clean Water Act**

# Jurisdiction

- **Fill material in waters of the United States**
  - material has the effect of either replacing any portion of a water of the United States with dry land or changing the bottom elevation of any portion of a water

# Waters of the United States

1. All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:
  - a. which are or could be used by interstate or foreign travelers for recreational or other purposes; or
  - b. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
  - c. which are used or could be used for industrial purpose by industries in interstate commerce;
4. All impoundments of waters otherwise defined as waters of the United States under the definition;
5. Tributaries of waters;
6. The territorial seas;
7. Wetlands adjacent to waters (other than waters that are themselves wetlands)

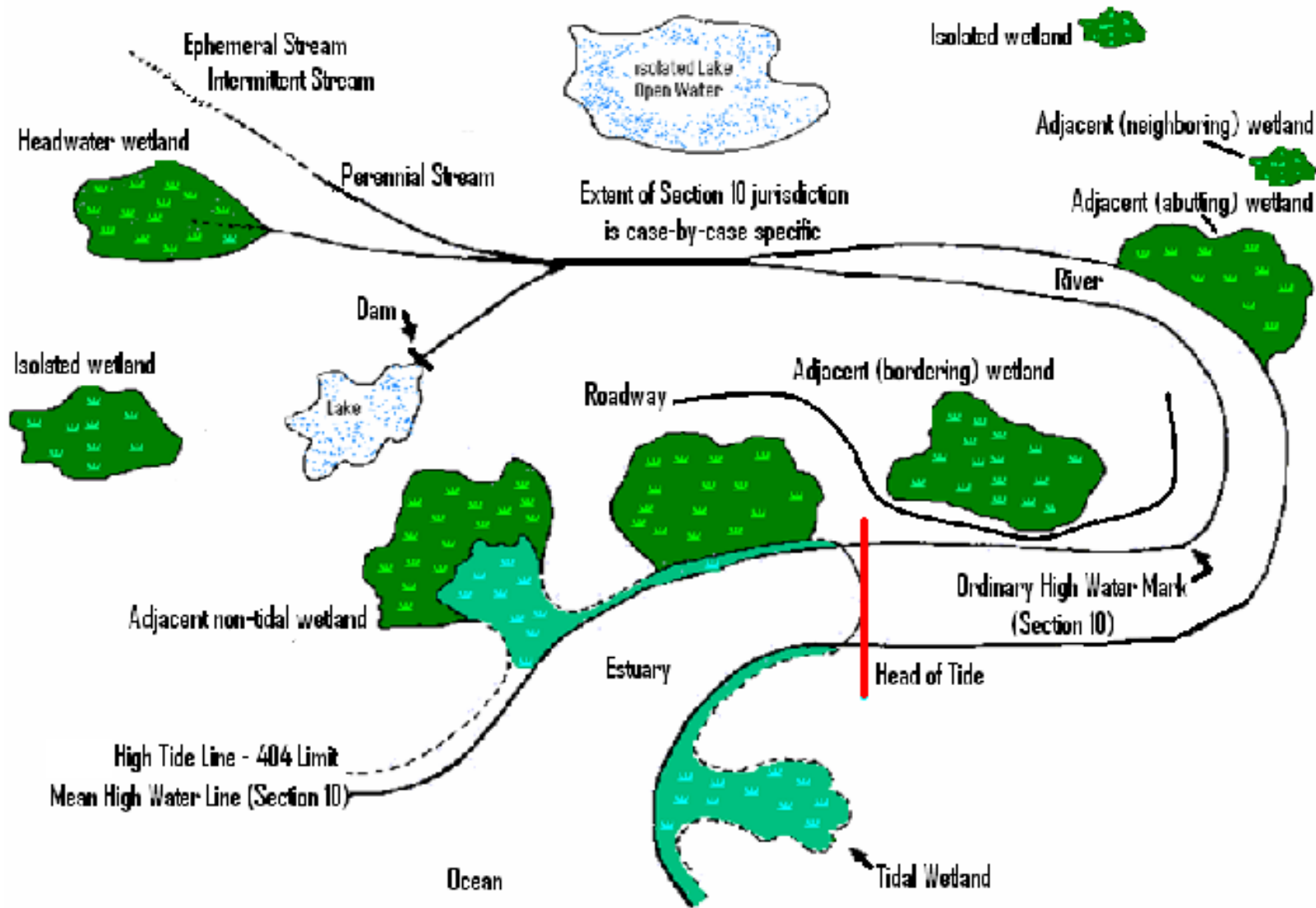


# Waters of the U.S.

- **Waters and wetlands the use, degradation or destruction of which could affect interstate or foreign commerce,**
- **Tributaries of these waters; and**
- **Wetlands *adjacent* to these waters**

# Adjacent Wetlands

- **Bordering, contiguous, or neighboring.**
  - **Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are “adjacent wetlands.”**



# MA General Permit

- Provides for expedited authorization of minimal impact projects
  - Category 1 – notification but no application required
  - Category 2 – application required, screening review
- 90 % authorized within 60 days of a *complete* application

# Complete Application

- **Plans**
  - **No larger than 11" x 17", black & white**
  - **Plan view, section view showing work affecting aquatic resources and applicable jurisdictional lines**
- **Application**
  - **ENG 4345, or DEP WQC or CH 91**
- **Notifications**
  - **PNF to identify historic resources**
  - **NHESP to identify endangered species**

# Proposed Changes

- **Return to applications being sent directly to Corps**
- **Sec 106 NHPA & Sec 7 ESA coordination by other Federal agency accepted.**
- **Clarification of Vernal Pool language**

**DRAFT**

# Vernal Pools in MA GP

- **Excluded from Category 1 for all VPs on, or known VPs surrounding, the project site:**
  - **Any work within a VP Depression.**
  - **Any work, including roads and driveways, in the VP Envelope.**
  - **Any work that individually or cumulatively impacts >25% of the total present and historic impact areas of the VP Envelope + Critical Terrestrial Habitat. Historic impact areas that extend off the project site must be estimated and factored into the calculation.**



Photo credit: Daniel Vasconcelos

# Emerging Policy Issues

- **Mitigation Rule**
- **Invasive Species Control**
- **Historic Properties**

# 2008 Mitigation Rule

- **Mitigation Banks- in place prior to impact**
- **In Lieu Fee Program - larger, more ecologically valuable compensatory mitigation projects**
- **Permittee - Responsible Mitigation**

# Permittee – Responsible Mitigation

- **Watershed scale factors**
  - **Offsite or out of kind replacement of aquatic resources that are beneficial to the watershed**
- **Onsite/ in kind**
- **Offsite/out of kind**

# Mitigation Ratios

	Restoration	Creation	Enhancement	Preservation
Emergent Wetlands	2:1	2:1 to 3:1	3:1 to 10:12	15:1
Scrub-shrub Wetlands	2:1	2:1 to 3:1	3:1 to 10:12	15:1
Forested Wetlands	2:1 to 3:1	3:1 to 4:1	5:1 to 10:12	15:1

# Invasive Species

- **Executive Order 13112**
- **Policy- Permit may include special conditions to require the permittee to control the introduction or spread of invasive species at the site**
- **Guidance-Outline for Developing an Invasive Species Control/Management Plan (ISCP) & links on website**

# MA GP Requirement

## **27. Invasive Species.**

- (a) The introduction, spread, or the increased risk of invasion of invasive plant or animal species on the project site, into new or disturbed areas, or areas adjacent to the project site caused by the site work is prohibited. See Appendix F.
- (b) Unless otherwise directed by the Corps, all applications for Category 2 inland projects proposing fill in Corps jurisdiction shall include an Invasive Species Control Plan (ISCP). See Appendix F.

# Suggested Outline

**Identify the risks posed by invasive species:**

- a. Within the project area**
- b. From nearby adjacent properties**
- c. From the watershed and region**

**Describe existing on site conditions:**

- a. Baseline inventory of invasive species**
- b. Relative abundance of invasive species**
- c. Baseline map showing extent of the invasive species**

# Suggested Outline

**Identify the preferred control or management strategy for each target species:**

- a. Summarize the techniques**
- b. Identify any constraints (e.g. regulatory or site conditions that impact practicable solutions)**
- c. Schedule of control activities**
- d. Required Resources**
  - i. Personnel qualifications**
  - ii. Equipment**
  - iii. Sanitation/re-contamination considerations**
- e. Monitoring**
  - i. Inventory invasive species in the project area**
  - ii. Using baseline map compare species abundance with baseline condition**
  - iii. Reassess/evaluate effectiveness of management strategy**
  - iv. Refine management strategies as needed.**
- f. Total anticipated cost.**

# Historic Properties

- **Section 106 National Historic Preservation Act**
  - **Requires avoidance, minimization and mitigation of impacts to historic resources eligible for listing on the National Register of Historic Places.**
  - **Consult with State and Tribal Historic Preservation Offices**
    - **Identifying archaeological, historic or cultural resources**

950 CMR: OFFICE OF THE SECRETARY OF THE COMMONWEALTH

APPENDIX A  
MASSACHUSETTS HISTORICAL COMMISSION  
220 MORRISSEY BOULEVARD  
BOSTON, MASS. 02125  
617-727-8470, FAX: 617-727-5128

PROJECT NOTIFICATION FORM

Project Name: \_\_\_\_\_

Location / Address: \_\_\_\_\_

City / Town: \_\_\_\_\_

Project Proponent

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/Town/Zip/Telephone: \_\_\_\_\_

Agency license or funding for the project (list all licenses, permits, approvals, grants or other entitlements being sought from state and federal agencies).

Agency Name

Type of License or funding (specify)

**Project Description (narrative):**

**Does the project include demolition? If so, specify nature of demolition and describe the building(s) which are proposed for demolition.**

**Does the project include rehabilitation of any existing buildings? If so, specify nature of rehabilitation and describe the building(s) which are proposed for rehabilitation.**

**Does the project include new construction? If so, describe (attach plans and elevations if necessary).**

# **Request Pre-application Consultation**

**Karen K. Adams**

**Chief, Permits & Enforcement Branch  
Corps of Engineers, New England District**

**978-318-8828**

**[Karen.k.adams@usace.army.mil](mailto:Karen.k.adams@usace.army.mil)**