

# BRIDGE PROGRAM



**COMDTINST 16590.5D**  
**July 2022**

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U.S. Department of  
Homeland Security

United States  
Coast Guard



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COMDTINST 16590.5D  
22 JUL 2022

## COMMANDANT INSTRUCTION 16590.5D

Subj: BRIDGE PROGRAM

- Ref: (a) *Act of August 18, 1894*, ch. 299, § 5, 28 Stat. 362; as amended; classified to 33 U.S.C. §§ 499
- (b) *Act of March 3, 1899*, ch. 425, § 9, 30 Stat. 1151; as amended; classified to 33 U.S.C. §§ 401, 502
- (c) *Act of March 23, 1906*, ch. 113, § 1, 34 Stat. 84; as amended; classified to 33 U.S.C. §§ 491-498
- (d) *Act of June 21, 1940*, ch. 409, 54 Stat. 497; as amended; classified to 33 U.S.C. §§ 511-524
- (e) *Act of August 2, 1946*, 60 Stat. 497; as amended; classified to 33 U.S.C. §§ 525, 530, 533
- (f) *Act to give the consent of Congress to the construction of certain international Bridges, and for other purposes, 1972*, P.L. No. 92-434 (H.R. 15577), 86 Stat. 731 as amended; classified to 33 U.S.C. §§ 535-535i
- (g) *Frank LoBiondo Coast Guard Act of 2018, 2018*, P.L. 115-282
- (h) 33 C.F.R. Chapter 1-Coast Guard, Subchapter J-Bridges, Parts 114-118
- (i) U.S. Coast Guard Environmental Planning Policy, COMDTINST 5090.1 (series)

1. **PURPOSE**. This Instruction prescribes policy guidance on the Bridge Program. All personnel involved in the administration of the Bridge Program must utilize this Instruction in alignment with References (a) through (i).
2. **ACTION**. All Coast Guard unit commanders, commanding officers, officers-in-charge, deputy/assistant commandants, chiefs of headquarters directorates must comply with the policies contained.
3. **AUTHORIZED RELEASE**. Internet release is authorized.
4. **DIRECTIVES AFFECTED**. The Bridge Administration Manual, COMDTINST M16590.5C, is hereby cancelled.
5. **BACKGROUND**. Changes have been made to this Instruction to reflect the changes to bridge statutes, regulations and policies. All procedural guidance has been removed from this Instruction and placed in the appropriate Tactics, Techniques and Procedures.

6. DISCLAIMER. This guidance is not a substitute for applicable legal requirements, nor is it itself a rule. It is intended to provide administrative guidance for Coast Guard personnel and is not intended nor does it impose legally binding requirements on any party outside the Coast Guard.
7. MAJOR CHANGES. Major changes in this update include: Chapter 3, Environmental Impact Considerations, was updated to ensure all Bridge Program actions conform with Procedures for Considering Environmental Impacts, reference (h), the U.S. Coast Guard Planning Implementing Procedures (series). Chapter 4, Bridge Permits, now references CGTTP 3-71.10 Bridge Permits TTP due to the removal of the Permit Writing Guide. Greater clarity is also provided on bridge permit exemptions. Chapter 6, Drawbridge Operations, was renumbered to Chapter 5 in which additional environmental control laws have been added, reflecting changes that occurred to the drawbridge operation regulation (33 CFR § 117) in 2007 and reference (g) in 2018. The title of Chapter 7, Alteration of Unreasonably Obstructive Bridges under the Truman-Hobbs Act, was changed to Chapter 6, Alteration of Unreasonably Obstructive Bridges. Chapter 8, The Investigation, was deleted and portions of Chapter 8 were incorporated into Chapter 9, General Penalty Procedures, renumbered and renamed to Chapter 7, General Penalty Procedures, solidifying and streamlining the investigation process. The addition of Notice of Violations has been included to the penalty process for Bridge Violations.
8. SCOPE AND AUTHORITIES. It is recommended the reader become familiar with the directives and publications noted throughout this Instruction including the following:
  - a. Bridge Administration Tactics, Techniques, and Procedures, CGTTP 3-71.9 (series);
  - b. Bridge Permits Tactics, Techniques, and Procedures, CGTTP 3-71.10 (series);
  - c. Bridge Environmental Documentation Tactics, Techniques, and Procedures, CGTTP 3-71.11 (series);
  - d. Bridge Operations Tactics, Techniques, and Procedures, CGTTP 3-71.12 (series);
  - e. Headquarters Truman-Hobbs Tactics, Techniques, and Procedures, CGTTP 3-71.14 (series);
  - f. COMDTINST M5582.1B, Notice of Violations User's Guide;
  - g. All applicable Executive Orders and Acts affecting the environmental review for the permitting of infrastructure.
9. IMPACT ASSESSMENT. This policy does not have an impact on resources.
10. ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATIONS. The Office of Environmental Management, Commandant (CG-47) reviewed this Commandant Instruction and the general policies contained within, and determined that this policy falls under the Department of Homeland Security (DHS) categorical exclusion A3. This Commandant

Instruction will not result in any substantial change to existing environmental conditions or violation of any applicable federal, state, or local laws relating to the protection of the environment. It is the responsibility of the action proponent to evaluate all future specific actions resulting from this policy for compliance with the National Environmental Policy Act (NEPA), other applicable environmental requirements, and the U.S. Coast Guard Environmental Planning Policy, COMDTINST 5090.1 (series).

11. DISTRIBUTION. No paper distribution will be made of this Instruction. An electronic version will be located in the Coast Guard Directives System Library internally, and if applicable on the Internet at [www.dcms.uscg.mil/directives](http://www.dcms.uscg.mil/directives) .
12. RECORDS MANAGEMENT CONSIDERATIONS. Records created as a result of this Instruction, regardless of format or media, must be managed in accordance with the records retention schedules located on the Records Resource Center SharePoint Online site: <https://uscg.sharepoint-mil.us/sites/cg61/CG611/SitePages/Home.aspx>.
13. FORMS/REPORTS. The forms referenced in this Instruction are available on the Coast Guard Standard Workstation or on the Internet: <https://www.dcms.uscg.mil/forms>.
14. SECTION 508. This Instruction was created to adhere to Accessibility guidelines and standards as promulgated by the U.S. Access Board. If changes are needed, please communicate with the Coast Guard Section 508 Program Management Office at [Section.508@uscg.mil](mailto:Section.508@uscg.mil) .
15. REQUEST FOR CHANGES. Units and individuals may formally recommend changes through the chain of command using the Coast Guard Memorandum. Comments and suggestions from users of this Instruction are welcomed. All such correspondence may be emailed to Commandant (CG-BRG) at: [HQS-SMB-CG-BRG@uscg.mil](mailto:HQS-SMB-CG-BRG@uscg.mil) .

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## CHAPTER 1 GENERAL

### A. Introduction.

1. Bridges are a vital part of our domestic intermodal transportation system and the U.S. Coast Guard (the Coast Guard) Bridge Program plays a significant role in effective waterways management. The Bridge Program ensures the safe passage of vessels through or under bridges that are over or across the navigable waters of the United States and its territories, including waters between the U.S. and Canada or Mexico, while promoting intermodal mobility, safety and security.

### B. Policy.

1. When considering bridge actions, the Coast Guard promotes the maritime transportation goals of the Nation and the Department of Homeland Security to accommodate, to the greatest extent practicable, the needs of all transportation modes. However, the safety of navigation is a paramount when addressing Bridge Program issues.
2. The Coast Guard's duty and responsibility, under the bridge authorities delegated to the Commandant, is to preserve the public right of navigation. The Chief, Office of Bridge Programs is responsible for implementing policies and procedures to carry out the Coast Guard's authorities unless otherwise noted.
3. This Instruction is the primary source of internal guidance for addressing the potential navigational impacts of Bridge Program actions.
4. In addition to this Instruction, the Coast Guard's Tactics, Techniques, and Procedures (TTP) for Bridge Administration (CGTTP 3-71.9), Bridge Permits (CGTTP 3-71.10), Bridge Environmental Documentation (CGTTP 3-71.11), Bridge Operations (CGTTP 3-71.12), and Headquarters Truman-Hobbs (CGTTP 3-71.14) must be followed for all Bridge Program purposes. The TTP are posted on the FORCECOM CG Portal site and provide guidance on how to perform the Bridge Program mission in accordance with the policy established herein.
5. Every effort will be made to involve members of the navigation community and other interested or affected parties early in Bridge Program deliberations. Early involvement will ensure that all identified bridge-related issues are fully considered when the potential navigational impacts to the marine transportation system are addressed.
6. Federal approval for the construction, repair, and operation of bridges must consider the impacts upon navigation under the applicable bridge statutes and regulations and the environment as required by the National Environmental Policy Act and the various federal environmental statutes.

**C. Navigable Waters of the United States and its Territories.**

1. The Commerce Clause of the Constitution provides the U.S. Congress plenary power to regulate interstate and foreign commerce, which includes the authority to regulate the navigable waters of the United States, and all navigation upon those waters. In 1870, the Supreme Court held that the “navigable waters” of the United States includes “not only the tide-waters, but also the great fresh-water rivers and lakes of our country. In a broader sense, we apply it to every stream or body of water, susceptible of being made, in its natural condition, a highway for commerce, even though that trade be nothing more than the floating of lumber in rafts or logs.” This first definition of the navigable waters of the United States applies with equal force today, and is followed by all federal agencies with authority over activities in these waters, or the waters themselves. The definition of navigable waters for purposes of determining Coast Guard bridge jurisdiction is in 33 CFR 2.36(a), which includes the following:
  - a. The territorial sea.
  - b. Internal waters subject to tidal influence; or
  - c. Internal waters not subject to tidal influence;
    - (i) which are or have been used, or are or have been susceptible for use, by themselves or in connection with others, as highways for substantial interstate or foreign commerce, notwithstanding obstructions that require portages; or
    - (ii) which a governmental or non-governmental body with expertise in waterway improvement determines, or has determined to be, capable of improvement at a reasonable cost (a favorable balance between cost and need) to provide, by themselves or in connection with others, as highways for substantial interstate or foreign commerce.

**D. Bridge Legal Authorities and Bridge Statutes.**

1. Through Department of Homeland Security Delegation Number 0170.1, the Secretary of Homeland Security has authorized the Commandant of the Coast Guard to exercise jurisdiction over bridges and causeways in or over navigable waters of the United States in accordance with the following acts/statutes:
  - a. Act of March 3, 1899, c. 425, § 9, 30Stat. 1151; as amended; classified to 33 U.S.C. §§ 401, 502 (commonly referred to the “Rivers and Harbors Appropriation Act of 1899”);

- b. Act of March 23, 1906, c. 113, § 1, 34 Stat. 84; as amended; classified to 33 U.S.C. §§ 491-498 (commonly referred to the “General Bridge Act of 1906”);
- c. Act of June 21, 1940, c. 409, 54 Stat.497; as amended; classified to 33 U.S.C. §§ 511-524, (commonly referred to the Truman-Hobbs Act of 1940);
- d. Act of August 2, 1946, 60 Stat. 497; as amended; classified to 33 U.S.C. §§ 525,530, 533 (commonly referred to the General Bridge Act of 1946);
- e. Act to give the consent of Congress to the construction of certain international Bridges, and for other purposes, P.L. No. 92-434 (H.R. 15577), 86 Stat. 31-733 (September 26, 1972); as amended; classified to 33 U.S.C. §§ 535-535i (commonly referred to as “the International Bridge Act of 1972”).

#### **E. Bridge Regulations.**

1. The Coast Guard’s Bridge Regulations are found in 33 CFR, Chapter 1, Subchapter J, 114 - 118.
2. Part 114 provides general provisions about the Coast Guard’s Bridge Program and states the purpose of the bridge regulations is to set forth the requirements for:
  - a. Locations and clearances of bridges over or across navigable waters;
  - b. Administration of the alteration of unreasonably obstructive bridges; and
  - c. Regulation of drawbridge operations
3. Part 115 discusses the procedures for bridge permit applications, however, the detailed requirements are found in the Bridge Permit Application Guide, COMDTPUB P16591.3 (series).
4. Part 116 implements the Truman-Hobbs Act of 1940, which was intended to provide certain financial relief to bridge owners when the nature of navigation on the waterway required an alteration to an existing rail or highway bridge. These regulations provide a detailed process that the Coast Guard follows to identify whether a bridge may need to be altered to accommodate present navigation, and establish the procedures that the Coast Guard follows to determine the proportion of the alteration cost to be borne by the Federal Government.
5. Part 117 discusses general requirements for all drawbridges in Subpart A, which apply to all Coast Guard-regulated drawbridges, however, there are unique supplemental requirements for those particular drawbridges specifically regulated

under Subpart B. The Subpart B requirements are in addition to, or vary from, the general requirements in Subpart A. As such, the requirements in Subpart A apply to all drawbridges, unless expressly modified by specific provisions in Subpart B.

6. Part 118 discusses bridge lighting and signals, and provides that bridge owners or operators are responsible to maintain the lighting and signals as required by the District Bridge Office.

## **F. Navigation.**

### 1. Navigation Phase.

- a. Navigation involves the planning and movement of vessels on, across or through a body of water. Navigation traditionally means the movement of vessels upon the water, or the planning for the movement of a vessel by preparing track lines or a course to steer. For Bridge Program purposes, navigation also includes the Act or practice of steering, directing the course of, or finding a way of vessels using navigable waterways, with a particular focus on the clearances provided by bridge piers, abutments, protective systems and the superstructure above the waterway. Navigation also includes recreational vessel traffic, which can indicate that commercial vessels of the same size could use the waterway. Therefore, our use of the term “commerce” includes both commercial and recreational vessels.

### 2. Navigability Determinations.

- a. A navigability determination is a formal decision made or adopted by the Coast Guard that a particular waterway or delimited portion thereof meets the definition in 33 CFR § 2.36(a), and therefore the Coast Guard may assert jurisdiction in the area determined to be navigable. This jurisdiction applies to all Coast Guard missions, including the Bridge Program.
- b. Navigability determinations performed by the Coast Guard or any other federal agency with authority over navigable waters are agency determinations that may be modified or reversed by Congress or a federal court of competent jurisdiction. As discussed above, Congress has plenary power of navigable waters and may declare certain waterways or portions thereof to be navigable, or non-navigable. See, e.g., 33 U.S.C. Chapter 1, Subchapter II, for a listing of waters declared by Congress to be non-navigable.
- c. Coast Guard navigability determinations are maintained at District Legal Offices and available to the public in accordance with 33 CFR §§ 2.45 and 1.10-5) (b). Although 33 CFR § 2.45 provides that navigability

- determinations are subject to change, Bridge Program personnel should consult with legal counsel to ensure compliance with 14 U.S.C. § 563 which requires certain analysis and notifications, including to our Congressional oversight committees, prior to making a final determination that a waterway or portion thereof is navigable. Because of this 2014 legislative change, District Commanders may no longer make final navigability determinations without the assistance of various Headquarters Legal and Environmental elements responsible for Congressional notifications.
- d. See the Bridge Operations TTP guidance when making navigability determinations.
  - e. If neither the Congress nor the federal courts has addressed whether a particular waterway is navigable, the District Commander may make a navigability determination applying the definition in 33 CFR Part 2, in accordance with the procedures set forth in 14 U.S.C. § 563.
3. Navigation Evaluation.
- a. A navigational evaluation is intended to address the impact of an existing or proposed bridge, or a proposed change in a drawbridge operation, on the ability of a vessel to transit through a bridge reasonably free, safe and unobstructed manner.
4. Waterway Use.
- a. Recreational Use.
    - (i) Evidence of use by recreational craft may support an inference that commercial vessels of similar size and capacity could use the waterway for interstate or foreign commerce. Similarly, use of the waterway by recreational-type vessels used for business purposes may constitute commerce, particularly when there is a history of for-profit use including guided fishing, sightseeing tours, rafting, canoeing, and guided hunting voyages. The District Commander must determine if the types of vessels that are using the waterway could support substantial interstate or foreign commerce. As a result, the focus of a navigability determination is on the physical capacity of the waterway, with due consideration for whether reasonable improvements could clear the waterway of obstructions or otherwise make it more suitable to commercial use.
  - b. Commercial Use.

- (i) A finding of "substantial" interstate or foreign commerce is subjective and may be based upon a waterway's economic impact or its utilitarian impact (e.g., the only practical method of moving a commodity is along a particular waterway, or a waterway provides the only trade link for a community, even though the economic impact might be relatively minor). The term substantial is to be considered in the context of the local area or the reach of the waterway at issue. What may constitute substantial commerce in a remote area may be found by the Coast Guard to be insubstantial in a more developed area. Examine each factual setting on its merits.
5. Coast Guard Jurisdiction.
  - a. Once Coast Guard jurisdiction over the waterway has been established for administering the Bridge Program, no distinction must be made between commercial and recreational vessels in the administration and enforcement of the bridge statutes and regulations. Neither the use nor purpose of any vessel using the waterway provides a basis for making such distinctions.
6. Artificial Waterways.
  - a. Artificial waterways, which are substantively manmade and are dedicated for public navigation, are navigable waters of the U.S. if they are subject to tidal influence or if they are susceptible for use by substantial interstate or foreign commerce.
7. Boundaries.
  - a. A navigable waterway must normally be considered to extend to its full width from bank-to-bank. The Mean High Water (MHW) line must apply for this purpose. Harbor lines and bulkhead lines, where established, do not define the boundaries of navigable waters within the waterway. Furthermore, the construction of a lawfully permitted structure that impedes or fully obstructs navigation on a navigable waterway does not change a previous determination that the entirety of the waterway is navigable. Even if bifurcated by such a structure, the entire waterway remains a navigable waterway in accordance with the original navigability determination.
8. Tidal Nature.
  - a. Internal waters of the United States are considered navigable when they are subject to tidal influence, (MHW applies in this case also) whether they are fresh, brackish, or saline. The salinity content of the water is not a determinative factor.

## **G. Construction over Navigable Waterways.**

1. In exercising these Commerce Clause powers, Congress may take any action to improve navigation, but may also authorize the construction of bridges, causeways, piers, dams and other structures that tend to obstruct navigation. Through the Rivers and Harbors Act of 1899 and the subsequent bridge acts in 1906, 1946 and 1972, Congress asserted its power over construction in the navigable waters ultimately giving its consent to the construction, operation and maintenance of bridges, subject to the approval of the locations and plans originally by the Secretary of War and Chief of Engineers, and later to the Secretary of the Department in which the Coast Guard is operating. The Secretary of Homeland Security has delegated the authority under the several bridge acts, which are discussed below, to the Commandant of the Coast Guard, who is responsible to oversee the construction, operation and maintenance of bridges in U.S. navigable waters through the Office of Bridge Programs and the District Commanders, whose bridge-related authority is specified in 33 CFR Part 1.
2. Location, design and operation of a bridge must be planned in such a manner to not impede the movement or navigation of vessels using the waterway.
3. Bridges over or across the navigable waters of the United States are considered obstructions to navigation, permitted only when they serve the needs of land transportation. While the public right of navigation is paramount to land transportation, it is not absolute. This right may be diminished to benefit land transportation, if navigation is not unreasonably obstructed. A Coast Guard bridge permit or change to a drawbridge operating regulation must be issued only if the proposed design, location or operating schedule will not unreasonably obstruct existing or prospective navigation.
4. Bridges and Causeways.
  - a. A bridge is any structure erected over or across the navigable waters of the United States, and includes approaches, fenders, and other appurtenances thereto. A bridge may be used for transporting people, vehicles, commodities, or other physical matter and that allows the passage or flow of water through or under it. A bridge is that engineering entity composed of all integral elements of the bridge, approaches, and appurtenances, regardless of the materials used, whether natural or manufactured or the construction methods.
    - (i) This definition includes but is not limited to highway bridges, railroad bridges, footbridges, aqueducts, aerial tramways, conveyors, pipelines, ziplines, and similar structures of like function.



- (ii) This definition does not include: aerial power transmission lines, submerged pipelines, cable ferries, telephone or communication cables, dams, dikes, berms, dredging and filling, wharves, piers, breakwaters, bulkheads, jetties, floating security barriers, or similar structures and works, unless:
  - (1) they are integral features of a bridge and are used in its construction, maintenance, operation, or removal, or:
  - (2) they are affixed to the bridge and affect the clearances provided by the bridge.

**NOTE:** The U.S. Army Corps of Engineers (USACE) has jurisdiction over these structures under Sections 9 and 10 of the Rivers and Harbors Improvement Act of March 3, 1899, as amended (33 U.S.C. §§ 401 and 403).

- b. A causeway is a raised road of solid fill across water or marshland constructed so that the water or marshland is on both sides of the road and water is unable to pass through. A raised road with any openings that may support navigation is a "bridge" with solid fill approaches, not a "causeway." In addition, a causeway that is constructed in navigable waters or affects navigation, navigable waters, and design flood flows require congressional approval before the Coast Guard approves its construction. (See Chapter 4.F.1.a. concerning legislative authority).
- c. A multi-purpose structure is a structure serving multiple purposes and having characteristics of either a bridge or causeway, and possibly some other structure, must be considered a bridge or a causeway when the entire structure, including its appurtenances and incidental features, has or retains the predominant characteristics and purpose of a bridge or a causeway.
- d. A structure must not be considered a bridge or a causeway when its primary and predominant characteristics and purpose are other than those stated herein, or when it meets these general definitions only in a narrow technical sense or because of incidental features. For example, a dam's main purpose is to block water, but one can often travel across it.
  - (i) These interpretations are intended to minimize the instances requiring an applicant for a single project to obtain a permit or series of permits from both the USCG and the USACE for each separate feature or detail of a project when that detail serves, incidental to its primary purpose, more than one purpose and has features of either a bridge, causeway, or of some other structure.

- (ii) However, if parts of a project are separable and can be fairly and reasonably characterized or classified as separate structures, then each such structure must be so treated and considered for approval by the agency having jurisdiction there over.
- (iii) In cases where proposed structures or modifications of structures do not clearly fall within one of the classifications described above, the application must be forwarded with recommendations of the reviewing officers to the Chief, Office of Bridge Programs for determination.
- (iv) The term "bridge and its approaches," as used in 33 CFR § 114.05, must be defined in each case by applying proper common sense to the facts of the case. The term may be defined generally as including all work integral to the structure itself.
  - (1) For example, if a bridge deck's grade is the same as the grade of the highway approach to it, then the point where the abutment or last pier meets the approach, inclusive of the abutment or last pier, would be considered the limit of the bridge.
  - (2) In cases where the bridge deck is at a higher elevation, the point where a change in grade in the approach highway occurs would be considered the limit of the bridge.
- e. Commencement of Construction.
  - (i) Commencement of construction is normally considered the date on which work actually begins on the site of the proposed bridge, its approaches, or ancillary works. This includes work in the water, such as filling, dredging, or other work authorized by the USACE, which is related to the bridge project.
- f. Completion of Construction. (As defined in the Bridge Permits TTP)
  - (i) The Coast Guard considers construction completed when removal of falsework and removal of existing bridge is completed, the construction contract is completed, required navigation lights and clearance gauges have been installed, and the bridge has been opened to traffic or placed in operation.
- g. Waterway Cleared to the Satisfaction of the District Commander.

- (i) The waterway is considered cleared to the satisfaction of the District Commander once falsework has been removed, the existing bridge has been removed (if applicable), and the construction work is completed. District Commanders must require the bridge owner to provide verification that the waterway has been cleared to the Coast Guard's satisfaction. This could include providing soundings of the waterway in the vicinity of the bridge and/or wire dragging the area after completion of the bridge construction and making a declaration via letter or similar documentation confirming the construction activities were completed, the existing bridge was removed (if applicable) in accordance with the permit condition and the navigation channel is clear from all debris as specified in the bridge permit.

## **H. Altering the Character of Bridges and Causeways.**

### **1. Unused or Abandoned Bridges.**

- a. The jurisdiction of the Secretary of Homeland Security and the Coast Guard over bridges and causeways includes the authority to require that these structures be removed when the owners want to discontinue their use for transportation purposes. For the procedure to pursue the removal of an unused or abandoned bridge, see the Bridge Operations TTP, "Unused or Abandoned Bridges".
- b. Unused bridges.
  - (i) A bridge is considered "Unused" when the following criteria are met:
    - (1) Present owner can be identified and contacted. Owner has plans to bring the bridge back into service within a reasonable period of time that should not exceed two years from the date of suspending traffic on the bridge (49 CFR § 1152.50(b) used for time reference only), and;
    - (2) The bridge is capable of performing its design transportation function (e.g., connected by rails or road to transportation network, in good condition and has working bridge lighting, its operating machinery is functional in case of movable bridges, etc.).
- c. Abandoned bridges.

- (i) A bridge is considered “Abandoned” when one or more of the following criteria are met:
  - (1) Present owner cannot be identified or contacted. There are no apparent plans to bring bridge back into service in the near future, or;
  - (2) It can be verified that no land traffic has moved over the bridge for at least two years (49 CFR §1152.50(b) used for time reference only), or;
  - (3) Per regulations governing abandonment of service over rail lines provided at 49 CFR § 1152, “Abandonment and Discontinuance of Rail Lines and Rail Transportation under 49 U.S.C. § 10903”, or;
  - (4) Incapable of performing its design transportation function (e.g., approach rails or roads have been removed or destroyed, bridge is in disrepair or danger of collapse, and/or, if movable span, operating machinery inoperative or removed, etc.).

## 2. Retention of Structures.

- a. If the owner of a bridge or causeway discontinues its terrestrial transportation use and wishes to retain it in whole or in part for use other than as a bridge or causeway, then the Coast Guard will determine whether the remaining structure remains within USCG jurisdiction, or is subject to permitting as a structure under the authority of the USACE. In cases where the Coast Guard determines the remaining structure does not fall within its jurisdiction, the Coast Guard will refer the applicant to the USACE for consideration. If the USACE approves the conversion of a bridge or causeway to another structure, then no residual jurisdiction over the structure will remain with the Coast Guard, except that the Coast Guard may require the remaining structure to be marked or lighted in accordance with 33 CFR Part 64. However, if the USACE declines jurisdiction or does not approve the proposed conversion, then the structure remains a bridge subject to the jurisdiction of the Coast Guard. In this case, the Coast Guard will normally require removing the structure in its entirety or to an elevation deemed appropriate by the responsible Coast Guard District Commander.

## 3. Drawbridge Conversions to Fixed Bridges.

- a. An occasion may arise where a bridge owner wishes to convert a drawbridge to a fixed bridge.
- b. If the drawbridge is to be permanently converted to a fixed bridge by removing operating machinery or other constructive means, a permit action is required as this is considered a deviation from previously approved plans. See the Bridge Permits TTP for further information on permit actions.
- c. If the owner intends to keep the bridge closed, but not physically convert it to a fixed structure, a regulatory action is required to keep the bridge closed permanently. The Coast Guard typically will propose the change to the current regulations and seek public comment. If approved, the bridge would then remain in the closed to navigation position in accordance with 33 CFR § 117.39. This will not require a permit action. See the Bridge Operations TTP for information on Regulatory Process.

#### **I. Structural Integrity of Bridges and Their Appurtenant Bridge Protective Systems.**

1. The Coast Guard has no statutory authority or responsibility for the inspection of or structural integrity of bridges and their bridge protective systems over or across navigable waters of the United States. The responsibility for structural integrity rests with the bridge owner. The Federal Highway Administration (FHWA) and Federal Railroad Administration (FRA) have inspection programs to identify substandard highway and railroad bridges. The bridge owner is responsible for inspecting the bridge for structural condition and damage and for providing sufficient bridge protective system.
2. Specifications for the design of bridge piers and their bridge protective systems to minimize bridge susceptibility to collapse due to vessel allisions may be found in publications such as the ones from the American Association of State Highway and Transportation Officials (AASHTO) for highway bridges and the American Railway Engineering and Maintenance Association (AREMA) for railroad bridges. It is the responsibility of the bridge owner to abide by “best practices” and meet those specifications.

#### **J. Condition of Bridges.**

1. General.
  - a. Under the provisions of regulations pertaining to the lighting, construction, and operation of fixed and movable bridges over or across navigable waters, 33 CFR 114,115, 117, and 118, the bridge owners, operators, or agencies controlling such bridges are required to maintain and operate their bridges properly.

- b. Failure of the owner to maintain and operate the structure according to the above-mentioned regulations and conditions of the bridge permit may violate the applicable laws and regulations. The Coast Guard is responsible for enforcing the laws and regulations regarding complaints, reports, or observations of a violation.
2. Enforcement.
    - a. In responding to complaints, reports, or observations of a violation, the District Commander must promptly investigate to determine if a violation has occurred and the appropriate action to correct said violation. See the Bridge Operations TTP, “Civil Penalty Enforcement”.
    - b. Therefore, USCG Bridge Program personnel, with appropriate notification to the bridge owner, may make a site visit to any bridge within their jurisdiction in order to observe that the bridge is visually in good condition and that no portion of the bridge is endangering navigation. Bridge Program personnel may direct a drawbridge owner to cycle the bridge in order to observe that the bridge and operating machinery appear to function properly.

#### **K. Authorities.**

1. Under the applicable bridge acts, the Bridge Program has the authority to approve the location and plans for bridges over or across the navigable waters of the United States to ensure that they provide the clearances required for navigation at bridges. This duty and authority extends to and may be exercised in connection with the construction, alteration, operation, maintenance, and removal of bridges. This includes the authority to approve the temporary restriction of the passage of vessels through or under a bridge by the use of falsework, piling, floating equipment, closure of draws, or any works or activities that reduce the navigational clearances and design flood flows including closure of any or all spans of the bridge.
2. Delegation of Authority to Issue Bridge Permits.
  - a. Per 33 CFR § 1.01-60(a) the Commandant has delegated to the Deputy Commandant for Operations (CG-DCO), the authority to issue the following permits for the construction, reconstruction, or alteration of bridges over or across the navigable waters of the United States:
    - (i) Those that require an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969, as (42 U.S.C. 4321 et seq.) and all implementing regulations, orders, and instructions.

- (ii) Those that require a Presidential permit and approval under the International Bridge Act of 1972 (33 U.S.C. § 535).
  - (iii) Those that require the amendment of an existing permit issued by the USACE.
  - (iv) Those that raise substantial unresolved controversy involving the public, or are objected to by Federal, state, or local government agencies.
  - (v) Those authorized by the Commandant upon the appeal of a District Commander's decision denying a permit.
- b. Per 33 CFR § 1.01-60(a) the Commandant has delegated to the District Commanders, with the reservation that this authority must not be further re-delegated, the authority to issue all permits for the construction, reconstruction, or alteration of bridges over or across the navigable waters of the United States other than those specified in section a. above.
3. Delegation of Authority to Issue Bridge Operation Regulations.
- a. Per 33 CFR § 1.05-1(e)(1)(iii) the Commandant has delegated the Coast Guard District Commanders, with the reservation that this authority must not be further re-delegated the authority to issue regulations pertaining the operation of drawbridges.
  - b. Per CFR § 1.05-1(j) the Commandant has also delegated to the Coast Guard District Commanders the authority to re-delegate in writing to the Coast Guard District Bridge Manager, with the reservation that this authority must not be further re-delegated, the authority to issue temporary deviations from drawbridge operating regulations as the District Bridge Manager deems necessary.
4. Captain of the Port.
- a. Under the Ports and Waterways Safety Act of 1972, 46 U.S.C. 700001 et seq. the Commandant (Captain of the Port or District Commander) may exercise broad powers to control vessel traffic in the navigable waterways in areas the Coast Guard has determined to be especially hazardous. Also, the Commandant (Captain of the Port or District Commander) may establish safety/security zones, regulated navigation areas or other measures for limited controls or conditional access and activity, when necessary, to prevent damage to, or the destruction or loss of, any vessel, bridge, or other structure on or in the navigable waters of the United States.

- b. If work related to the construction, alteration, or repair of a bridge or causeway is of such a nature that, for the protection of life and property, navigation through or in the vicinity of the bridge or causeway must be temporarily prohibited, then the Coast Guard Captain of the Port may close that part of the affected waterway while the work is being performed. Although the Captain of the Port has authority to close the waterway, only the District Commander may authorize temporary changes to the navigational clearances or operating schedule of a bridge.
- c. The Coast Guard will notify Federal and State agencies when it contemplates either significantly restricting a passage through or under a bridge or temporarily closing a waterway.

#### **L. Interagency Coordination.**

1. The District Bridge Office must establish liaison with local agencies having responsibilities ancillary to Coast Guard bridge responsibilities, including, but not limited to: District and division components of the USACE, regional offices of the U.S. Fish and Wildlife Service (USFWS), the National Park Service (NPS), National Oceanic and Atmospheric Administration (NOAA), state highway and conservation offices, the U.S. Environmental Protection Agency (EPA), the FHWA, the FRA, international boundary commissions, equivalent state and local agencies, local business associations, and environmental interest groups, as appropriate.
2. The District Bridge Office must be prepared to participate with these agencies at the earliest possible time in planning bridge projects.

#### **M. Coast Guard Sectors, Reservists, and Auxiliary.**

1. The Bridge Program may request the use of other Coast Guard assets such as Sector personnel, cutters, small boats and aircraft to meet mission requirements, such as construction monitoring, bridge discrepancy reporting, investigation of allisions, investigation of violations, and severe weather communications, see the Operations TTP.
2. Coast Guard Reservists and members of the Coast Guard Auxiliary may be used to support and augment bridge surveys, investigate and provide information regarding waterways safety and navigation situations pertaining to the Bridge Program, and provide direct assistance and support to Bridge Program personnel. Members of the Auxiliary cannot perform inherently governmental functions. See Chapter 2.I. of this COMDTINST for additional information regarding coordination with other Coast Guard assets.

#### **N. Public Meetings and Hearings.**



1. A public meeting is an informal process used by the Coast Guard to allow the public an opportunity to be heard and to obtain additional information on potentially controversial bridge actions. The forum under which the Bridge Program announces these meetings and gathers public opinion does not constitute a public hearing. While other states or agencies may identify these forums as “public hearings”, the Coast Guard uses the term “public meeting” so as not to imply that a formal trial-like proceeding will be held. For those states that identify these forums as public hearings, the Coast Guard will acknowledge in the public notice that the public meeting meets the requirements specified in state law for a state hearing or Council for Environmental Quality (CEQ) hearing.
2. Hearings are formal processes requiring an impartial decision-maker, such as an Administrative Law Judge, to preside and are handled in more of a trial type proceeding. This includes requiring presentation of evidence, witnesses, and limited pre-hearing findings.
3. See the Bridge Administration TTP, “Public Meetings” for further information.

#### **O. Maintenance, Repair, and Construction Monitoring.**

1. The Bridge Program mission includes preventing construction, rehabilitation, maintenance and repair activities from unreasonably obstructing navigation. The program coordinates activities that affect navigation with bridge owners, contractors, waterway users and Coast Guard Sectors throughout the project. Coordination includes issuing Local and Broadcast Notices to Mariners and visiting the site as needed to confirm compliance.
2. Bridge lighting, temporary structures, clearance gauges, signage and bridge protective systems should be monitored for compliance with Coast Guard bridge regulations. Discrepancies should be resolved with all due speed to ensure navigation safety is maintained.
3. Under the provisions of regulations pertaining to the lighting, construction, and operation of fixed and movable bridges (33 CFR Parts 114, 115, 117 and 118), the owners, operators, or agencies controlling such bridges are required to maintain and operate their bridges properly.
4. The Coast Guard is responsible for enforcing the applicable laws and regulations. In responding to complaints, reports, or observations of a violation, the District Bridge Office (DBO) must promptly conduct the investigation or inquiry deemed necessary and must take appropriate action to correct the violation.
5. Bridge owners are responsible for inspections to ensure the structural integrity of their bridges. Coast Guard personnel are not authorized or qualified to conduct this type of inspection.

6. See the Bridge Operations TTP, “Maintenance, Repair and Rehabilitation Planning”, located on the FORCECOM Coast Guard Portal site.

**P. Bridge Program Performance Data.**

1. The Bridge Program Office monitors the efficiency and effectiveness of program operations and evaluates staffing and other resource needs. To accomplish this task, District Bridge Offices are required to report monthly to the Office of the Bridge Program, electronically or by the Bridge Program Database when becomes available, all district activities including permitting, regulatory actions, operations, issuing Civil Penalties / Notices of Violations, and monitoring project construction work. The Bridge Program Office will use the reported data to generate districts’ Quarterly Activities Report.
2. Guidance on performance data reporting submission is outlined in the Bridge Operations TTP.

**Q. Authority for Bridge Permit Conditions and Drawbridge Regulations.**

1. Coast Guard bridge permits must not contain conditions that the Coast Guard has no legal authority to enforce or conditions that are otherwise enforceable by law by other agencies. This includes conditions that are already part of another agency's permit or license or that are clearly enforceable under another agency's authority.
2. Drawbridge operation regulations will not be promulgated in cases where the primary intent or purpose is to achieve objectives otherwise unenforceable by law. Examples of such improper purposes include restriction of drawbridge operation to save costs of maintenance and operation, or restriction of drawbridge operation to inhibit navigation or navigation facility improvements.

**R. Violations of Law.**

1. Section 108 of the Coast Guard Authorization Act (CGAA) of 1982, Public Law 97-322 enacted October 15, 1982, authorized civil penalties for bridge statute violations by amending the following laws:
  - a. Act of 1894, Section 5 of the Rivers and Harbors Appropriations (33 U.S.C. § 499);
  - b. Act of 1899, Section 18 of the Rivers and Harbors Appropriations (33 U.S.C. § 502);
  - c. Act of March 23 1906, Section 5 of the (33 U.S.C. § 495); and

- d. Act of 1946, Section 5 of the General Bridge (33 U.S.C. § 533).
2. Civil penalties are calculated per violation per day and each day a violation continues is considered a separate offense. Civil penalties are periodically adjusted for inflation and those changes are reflected in the Marine Information for Safety and Law Enforcement (MISLE) Civil Penalty Amounts and in 33 CFR part 27.

#### **S. Case Records.**

1. The issuance or denial of bridge permits, drawbridge operating regulations and Orders to Alter under the Truman-Hobbs Act are defined as orders, licenses or regulations subject to the provisions of the Administrative Procedure Act, codified at 5 U.S.C. §§ 551-559.
2. The administrative records of these actions are public records and must be available to the public, as prescribed in the Administrative Procedure Act.
3. Disposition of the case records must conform to the provisions of Maintenance, Transfer and Destruction of Headquarters Records, HQINST M5212.6 (series) and the Paperwork Management Instruction, M5212.12 (series). Additional guidance will be provided in the Bridge Program TTPs.
4. Public notices, public meetings, and the opportunity for public participation in these proceedings must be provided in a fair and objective manner.
5. The record of the proceedings is a public record and must be available to the public, as prescribed in 5 U.S.C. § 552.
6. No conditions to accepting any application or petition for a bridge permit or drawbridge regulation, except as prescribed in this Instruction, may be imposed.
7. Under 33 CFR § 114.50, an applicant has the right to appeal a District Commander's decision to deny a bridge permit application or an application for a drawbridge operating schedule.
8. No ex parte proceeding, agreement or prejudgment determining the outcome of the processing of any application for a bridge permit or drawbridge regulation may be entered into by any person charged with the responsibility of making a final recommendation or decision.

#### **T. Bridge Program Roles and Responsibilities.**

1. The Office of Bridge Programs is responsible for:

- a. Policy, Guidance and Direction. Includes setting the Bridge Program mission and vision, developing/updating, publishing policy, and procedural Instructions, assessing the impact of new laws on Bridge Program policy and procedures, visiting District Bridge Offices, and ensuring nationwide consistency. In addition, Headquarters, Bridge Program provides technical assistance and guidance to the District Bridge Offices, updates templates, and training.
- b. The Marine Information for Safety and Law Enforcement (MISLE). MISLE is a Coast Guard wide database that is used to store a variety of marine information. This includes bridge facility information that can be used for investigation and enforcement activities. The Chief, Office of Bridge Programs sets criteria and develops procedures for District Bridge Offices to populate with data in their area of responsibility. In the absence of “step-by-step” procedures for entering referential bridge data and investigation and enforcement actions, process guides have been tailored to meet Bridge Program requirements.
- c. Bridge Program Database. The Chief, Office of Bridge Programs administers this system, develops procedures for its use, and ensures data integrity. Develops efficiency and performance measures for the Bridge Program, which will be tracked by the Bridge Program Database. Manages database training to field, headquarters personnel, and conducts quality control of the system to ensure accurate data capture.
- d. Strategic and Resource Planning. Includes conducting strategic analyses for resource support, participating in Coast Guard – wide strategic planning and performance initiatives, and preparing justifications to support resource projections and resource plans.
- e. Agency Liaison. Includes managing and updating Memorandums of Agreement with other federal agencies and acting as the Bridge Program liaison with DHS, Department of Transportation (DOT), Office of Management and Budget, the Advisory Council on Historic Preservation, the White House and Congress.
- f. Program Visibility. Includes marketing the Bridge Program and visiting the District Bridge Offices.
- g. Permitting. Includes permit case review and permit actions, environmental guidance on cases, providing feedback to District Bridge Offices regarding the casework submitted, and reviewing application materials. Also ensures compliance with transportation permit-related statutes.

- h. Regulations. Includes development of overall bridge regulations, publishing regulations in the Federal Register, submitting technical amendments and providing programmatic input on issues related to relevant statutory authorities.
  - i. Truman-Hobbs. Includes Truman-Hobbs investigations, orders to alter, oversight of Truman-Hobbs appropriations, design and construction oversight.
  - j. Administrative. Includes contract management, addressing program issues, processing staff performance evaluations, and recruiting Bridge Program staff.
  - k. Appeals includes handling appeals of District Commander permit decisions, developing decision analyses to support Bridge Program decisions.
  - l. Addressing High Level/Controversial Issues. Includes responding to congressional inquiries, briefing Coast Guard senior leadership, responses to media inquiries, and handling controversial issues for the Bridge Program to include preparing public affairs guidance.
  - m. Outreach/Training. Includes training and briefing Coast Guard members on the Bridge Program.
2. District Bridge Offices are responsible for:
- a. Construction Monitoring. Includes monitoring the construction of permitted bridges, prepare and publish or release LNMs/BNMs, conducting site visits for bridge construction projects and reviewing construction and demolition plans.
  - b. Maintenance/Rehab Monitoring. Includes monitoring bridge maintenance operations, prepare and publish or release LNMs/BNMs, and conducting site visits for maintenance/rehabilitation projects.
  - c. Emergency Response. Includes responding to bridge issues associated with high water events and flooding, and ensuring continuity of operations. Includes responding to bridge issues related to incidents that influence the safe navigation of vessels through a bridge and ensuring continuity of operations.

- d. Internal/External Education and Training. Includes Bridge Program coordination with Sectors, Auxiliary, Coast Guard active duty training, providing training to applicants and consultants, understanding applicable laws and regulations, training new staff, educating bridge tenders, responding to questions from the public, training reservists, and attending general mandated training.
- e. Enforcement. Includes processing regulatory violations, conducting investigations, conducting site visits, and issuing civil penalties.
- f. Jurisdiction and Navigational Determinations. Includes conducting site visits, collecting data to determine navigation on the waterway, issuing public notices to obtain navigation information, and making permit determinations.
- g. Internal/External Coordination. Includes conducting outreach and coordinating with customers, conducting site visits, participating in working groups, coordinating with expert agencies and applicants during the application phase, conducting environmental consultations, handling questions from the public, and participating in cultural resource assessment reviews.
- h. Environmental Consultation. Includes conducting site visits, coordinating with expert agencies and the public, and participating in cultural resource assessment reviews, and various consultations with expert agencies.
- i. Collateral Duties and Administrative. Includes senior civilian duties, ensuring workload efficiency, workload data reporting, preparing the fiscal budget, answering data calls and preparing quarterly reports, preparing work performance evaluations, prioritizing workload and assignments, contract management, addressing essential personnel issues and addressing limited resource issues during times when staff are on reserve duty including employee support/guard reserve (ESGR).
- j. High Profile Actions. Includes site visits, responding to congressional inquiries and Freedom of Information Act requests, preparing digests for Coast Guard leadership and managing media inquiries.
- k. Permits. Includes processing bridge permit applications and issuing public notices to solicit comments on proposed projects. Also includes extensive coordination and consultation with expert agencies and the public.

- l. MISLE Input. Includes populating bridge data fields in MISLE and creating investigation and enforcement activities for letters of warning, notices of violation and civil penalties. Also includes ensuring the data is accurate and current.
- m. Bridge Database Input. Includes populating permitting, regulatory actions, operations, and project monitoring projects in the Bridge Database.
- n. Public Meetings. Includes notifying the public and other interested parties about proposed projects, conducting meetings, and accepting comments.
- o. Initial Investigations. Investigate bridges reported to be unreasonable obstructions to navigation.
- p. Regulatory Actions. Includes coordination with the public and the bridge owner to determine the appropriate operating schedule for a drawbridge, whether temporary or permanent changes. Also includes drafting regulations for publication in the Federal Register.
- q. Sector/COTP Coordination. It is important to involve the Sector/COTP in the coordination and decision-making process for bridge projects and operations that may affect management of their waterways. Likewise, the Sector Commander/COTP has authorities that can affect bridge operations as well as navigation on a waterway.

## CHAPTER 2. NAVIGATIONAL CONSIDERATIONS

### A. Introduction

1. A navigation evaluation must be conducted during the bridge permitting and regulatory processes described in Title 33, CFR Parts 114-118, to identify and evaluate current and future navigational needs regarding the sufficiency of proposed horizontal and vertical clearances and the timing of openings provided by a bridge project.

### B. Navigational Concepts and Bridge Clearances

1. The U.S. Army Corps of Engineer (USACE) is responsible for designing, establishing, and maintaining federal project channels authorized by Congress. Their Instructions provide guidance for the planning, layout, design of deep-draft and shallow-draft waterways, and may be useful when considering proposed bridge locations and clearances. At time of publication, this section was developed using USACE Engineer Instructions, EM-1110-2-1611 and EM-1110-2-1613. When using this information, ensure most recent versions of the Instructions are used.
2. Open-river navigation is normally preferred by commercial towboat operators since it often eliminates delays encountered in passing through locks. However, restrictive bridge clearances and movable-span bridge opening schedules may impede commercial navigation even on an open-river system.
  - a. Maintenance of a river system can also be a major challenge due to constant changes in channel width and depth and in some cases, channel alignment. These potential changes are particularly important when considering bridge locations and clearances.
  - b. Examples of open-river navigation include the Mississippi River below St. Louis, the Missouri River and the Columbia River below Bonneville Dam
3. Canalized streams involve construction of locks and dams to maintain adequate depths for navigation during periods of medium or low water flows. These waterways normally have greater channel width and depth. Examples include the Ohio and Monongahela Rivers, the Mississippi River above St. Louis, Missouri, and the Arkansas River. Land-cut canals normally connect two bodies of water, bypass rock outcrops and rapids and reduce the length or curvature of a navigable channel. Canals tend to be narrow and shallow to minimize costs. Examples include Chain of Rocks Canal near St. Louis, Missouri, the New York State Barge Canal, and portions of the Intracoastal Waterways.
4. Intracoastal Waterways have been developed principally to assist commercial navigation by providing protected navigation along the East and Gulf Coasts of



the United States. In recent years, these waterways have also become favorite routes for recreational vessel traffic.

5. For the purpose of the Bridge Program, recreational boating falls within the term “commerce” as previously discussed in Chapter 1.
6. Most federally authorized inland and coastal waterways have been designed to accommodate commercial barge tows consisting of a towboat pushing one or more barges. This is known as a “composite unit” when wires rigidly connect the barges or chains causing them to react to sea conditions as one unit.
  - a. The tow speed and direction are controlled by the towboat, which is normally positioned behind the barge(s) being pushed. The length of these tows may be one barge plus the towboat (150’-350’) or may be more than 1200’ with multiple barges.
  - b. The amount of control maintained by the towboats depends on their size, power, and maneuverability. Long tows often use some type of bow thruster or control units. These are independent power units located in the bow or stern of the towboat or attached to the lead barge. These units help control the direction of the bow or front ends of the tows. Most towboats are also equipped with twin propellers and large flanking rudders to assist in maneuvering through sharp bends and narrow bridge openings.
  - c. This ability to maneuver, however, varies greatly and must be carefully considered when evaluating proposed bridges along meandering river streams. The movement of a vessel is affected by the power of its propulsion unit, the size and location of its rudders, the underwater design of the vessel, and the direction and velocity of currents, wind, ice drift, and channel dimensions.
7. The pivot point of a vessel is normally about one-third of the distance from the bow to the stern. In other words, a vessel’s stern maneuvers right and left while the bow remains constant.
  - a. This characteristic makes vessel handling similar to that of pushing or maneuvering a wheelbarrow. However, a towboat does not normally follow the barge track when going around bends or negotiating turns.
  - b. This particular navigational characteristic, known as the swept path of a vessel, is recognized by the USACE when it designs bends in waterways. Such waterways are normally widened to compensate for the movement of large vessels, especially tugs with tows.
8. The effect of currents on vessels is a particularly important factor when considering bridge clearances. Tows and all other vessels are affected by the

velocity and alignment of currents relative to the path of the vessel.

- a. Currents moving at an angle to the path of the vessel are referred to as crosscurrents. These currents can be encountered in river crossings, in bends, near side or divided channels, in the entrance to canals and in approaches to locks and bridges.
  - b. Open-river navigation, in particular, recognizes and takes advantage of the current flows, which normally move from the concave bank of one bend across the descending stream to the concave bank of the next bend.
  - c. The straight reaches between alternate bends in a meandering stream are called crossings. Tows leaving one bend, usually from along the concave bank, must cross the stream toward the opposite bank to approach the concave bank of the next alternate bend. This series of bends in a meandering stream is nature's way of controlling the flow of water (much like the slalom movements of skiers coming down a steep mountain). Vessel operators normally follow this natural current flow as they descend a river.
  - d. If a bridge alignment is located close to or within a bend in a waterway, the crosscurrents may create significant difficulty in transiting through a bridge. This will necessitate increased horizontal clearances and bridge alignments that are perpendicular to the actual current flow to ensure the safety of navigation.
9. Generally, bridges must not be located in a bend or where crosscurrents can be expected. When more than one bridge is required in a given locality, the bridges must be close together with piers and bridge protective systems in line or far enough apart to permit tows passing one bridge to become properly aligned for passage through the next bridge.
10. The required bridge horizontal and vertical clearances to accommodate a given design vessel (the largest vessel expected to use the waterway) must be determined based on the following factors in descending order of importance:
- a. Traffic pattern (one-way or two-way traffic);
  - b. Design vessel beam, length and vertical height;
  - c. Channel cross-section shape; current speed and direction;
  - d. Quality and accuracy of aids to navigation; and
  - e. Variability of channel direction and current flow.

**C. Determining Horizontal Clearance Requirements**

1. If a federal channel has been established, the authorized clearances for a new or modified bridge must completely span the authorized channel within practical engineering limits.
2. See the Bridge Permits TTP for more information.

**D. Determining Horizontal Clearance Requirements**

1. The Coast Guard encourages construction of high-level fixed bridges, whenever practicable, to minimize potential conflict between land and waterborne modes of transportation. A balance between transportation modes is essential to further the strategic goals of tying America together through improvement and renovation of our national transportation infrastructure.
2. See the Bridge Permits TTP for more information.

**E. Special Considerations When Determining Bridge Clearances for Inland River Systems.**

1. Open rivers allow towboats to push as large a tow as the towboats can handle. Understanding these local towboat operations is an essential ingredient in determining proposed bridge clearance requirements and where bridge piers can be safely positioned within a waterway.
2. See the Bridge Permits TTP for more information.

**F. Guide Clearances**

1. Guide Clearances are established by the Coast Guard for particular navigable waters of the U.S. They are not intended to be regulatory in nature or form a legal basis for approving or denying a bridge permit application. However, they do provide guidance to potential bridge permit applicants regarding minimal clearances that would normally receive favorable consideration during the bridge permitting process.
2. See the Bridge Permits TTP for more information.

**G. Navigation Considerations When Evaluating Any Proposed Changes to Drawbridge Operations.**

1. The guidelines and procedures for evaluating proposed changes to regulations governing the operation of drawbridges over or across the navigable waters of the United States are prescribed in Chapter 5.

2. A primary concern in the evaluation process is the impact that a change in the established operating schedule of a drawbridge would have on the safety of navigation. In evaluating the proposed change, take into account the environmental and physical condition of the waterway near the bridge and its potential effect on vessels. Consider the types and numbers of vessels that transit the bridge, types of cargo and if there are any limitations such as size and maneuverability of the vessels that could affect safety to both the bridge and vessels.
3. Waterway traffic using nearby facilities such as fueling docks, marinas, boat launch facilities and waterside restaurants may cause waterway traffic congestion and should be considered during the evaluation. All of these entities may affect the safety of waiting vessels.
4. For any change to the operating schedule of a drawbridge, early consultation between the bridge owner and the local waterway users is encouraged to determine the impact on the safety of navigation. Refer to Chapter 7 “District Regulatory and Notice Actions” of the Bridge Operations TTP for guidance on changing an operating schedule.
  - a. In some instances, drawbridge repairs such as painting or replacement of superstructure materials or operating equipment may require a deviation or temporary change in operating schedule in order to allow time for the movement of equipment for the safe passage of vessels.
  - b. As a part of the navigational evaluation, the procedures to be followed by the repair contractor must be reviewed to ensure that a reasonable balance is maintained between the needs of land and water transportation, and that navigation is not unreasonably impacted by delayed openings.
  - c. The volume and type of navigation using the waterway will often determine the amount of flexibility that is available to maintain waterway safety.

**NOTE:** Refer to the Maintenance and Rehab Monitoring and the District Regulatory and Notice Actions Chapters of the Bridge Operations TTP for additional information.

5. As part of the navigation evaluation, a review of any recent waterway studies (i.e., Waterways Analysis and Management System (WAMS) studies, Ports and Waterways Safety Assessment (PAWSA), Navigation Impact Report, etc.) and the USACE Waterborne Commerce of the United States publications may provide information regarding waterborne commerce near the bridge site. In addition, the waterway mishap history near the bridge may be available through the Coast Guard Incident Investigation data contained in the Marine Information for Safety and Law Enforcement (MISLE) database maintained by the local Coast Guard Sector.

6. In order to avoid groundings and the resultant vessel or environmental damage, commercial tows and larger vessels are normally confined to the main navigation channel while waiting for a bridge opening.
7. If a review of bridge tender logs and other waterway data indicate a large number of vessels, including tugs with tows, will be required to wait near the bridge for openings during short-term closures, consult with the local Coast Guard Sector regarding possible establishment of limited access areas to minimize risk of vessel collisions or groundings.

#### **H. Navigation Considerations When Evaluating Any Potentially Unreasonably Obstructive Bridges.**

1. Chapter 6 provides guidance in conducting the Preliminary and Detailed Investigations of a potentially unreasonably obstructive bridge, as described in 33 CFR Part 116.
  - a. In particular, the navigation benefits and benefit-to-cost ratio computations address the tangible annual savings related to navigation that would be realized by removing the obstructive features of the bridge.
  - b. These include: elimination of commercial and recreational vessel delays caused by the bridge, elimination of vessel accidents caused by the limited clearances of the bridge, and other savings such as eliminating a need for extra pilots, crew and tugs, eliminating environmental delays (bad weather, tides, cross-currents, wind, etc.), and eliminating multiple trips due to size limitations of barge configurations, plus other savings.
2. The criteria described in the navigational evaluation within this chapter can also be used during a Truman-Hobbs investigation to further describe impacts of existing bridge locations and designs on our national security, the safety and mobility of intermodal transportation, and the potential for economic development within the waterway system. In particular, the Preliminary Investigation includes an analysis of the existing bridge design and location to determine whether the navigational clearances are unreasonably restrictive and what navigational problems are created by the restrictive clearances.
  - a. The history of accidents at the bridge site and the costs associated with the accident history are integral parts of the navigational evaluation required as part of this investigation.
  - b. Potential delays to military deployments and commercial vessel movements due to restrictive clearances are significant national security and mobility issues.

- c. The inability of waterways to sustain modern vessel designs also greatly limits the potential for economic development within the waterway systems and impedes expansion of the marine transportation system.
3. In some instances, restrictive navigational clearances caused by the age of an existing bridge, combined with strong crosscurrents, may force tows to await slack water before transiting through a bridge. Such delays can seriously affect the competitiveness of waterborne transportation, which may ultimately cause a reduction in the amount of commerce using the restricted waterway.

#### **I. Coordination with Other Coast Guard Activities**

1. All aspects of bridge permitting, drawbridge operations, and bridge lighting and markings must be coordinated with Coast Guard field commands, as appropriate.
2. The Coast Guard Sectors, Captains of the Port, Coast Guard Stations, Coast Guard Cutters, and/or Aids to Navigation units can offer a wealth of professional experience in navigational issues, which can be used during navigational evaluations.
3. These commands can assist the district bridge staff by providing navigational information for use in the jurisdictional determinations, site-specific information about design vessels that use a particular waterway, and by describing the potential impacts of current flow, shoaling, and wind effects on proposed bridge alignments.
4. These commands must also be consulted regarding proposed closures or restricted openings of drawbridges and asked to review all public notices describing proposed bridge construction over or across navigable waterways within their areas of responsibility. Such early consultation and partnering sessions may help identify serious navigational issues that can be more fully investigated and mitigated during the bridge permitting and regulatory processes. They can also help with testing proposed pier locations and horizontal clearances at bridge sites within their area of responsibility.

## CHAPTER 3. ENVIRONMENTAL IMPACT CONSIDERATIONS

### A. Introduction

1. The guidance in this chapter is to be used in conjunction with Commandant and DHS Directives, other applicable Federal laws and regulations, and the Bridge Program TTPs.
2. Those directives, orders, acts, laws or regulations specifically applicable to the Bridge Program are discussed in this chapter. The term “bridge program actions” as used throughout this chapter, refers to bridge permits, permit amendments, after-the-fact permits, Orders to Alter, and the promulgation of drawbridge operation regulations.

### B. Policy

1. A systematic interdisciplinary approach will be used to assess social, economic, environmental and other effects of bridge program actions. Efforts will be made in the Bridge Program to create, maintain, and improve the beneficial relationship between people and the environment; and to preserve the natural beauty of the countryside, coastal areas, natural and cultural resources. Coast Guard investigations will include consultations with local, state, and Federal agencies and the public. Coast Guard recommendations and decisions are based on the reasonable needs of navigation and on consideration of social, economic and environmental impacts.
2. For projects when the Coast Guard is the lead Federal agency, Headquarters, Office of Bridge Programs, must be consulted early in the process and given the opportunity to comment on environmental documents before they are finalized.
3. Laws and regulations governing impacts or management of historic and cultural resources, as well as a wide variety of natural resources may be triggered by Bridge Program actions. The primary laws are described briefly below. Additional information and responsibilities can be found by consulting the Bridge Program TTPs<sup>1</sup>.

### C. National Environmental Policy Act

1. Compliance. All Bridge Program actions must conform with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. § 4321), as amended; the Council on Environmental Quality (CEQ) Regulations (40 CFR §§ 1500 1508), which implement NEPA; Procedures for Considering Environmental Impacts, the

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<sup>1</sup> where any environmental compliance guidance and procedures in the Bridge Program TTPs conflicts with current environmental planning laws or regulations and overarching Office of Environmental Management Environmental Planning, Natural Resource Management or Coastal Zone Consistency Policy or this Instruction, the laws or regulations take primary precedence and then CG-47 overarching policy and then this Instruction

U.S. Coast Guard Environmental Planning Policy, COMDTINST 5090.1 (series), the U.S. Coast Guard Planning Implementing Procedures (series) and all applicable Executive Orders and Acts currently in force affecting the environmental review for the permitting of infrastructure.

2. NEPA.

- a. Requires Federal agencies to analyze the impacts of their proposed actions on the human environment before the action is taken by considering the natural and physical environment and the relationships of the people with that environment.
- (i) When a project sponsor proposes to construct, replace or modify a bridge across a navigable waterway, a Coast Guard bridge permit might be required. The bridge work may be the full extent of the project or may be just one component of a larger project, often involving roadway modifications. As a Coast Guard bridge permit is a major federal action, the Coast Guard must also comply with NEPA, either as the lead Federal agency (LFA) or more commonly, as a cooperating agency. For most Coast Guard bridge permits, another Federal agency such as the Federal Highway Administration is the LFA. When the Coast Guard is the lead Federal agency, it must establish the scope of the NEPA document (e.g., the EA or EIS) to address the impacts of the specific activity requiring a Coast Guard bridge permit, which in most cases is limited to those portions of the entire project over which the Coast Guard has authority. This means the Coast Guard should only analyze impacts for those sections of the project under our jurisdiction, i.e., bridges and approaches.

The term "bridge and its approaches," as used in 33 CFR § 114.05, must be determined on a case-by-case basis and principally based upon the project design limits of the bridge. The term may be defined generally as including all work integral to the structure itself, but not the roadways that connect to the bridge.

- (1) For example, if a bridge deck's grade is the same as the grade of the highway approach to it, then the point where the abutment or last pier meets the approach, inclusive of the abutment or last pier, would be considered the limit of the bridge for the Coast Guard permit and the limit of Coast Guard NEPA responsibility. Our authorities only extend to the limits of the bridge.
- (2) In cases where the bridge deck is at a higher elevation, the point where a change in grade in the approach highway occurs would be considered the limit of the bridge and the



limit to our NEPA responsibility. Our authorities only extend to the limits of the bridge

- (ii) In unusual cases, the Coast Guard may have NEPA responsibility for portions of the project beyond the limits of Coast Guard jurisdiction where the Federal involvement is substantial enough to turn a private action into a Federal action. Such cases, where the environmental consequences of the larger project might directly result from the Coast Guard permit action, must be evaluated in consultation with the Headquarters Bridge Program.

Factors that may be considered in determining whether Coast Guard NEPA responsibility extend beyond the bridge and its approaches include:

- (1) Whether or not the Coast Guard bridge permit comprises merely a link in a corridor type project such as a highway, railway, or pipeline project .
- (2) Whether there are aspects of the transportation project in the immediate vicinity of the bridge that affect the location and configuration of the bridge.
- (3) The extent to which the entire project may be within Coast Guard jurisdiction.
- (4) The extent of cumulative Federal control and responsibility.

In determining whether sufficient cumulative Federal involvement exists to expand the scope of Federal action, the Coast Guard should contact the Headquarters Bridge Program for guidance

***Examples:***

For a Coast Guard lead project, if non-Federal infrastructure is proposed to be built and the only Coast Guard permit requirement relates to a pipeline, road, or rail line waterway crossing,, the Coast Guard permit alone, would not normally constitute sufficient overall Federal involvement with the overall project to justify expanding the scope of a Coast Guard NEPA document to cover the entire project.

When another Federal agency is the lead for a project that requires a Coast Guard bridge permit, that agency determines the scope of NEPA review and the Coast Guard will limit its coordination and review to the bridge and its evaluation in the NEPA document. The Coast Guard should, whenever practicable, incorporate by reference and rely upon the reviews of other Federal and

authorized State agencies. For example: If the Coast Guard is permitting a bridge that is a part of a larger project with federal funding, then the lead agency's NEPA review would extend to the entire project. The Coast Guard would simply be reviewing and ultimately adopting the bridge related portions of that NEPA document for the entire project.

As another example, a 10-mile roadway crossing a 1-mile-wide navigable river requires a Coast Guard permit, and the Coast Guard is the LFA. Neither the origin nor destination of the roadway nor its route to and from the navigable water, except as the route applies to the location and configuration of the crossing, are within the control or responsibility of the Coast Guard. Those matters would not be included in the Coast Guard's scope of analysis, which would be limited to the impacts of the specific bridge crossing as the Coast Guard has no control over where the rest of the project is routed. We only have authority over the bridge and its approaches.

- (iii) When another agency is the LFA for the NEPA document and the Coast Guard is a cooperating agency, the limits of the Coast Guard NEPA jurisdiction are the bridge and its approaches. The Bridge Program must ensure as a cooperating agency, that the EA or EIS documents that no significant harm to the environment outside of the United States occurs. Procedures for addressing significant harm determinations and no significant harm determinations can be found in the Environmental TTP.
- (iv) When the Federal Highway Administration (FHWA) is the LFA, comments and resolution of any differences concerning the adequacy of an environmental document must be consistent with the Coast Guard/DOT Memorandum of Agreement (MOA) and the Coast Guard/FHWA Memorandum of Understanding (MOU).

### 3. Categorical Exclusion (CE).

- a. The DHS Instruction 023-01-001-01, Revision 01, Implementation of the National Environmental Policy Act (NEPA) and the United States Coast Guard Environmental Planning Policy, 5090.1 (EP CI) and the United States Coast Guard Environmental Planning Implementing Procedures (EP IP) lists those bridge actions that are categorically excluded. If a bridge action is categorically excluded, then preparing an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is not required, unless the action triggers one or more of the extraordinary circumstances as described in the Chapter 3.B.7. of the United States Coast Guard Environmental Planning Policy, 5090.1 (EP CI) and the United States Coast Guard Environmental Planning Implementing Procedures (EP IP). It is preferred that only one CE be cited in the determination. Refer to the Environmental TTP for additional information.
4. Environmental Assessment (EA).
    - a. When the Coast Guard is the LFA for a project, the responsible Coast Guard official must ensure that an EA is prepared for all Coast Guard bridge actions not qualifying as CEs or requiring an EIS.
  5. When another Federal agency is the LFA, the responsible Coast Guard official must ensure that the EA prepared by or for that agency meets all USCG requirements as listed in the Bridge Permit Application Guide at the earliest time practicable. Refer to the Environmental TTP for additional information.
  6. Finding of No Significant Impact (FONSI).
    - a. When an EA has been prepared for a Coast Guard bridge action, and the responsible Coast Guard official has determined that there will be no significant impacts on the environment in accordance with 40 CFR § 1508.27(b), the Coast Guard must prepare a FONSI, which fulfills the requirements of the United States Coast Guard Environmental Planning Policy, 5090.1 (EP CI) and the United States Coast Guard Environmental Planning Implementing Procedures (EP IP). If significant impacts are discovered during the EA process that cannot be mitigated, then the EA may serve as the basis for preparing an EIS. Refer to the Environmental TTP for additional information.
    - b. When the Coast Guard is the LFA and has prepared an EA for a bridge action, or uses an adequate EA prepared by the applicant, the responsible Coast Guard official must prepare a FONSI using the USCG format given in National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts, COMDTINST M16475.1 (series). Both the EA and FONSI serve as Coast Guard environmental documents. Refer to the Environmental TTP for additional information.

7. Environmental Impact Statement (EIS).
  - a. Certain actions may require preparing an EIS without preparing an EA. Those actions are discussed in the United States Coast Guard Environmental Planning Policy, 5090.1 (EP CI) and the United States Coast Guard Environmental Planning Implementing Procedures (EP IP) and include notification of preparation of an EIS to CG-47 when the Coast Guard is the lead federal agency. Other actions may first require preparing an EA. If, after preparing an EA, it is determined that a proposed action will have significant impacts on the quality of the human environment, then an EIS must be prepared. Refer to the Environmental TTP for additional information.
8. Record of Decision (ROD).
  - a. ROD is prepared for all EIS cases at the conclusion of the NEPA process. The Coast Guard draft ROD should be limited specifically to the bridge related portions of the project, and discuss all impacts for which the Coast Guard is responsible. The ROD is signed by Chief, Office of Bridge Programs. The format for the ROD is described in the United States Coast Guard Environmental Planning Policy, 5090.1 (EP CI) and the United States Coast Guard Environmental Planning Implementing Procedures (EP IP). Refer to the Environmental TTP for additional information.
9. Adoption.
  - a. The Council on Environmental Quality (CEQ) Regulations (40 CFR § 1506.3) encourage agencies to adopt the environmental documentation of other Federal agencies, whenever possible, to reduce the cost and processing time of Federal actions. The Coast Guard can adopt EAs and EISs, whereas CE, FONSI, and RODs cannot be adopted. Refer to the Environmental TTP for additional information.
10. Tiering.
  - a. Tiering is a flexible option that project sponsors can use to organize decision making for large transportation projects. Tiering integrates the planning and NEPA processes in two phases: a first tier focused on broad, overall corridor issues, such as general location, mode choice, and area-wide air quality and land use impacts, and a second tier focused on site-specific impacts, costs, and mitigation measures. In some instances, bridge projects that are part of a larger transportation undertaking may be subject to tiering, with more specific design level details determined at the second tier of analysis.
11. Environmental Impacts Resulting from Navigation.

- a. Environmental impacts that are the result of navigational issues (e.g. air quality or water quality issues resulting from increased idling) should be addressed through the NEPA process.
- b. Impacts to navigation (e.g. decreased bridge clearances) must be addressed separately under the bridge authorities. The applicant is responsible for developing a navigation impact report (based on the information required by the District Office) to inform the design alternatives with respect to the reasonable needs of navigation. The navigation impact report should include impacts on the navigation and the economy. The navigation impact report must not be included in the NEPA analysis/documents.

## 12. Agency and Public Involvement.

- a. See the public notice and public meetings requirements contained in the Administrative TTP.

### **D. Environmental Effects Abroad**

1. When a bridge program action involves impacts that span international boundaries, those impacts must also be evaluated under the executive order on environmental effects abroad. Transboundary impact evaluations must also be coordinated with the Department of State and CEQ.

**NOTE:** 3.E. through 3.V. below are in order to coincide with the Bridge Permit Application Guide (COMDTPUB P16591.3 series), Environmental TTP, and Findings of Fact templates.

### **E. Clean Water Act, Section 401: Water Quality Certification**

1. The Bridge Program is required to document the impacts on water quality in the human environment to comply with NEPA, and to comply with the regulations of the Clean Water Act, as amended. This Act's goals are to restore and maintain the chemical, physical, and biological integrity of the Nation's waters through prevention and elimination of pollution.
2. All bridge actions must comply with the Water Quality Certification (WQC) provisions of the Clean Water Act, Section 401 (33 U.S.C. § 1341), and it is implementing regulations in 40 CFR Part 121. A bridge permit action requires a WQC, waiver, or a statement that the WQC is not required.
3. The decision to issue, deny, waive or determine the necessity for a WQC can be made only by the appropriate state water quality certifying agency, interstate agency or the Environmental Protection Agency (EPA), not the applicant, the

Coast Guard or any other Federal agency. In some instances more than one state water quality certifying agency may need to be consulted, if the proposed project is within two (or more) state boundaries.

#### **F. Clean Water Act, Section 404 and Protection of Wetlands**

1. Section 404 of the Clean Water Act requires the USACE to issue permits for the placement of dredged or fill material into waters of the United States, including wetlands.
2. National policy to avoid adverse impacts on wetlands wherever there is a practicable alternative is established by executive order.
3. The environmental document should include discussion of the effects of operational and construction activity on wetlands, which includes proposed mitigation. The environmental document should document coordination for and compliance with the executive order on Protection of Wetland requirements. In cases where the project qualifies as a CE, documentation of compliance with these requirements should be included in the application, FOF and/or the Corps permit, if applicable.

#### **G. Coastal Zone Management**

1. The Coastal Zone Management Act 1972 (16 U.S.C. §§ 1451-1456) (CZMA) established a national voluntary program in the Department of Commerce that encourages coastal states to develop and implement coastal zone management programs to preserve, protect, develop, and (where possible) restore and enhance resources of the coastal zone, including the Great Lakes.
2. All bridge actions must comply with Section 307 of the CZMA, as amended, 15 CFR Part 930, which implements the CZM Act, and Coastal Zone Management Federal Consistency Procedures. Bridge actions must be consistent with state adopted Coastal Zone Management Plans when states have developed such plans and the bridge action is located in a geographic area covered by the plan.

#### **H. Floodplain Management**

1. Federal agencies are required to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of flood plains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative.
2. All bridge actions must comply with the provisions of the executive order on Floodplain Management and evaluate potential impacts to floodplain functions.

**I. Wild and Scenic Rivers**

1. The Wild and Scenic Rivers Act (WSRA) of 1968, as amended, established a National Wild and Scenic Rivers System for the protection of rivers and adjacent lands with important scenic, recreational, fish and wildlife, and other values.
2. All bridge actions must comply with the provisions of the WSRA (16 U.S.C. § 1271) and with the intent of the CEQ Memorandum, dated August 10, 1980, concerning interagency consultation so that the qualities that have been identified for the rivers and lands under the WSRA are not affected.

**J. Coastal Barrier Resources Act.**

1. The Coastal Barrier Resources Act of 1982 (CBRA) establishes a Coastal Barrier Resources System (CBRS). Coastal barriers are landforms located at the interface of land and sea, such as barrier islands, spits, and dunes. The Coastal Barrier Improvement Act of 1990 reauthorized the CBRA, adding new units and enlarging previously designated units. CBRA prohibits federal funding for building and development in undeveloped portions of designated coastal barriers, including the Great Lakes.
2. CBRA establishes a system that identifies coastal barriers, called “system units,” and encourages conservation by restricting Federal expenditures that encourage development. To the extent permitted by law and to the maximum extent practicable, the Bridge Program, in taking such actions, must avoid harm to the coastal barrier resources.

**K. Land and Water Conservation Fund Act.**

1. Section 6(f) of the Land and Water Conservation Fund Act (LWCFA) prohibits the conversion of property acquired or developed with LWCFA grants to a non-recreational purpose without the approval of the Department of the Interior, National Park Service (NPS). LWCFA safeguards natural areas, water resources and cultural heritage.
2. When lands have been acquired or developed with LWCFA grants, the environmental document should include discussion of the effects of operational and construction activity on such lands. The environmental document also documents coordination for and compliance with the LWCFA including potential mitigation measures.

**L. National Marine Sanctuaries Act and Marine Protected Areas.**

1. The National Marine Sanctuaries Act (NMSA) authorizes the Secretary of Commerce to designate and protect areas of the marine environment with special national significance due to their conservation, recreational, ecological, historical,

scientific, cultural, archeological, educational, or esthetic qualities as national marine sanctuaries.

2. This Act applies to any project that is located within a National Marine Sanctuary (NMS). Some coastal roadways have been included within the boundaries of the National Marine Sanctuary System.
3. An executive order helps protect significant natural and cultural resources within the marine environment identified as Marine Protected Areas (MPA). The marine environment is any area that has been reserved by Federal, state, territorial, tribal, or local laws or regulations to provide protection for natural and cultural resources.
4. To the extent permitted by law and to the maximum extent practicable actions of the Bridge Program will review applicable sanctuary management plan(s) in order to determine whether a proposed action will destroy, cause the loss of, or injure any sanctuary resources, or fall under any other prohibited activity. The Bridge Program will avoid harm to the natural and cultural resources that are protected within an MPA. Impacts to an MPA must be evaluated within the NEPA document and consultations initiated with the administrator of the MPA.

#### **M. Endangered Species Act and Fish and Wildlife Coordination Act.**

1. The Endangered Species Act (ESA) provides for the conservation of endangered and threatened species of fish, wildlife, and plants, and the critical habitat upon which they depend.
2. All bridge actions must comply with Section 7 of the Endangered Species Act of 1973, as amended. Compliance, in part, consists of determining whether resources subject to the Act are within the area of potential effect, determinations of effects on the resource, and consultation with the National Marine Fisheries Service or Fish and Wildlife Service is required concerning those effect determinations.
3. The Fish and Wildlife Coordination Act (FWCA) requires that wildlife conservation be given equal consideration to other features of water-resource development programs through planning, development, maintenance and coordination of wildlife conservation and rehabilitation. Wildlife and wildlife resources are defined by the Act to include birds, fish, mammals and all other classes of wild animals and all types of aquatic and land vegetation upon which wildlife is dependent.
4. All bridge actions must comply with the Fish and Wildlife Coordination Act (16 U.S.C. § 661), as amended. This is typically accomplished through consultation with state and Federal wildlife officials when actions involve disturbance of wildlife habitat or nesting areas.



**N. Magnuson-Stevens Fishery Conservation and Management Act.**

1. The Magnuson-Stevens Fishery Conservation and Management Act requires Federal agencies which fund, permit, or carry out activities that may adversely impact Essential Fish Habitats (EFH) to consult with National Marine Fisheries (NMFS) regarding potential adverse effects of actions on EFH. The Coast Guard must determine if the proposed action will have an effect on EFH or Habitat Areas of Concern and bridge permit case records must clearly document compliance with all relevant EFH requirements. The focus of the Act is protection of marine fisheries, and "EFH" means those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.
2. All bridge actions must comply with the Magnuson-Stevens Fishery Conservation and Management Act, EFH consultation requirements, and the NMFS implementing regulations. While principally of interest in marine coastal areas, the protection of anadromous species and feedstock for marine species may extend to habitats inland from the marine coasts. As a result, to determine whether an action impacts an EFH consult with the regional NMFS office. Districts responsible for marine coast Bridge Program actions should become familiar with EFH resources in their districts.

**O. Marine Mammal Protection Act.**

1. The Marine Mammal Protection Act of 1972 (MMPA) prohibits the taking of marine mammals, and enacts a moratorium on the import, export, and sale of any marine mammal, along with any marine mammal part or product within the United States.
2. The MMPA defines "take" as "the Act of hunting, killing, capture, and/or harassment of any marine mammal; or, the attempt at such." The Bridge Program ensures the applicant consults with NMFS and/or USFWS to ensure that its actions do not result in the unlawful take of marine mammals.

**P. Migratory Bird Treaty Act.**

1. The Migratory Bird Treaty Act (MBTA) of 1918 is a domestic law that protects species or families of birds that live, reproduce or migrate within or across international borders at some point in their annual life cycle. Federal agencies are required by executive order to have regulatory authorization from the U.S. Fish and Wildlife Service before "taking" any migratory birds. A "take" is any action that has or is likely to have a measurable negative effect on migratory bird populations. This also includes actions that merely disturb or startle a migratory bird.
2. This law applies to the bridge program if a proposed action may have a measurable negative effect on migratory bird populations. Typically, this involves

disturbance of nesting areas or other suitable habitat.

**Q. Bald and Golden Eagle Protection Act.**

1. Bald and Golden Eagle Protection Act defines "take" to include "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb."
2. The Bridge Program ensures that its actions do not result in the unlawful take of any Bald or Golden eagle unless allowed by permit. Typically, in bridge permitting projects compliance with this Act entails avoidance of disturbance of both active and inactive nests or limitation of construction during active nesting by eagles in the immediate area.
3. Bald and Golden eagles are also protected by the Migratory Bird Treaty Act, which may trigger consultation with the U.S. Fish and Wildlife Service.

**R. Invasive Species.**

1. An executive order directs Federal agencies to not take actions that are likely to cause or promote the introduction or spread of invasive species, and to provide for re-establishment of native species and habitat conditions in ecosystems that have been invaded. Vegetation management actions taken in support of bridge activities should contain provisions to avoid introductions of invasive species and to use native species in mitigation measures.

**S. Historical and Cultural Resources.**

1. All bridge actions must comply with the provisions of the National Historic Preservation Act of 1966 (NHPA) and its implementing regulations.
2. The Coast Guard must ensure historic and cultural resources are identified that are near a proposed bridge project under the provisions of Section 106 of the NHPA regulations. Historic and cultural resources include historic districts, objects, and archaeological remains and historic structures, including bridges. If the historic or cultural resources are on or eligible for listing on the National Register of Historic Places, consultation must be undertaken under the NHPA regulations to determine effects of the proposed action on the historic and cultural resources.
3. Bridge Program actions on public land administered by the Federal government or on Indian lands require permits if archeological resources will be excavated as part of the project. Permits for archeological investigation may be issued under the Archeological Resources Protection Act (ARPA), the Antiquities Act of 1906, or both. Impacts to archeological resources should be identified in the appropriate NEPA document and may also require compliance with Section 106 of the NHPA. If human remains, funerary objects, sacred objects, and objects of cultural patrimony from Indian tribes, and Native Hawaiian organizations are

located as part of archeological investigations, the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) may apply. NAGPRA provides a process for museums and Federal agencies to return certain Native American cultural items to Indian Tribes or Native Hawaiian organizations. If any Native American historic resources are identified, the provisions of the Native American Religious Freedom Act of 1978 may apply and may require tribal consultation and/or mitigation.

4. The Abandoned Shipwreck Act covers actions that disturb, alter, damage, or destroy state-owned shipwrecks located on its submerged lands. Prior to making a bridge permit decision, the Coast Guard should afford the state agencies assigned with management responsibility for state-owned shipwrecks a reasonable opportunity to comment on the action. In most instances, the state program with responsibility for shipwrecks is incorporated into the state historic preservation program, coastal zone management program, or other management program.

#### **T. Clean Air Act.**

1. The Bridge Program is required to document the impacts on air quality in the human environment to comply with NEPA, and to comply with the regulations of the Clean Air Act (42 U.S.C. § 7506(c)), as amended.
2. The Clean Air Act (CAA) requires the EPA to establish the National Ambient Air Quality Standards (NAAQS). EPA has set NAAQS for six principal pollutants, which are called "criteria" pollutants. Under the CAA, a geographic area that meets a given standard is known as an "attainment area" for that standard. Areas where air quality does not meet the national primary or secondary ambient air quality standards for one or more criteria pollutants (or that causes or contributes to a new violation of ambient air quality in a nearby area) are identified as "nonattainment" areas.
3. Any new activity engaged in or approved by a Federal agency must conform to an applicable Federal or state approved air quality implementation plan (FIP or SIP), if the Conformity Rules apply.

#### **U. Environmental Justice in Minority or Low-Income Populations.**

1. All Federal agencies are required by executive order to ensure that environmental justice consideration is part of their missions by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions.
2. The environmental document should include discussion of the effects of operational and construction activity on minority populations and low-income populations, to include cumulative and indirect impacts, and proposed mitigation.

The environmental document will document coordination for and compliance with environmental justice considerations.

**V. Hazardous Materials, Substances and Waste.**

1. The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) was passed by Congress in response to a growing national concern about the release of hazardous substances from abandoned waste sites. The Act gives the Federal government broad authority to regulate hazardous substances, to respond to hazardous substance emergencies, and to develop long-term solutions for the Nation's most serious hazardous waste problems.
2. If a project involves a right-of-way containing a hazardous substance or is located near or on a Superfund site, compliance with provisions of CERCLA or related laws (Resource Conservation and Recovery Act) or regulations may be required.

## CHAPTER 4. BRIDGE PERMITS

### A. Introduction

1. This chapter documents overarching policy to be followed by District Commanders in processing applications for approval of the location and plans for the construction of new bridges or modification of existing bridges over or across navigable waters as required by the statutes enumerated in Section 4.B below.
2. The criteria for approval must rest primarily upon the effect of the proposed action on navigation to assure that the action provides for the reasonable needs of navigation. The provisions of this chapter are to be taken in context with Chapters 1, 2 and 3, as applicable, and 33 CFR Parts 114 and 115.

### B. Bridge Legal Authorities and Bridge Statutes.

1. Through Department of Homeland Security Delegation Number 0170.1, the Secretary of Homeland Security has authorized the Commandant of the Coast Guard to exercise jurisdiction over bridges and causeways in or over navigable waters of the United States in accordance with the following acts/statutes:
  - a. Act of August 18, 1894, c. 299, § 5, 28 Stat. 362; as amended; classified to 33 U.S.C. § 499;
  - b. Act of March 3, 1899, c. 425, § 9, 30Stat. 1151; as amended; classified to 33 U.S.C. §§ 401, 502 (commonly referred to the “Rivers and Harbors Appropriation Act of 1899”);
  - c. Act of March 23, 1906, c. 113, § 1, 34 Stat. 84; as amended; classified to 33 U.S.C. §§ 491-498 (commonly referred to the “General Bridge Act of 1906”);
  - d. Act of June 21, 1940, c. 409, 54 Stat. 497; as amended; classified to 33 U.S.C. §§ 511-524, (commonly referred to the Truman-Hobbs Act of 1940);
  - e. Act of August 2, 1946, 60 Stat. 497; as amended; classified to 33 U.S.C. §§ 525, 530, 533 (commonly referred to the General Bridge Act of 1946);
  - f. Act to give the consent of Congress to the construction of certain international Bridges, and for other purposes, P.L. No. 92-434 (H.R. 15577), 86 Stat. 31-733 (September 26, 1972); as amended; classified to 33 U.S.C. §§ 535-535i (commonly referred to as “the International Bridge Act of 1972”);

- g. Act of 1978, Section 124a of the Surface Transportation Assistance (STA), as amended, 23 U.S.C. § 144(c); and
- h. Act of 1982, Sections 107 of the Coast Guard Authorization (CGA) (Public Law 97-322); See Note;

**NOTE:** Section 107 of the CGA Act of 1982, amended section 9 of the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. § 401); the first section of the Act of March 3, 1906 (33 U.S.C. § 491) and section 502(b) of the General Bridge Act of 1946 (33 U.S.C. § 525(b)). In effect, the CGA Act of 1982 amended the U. S. Code by adding the requirements for navigability to the sections noted above; however, the amendment did not include waters deemed navigable only by historic use. Per the CGA Act of 1982, the requirements for the approval of the location and plans or the alteration of a bridge must not apply to any bridge over waters which are not subject to the ebb and flow of the tide and which are not used and are not susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce. Such waters do not meet the navigable waters requirements and the Coast Guard does not have jurisdiction to regulate bridges on these waters. The CGA Act of 1982 does not implement an exemption from the bridge permitting requirements; it clarifies the Coast Guard's jurisdiction for permitting bridges over or across navigable waters, but excludes waters for which navigability was determined only based on historic use. If such waters remain susceptible for use in interstate or foreign commerce, then the bridge statutes still apply. If there is doubt whether a waterway meets the navigability requirements, the District Bridge Office must consult with the District Legal Office to determine whether it is a navigable waterway of the United States.

### **C. Delegation of Authority to District Commanders.**

#### **1. Permit Actions**

- a. The Commandant has delegated to District Commanders (33 CFR § § 1.01-60) the authority to issue all bridge permits and permit amendments except those which have been delegated to Commandant (Office of Bridge Programs) below:
  - (i) Require an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969, as amended, (42 U.S.C. § 4321 et seq.) and all implementing regulations, orders, and instructions;
  - (ii) Those that require a Presidential permit and approval under the International Bridge Act of 1972 (33 U.S.C. § 535);

- (iii) Those that require the amendment of an existing permit issued by the USACE. Once the Commandant (Chief, Office of Bridge Programs) has amended a USACE permit or permit amendment, the District Commander is authorized to issue subsequent amendments provided the other delegation criteria are met. The District Commander is authorized to issue a Coast Guard permit to construct a bridge (project) which replaces a USACE permitted bridge, provided the other delegation criteria are met. See the Permits TTP for the distinction between modified and replaced bridges;
  - (iv) Those that raise substantial unresolved controversy involving the public, or are objected to by Federal, state, or local government agencies;
  - (v) Those authorized by the Commandant upon the appeal of a District Commander's decision denying a permit.
2. Additionally there may be permit actions that the Chief, Office of Bridge Programs will request be submitted to Headquarters for final agency action.

**NOTE:** Any Bridge Program issues or actions that are, or have the potential of becoming controversial, or involve or may involve litigation, should be forwarded to the Chief, Office of Bridge Programs for information and decision regarding action to be taken on such issues or actions early in the process. Such projects/issues may involve controversy between Federal, state and local agencies, disagreements with the bridge owners or applicants, controversy with environmental and navigational entities, political interest, precedent setting, environmental impact statements, etc.

#### **D. Bridge Permit Actions**

1. Bridge permits and permit amendments are the Coast Guard documents approving the location and plans of bridges as required under the statutes listed in Section 4.B.
2. The Permits TTP and the Bridge Permit Application Guide (BPAG) describe bridge-permitting procedures and must be followed whenever possible. If questions arise regarding the TTP or the BPAG procedures, contact Chief, Permits and Policy Division for guidance.
3. Districts must enter bridge permit information into the Bridge Program Database, when operational. Guidance for entering bridge permit information will be outlined in the applicable Bridge Program TTP. For further questions, please contact Chief, Office of Bridge Programs.
4. Bridge permits should be numbered consecutively by District Commanders in the

format of Consecutive Number - Calendar Year - District, e.g., (2-11-7), the second permit action taken in 2011 for a bridge project located within the Seventh Coast Guard District.

5. For permit actions spanning several waterways, consult with Headquarters early in the process to determine the number of permits that should be issued.
6. Amendments to permits are also formal permit documents with a unique number based on the original permit's number. Use consecutive lower case letters after the first permit number to reflect the number of amendment actions taken on each permit, e.g., (2a-11-7). Amendments to those permits issued with an abbreviated permit number, e.g., (8-81), must also bear the district number when the final action is taken, e.g., (8a-81-7). Amendments to a USACE permit must be assigned a new Coast Guard permit number.
7. The District Commanders must assign permit numbers for permit actions when preparing the permit document for district actions and when preparing the transmittal letter for Headquarters actions.
8. District Commanders must maintain a record of the permit actions taken within their district boundaries.
9. Bridge permit actions must be dated on each page with the date the action was signed. The first page of the permit must be dated to the right of the words "BRIDGE PERMIT" in line with the right margin. All continuation sheets must be dated just above the words "BRIDGE PERMIT" in the upper right corner. The preferable date format is day-month-year (e.g., DD MMM YYYY, 3 OCT 2020). Special care must be taken to ensure the permit action is dated the same day it is signed.
10. Permit application files must be complete and contain those items listed in the Permits TTP before sending to the District Commander or the Commandant, by direction, for review and signature. The District Commander must retain the originals of all documents in the district permit files. Copies of documents for district actions must be submitted to the Chief, Bridge Permits and Policy Division, within 20 calendar days of the date of the permit action to enable a prompt response to inquiries received in Headquarters, and timely quality assurance of documents to ensure nationwide consistency.
11. As outlined in 33 CFR § 115.05, care will be taken that Federal approval is not granted when there is doubt that the applicant has the right to construct and utilize the bridge. In such cases where there is doubt of the applicant's right to construct and utilize the bridge, particularly for a private bridge owner, proof of property rights must be furnished to the Coast Guard as part of the application. The applicant must be informed that the Coast Guard will accept a permit application only after any such impediments have been resolved or remove.



12. Bridge permit applications should not be accepted for processing if upon receipt it is evident that the bridge project is under any legal obstruction (court stay, injunction, or other order) that precludes construction and operation of a bridge, has any funding issues that threaten to prevent construction and operation of the bridge, or if there are any doubts concerning the applicant's property rights. District Bridge Office Managers should advise the Chief, Office of Bridge Programs of permit applications rejected for these reasons.

#### **E. Limiting Date in Permits**

1. Specific time limitations are stated in all permits for the commencement and completion of construction. As stated in 33 CFR § 115.10, normally three years for start of construction and two additional years for completion may be allowed. Additional time may be allowed in the permit for good cause, which should be documented in the Findings of Fact. For international bridge permit actions, two years to commence, and five years to complete construction are granted (33 U.S.C. § 535c). The district must document justification, in the Findings of Fact (FOF), for any limiting dates other than those prescribed above.
2. If an applicant requests to extend the time to commence construction, a permit amendment is the appropriate final agency action. Permit amendments for extensions of time to commence construction of a bridge project must include language located in the Permits TTP. If the request is to extend the time to complete construction is for two years or less, said request can be granted by letter, from the District Commander, to the applicant in lieu of a permit amendment. Requests for time extensions greater than two years require a bridge permit amendment. The letter response may not be used for any other actions requiring bridge permit amendments, including modifications to the bridge, modifications to the plans, or modifications to other conditions in the original permit. Issuance of a public notice and/or local notice to mariners is recommended to inform mariners of the continued impact to navigation.
3. District staffs must track bridge project expiration dates and notify permittees in writing of impending expiration dates and the procedure to request an extension of time. This notification must be early enough to allow the permittee to submit the request at least 30 days prior to the expiration of the permit.
4. Time Limits for Removal Provisions. Specific time limitations are inserted in all permits for the removal of temporary structures and bridges being replaced, in whole or in part by the newly permitted bridges where removal thereof is required as a condition of the permit. A specific date or time for removal of a temporary structure is determined on an individual case basis commensurate with the need of the project. Normally a period of 90 days after completion of the new bridge may be allowed for removal of such temporary structures and bridges being replaced. Removals must be completed within the time constraints so stated in the removal condition; however, removals are not a function of permit expiration. The

commencement/completion condition is the only indicator for permit expiration and is generally three/five years, respectively. Removal conditions typically require temporary and existing bridges to be removed from the waterway 90 days after the bridge has been opened to traffic, and are designed to exceed the five-year date for completion of the bridge project. If an extension of time is needed to remove temporary structures and existing bridges for no more than two years, said extension can be granted by sending a letter to the applicant. Requests for time extensions greater than two years require a bridge permit amendment.

5. Requests at least 30 days before permit expires. Generally, if a permittee requests an extension of time at least 30 days before the permit expires, the permit continues in force (i.e. work is permitted to continue) pending final agency action by the Coast Guard on that request.
6. Requests less than 30 days before permit expires. Should the permittee make the request for an extension of time less than 30 days before the permit expires, the permit may be reinstated and the time limit extended pending final agency action by the Coast Guard on that request.
7. Requests after permit expires.
  - a. Should the permittee request an extension of time after the permit expires and construction has not begun, the original permit does not continue in force (i.e. work cannot commence once the original permit has expired). After a permit has expired, any request for permit action received by the District must be coordinated with Headquarters. Any construction or modification work cannot commence until final agency action is taken.
  - b. Should the permittee request an extension of time after the permit expires and construction has begun, any request for permit action received by the District must be coordinated with Headquarters.
8. If a court having proper jurisdiction issues an injunction or other order to halt construction on a particular bridge (after the permit has been issued), the running of time limitations in the permit or properly issued extension must be suspended. The time limitations will resume running as of the date the injunction or other order has been lifted by the court. DBOs should notify applicants that their permit would be held in abeyance until the injunction is lifted.

## **F. Bridge Permit Exemptions**

1. Repair or Replacement of Bridge Parts.

- a. A bridge or causeway permit is required for the construction of any bridge or causeway over or across the navigable waters of the U.S. An Act of Congress is required as a prerequisite to a permit for a causeway unless the waterway is wholly contained within a state. Any deviation of the location, plans and conditions approved by the permit requires a new or amended permit. This applies to both before and after the bridge or causeway is constructed.
- b. Repairs that do not alter the clearances, type of structure, or any integral part of the substructure or superstructure, or navigation conditions, but consist only in the replacement of worn or obsolete parts, may, if the bridge is a legally approved structure, be made as routine maintenance without approval of the Coast Guard (33 CFR § 115.40). However, Coast Guard coordination is required for any temporary falsework such as scaffolding, cofferdams or bents that will be used to facilitate the repairs if these temporary structures will reduce the clearance for navigation. See the Maintenance, Repair and Rehabilitation Planning section of the Operations TTP for more information.
- c. Replacement-in-kind involves replacing damaged or dilapidated parts with new parts of the same material or substituting the type of material (i.e. steel for wood, concrete for steel) without changing the physical appearance or characteristics of the bridge and does not require a permit. However, if such substitutions affect the approved navigational clearances or the approved configuration are not considered replacement-in-kind and require a permit action. For example, replacing wood with steel on a bridge protective system, which may affect the safety of navigation, must not be considered replacement-in-kind and will require a Coast Guard permit. Any replacement of integral parts of the substructure or superstructure, such as the navigation span, will also require a Coast Guard permit. Replacing a bridge in its entirety with a bridge similar in design and navigation clearances must not be considered replacement-in-kind and will require a Coast Guard permit.

- d. Minor deviations that do not affect the navigational clearances, such as replacing pipe guardrails with solid material; milling and resurfacing pavement; addition, replacement, or removal of pipelines within the structures underneath, on the side, or top; deck widening for non-capacity adding projects or to accommodate bike/pedestrian paths with no new/widened piers in the waterway; or pier repair which do not significantly or materially alter the effect on, or safety of, navigation or the approved general configuration are not considered deviations requiring a bridge permit action. As-built plan sheets must be provided by the applicant for the case file at the discretion of the District Bridge Manager. Consider the following when determining whether to proceed with a minor deviation or a Coast Guard bridge permit:
  - (i) Degree of encroachment on a navigation channel;
  - (ii) Action will provide a clearance less than the guide clearance for the waterway;
  - (iii) The bridge receives complaints regarding clearances;
  - (iv) Hazardous navigation conditions at the site;
  - (v) Mariners require assist tows at the site;
  - (vi) Action will occur at a location where the channel has moved since the previous permit action; and
  - (vii) Headquarters, Bridge Program will provide further guidance regarding minor deviations on a case-by-case basis.

## 2. Temporary Repair or Replacement of Bridges.

- a. Temporary repair or replacement of severely deteriorated or damaged bridges to meet emergency land transportation requirements essential to the public health, interest and safety may be authorized without formal permit action.
- b. The following information must be considered prior to approval of the subject bridgework:
  - (i) Type of bridge (i.e., highway, railroad, bascule, vertical lift);
  - (ii) Clearances of existing structure;
  - (iii) Type of bridgework proposed;

- (iv) Clearances to be provided by temporary bridge repairs or structures;
  - (v) Anticipated effects on navigation;
  - (vi) Anticipated effects on the environment;
  - (vii) Probable (apparent) cause of the bridge failure;
  - (viii) Anticipated period of time that the bridge will be retained; and
  - (ix) Intention of the bridge owner to retain or repair a bridge permanently.
- c. The authorization is limited to the minimum period required for the bridge to return to normal operation. Extending the time to allow the temporary bridge or repair to remain in the waterway is at the discretion of the DBO.
  - d. Any temporary bridge repair or structure constructed under such an approval, which is later determined to have a significant effect on navigation or the environment will be subject to removal or alteration by and at the expense of the owner of the bridge to provide for the reasonable needs of navigation and to mitigate adverse impacts on the quality of the human environment.
  - e. Permanent retention of any temporary bridge repairs or structures will be subject to Coast Guard Bridge Permit procedures.
3. Construction of Temporary Bridges.
- a. In case of natural disasters or other catastrophic circumstances requiring extraordinary measures, or for military exercises, the construction of temporary bridges and causeways is authorized without approval of the location and plans. Such authorization is limited to the minimum period required for return to normalcy.
  - b. Any temporary bridge constructed under such authorization, which is later determined to have a significant impact on navigation, or the environment will be subject to removal or alteration to provide for the reasonable needs of navigation.
  - c. Any temporary structure built under this authorization is a categorical exclusion action for purposes of the considerations required otherwise under the National Environmental Policy Act (NEPA) for the duration of the emergency period until return to normalcy.

- d. Any temporary structure built under this authorization, which adversely affects the reasonable needs of navigation or the human environment, will be subject to removal or alteration by the owner to provide for the reasonable needs of navigation and maintenance of the quality of the human environment. Any temporary structures that are retained as permanent structures will be subject to a formal permit action for the proposed structure or after-the-fact approval under 33 CFR § 114.25. In such situations, state permits and certifications are typically expedited under emergency procedures and the NEPA documentation is categorically excluded under L48, table 3-1, Categorical Exclusions Allowed for Use by the Coast Guard, per the United States Coast Guard Environmental Planning Policy, 5090.1 (EP CI) and the United States Coast Guard Environmental Planning Implementing Procedures (EP IP).

### **G. Surface Transportation Assistance (STA) Act of 1978**

1. Section 144(c) of Title 23, U.S. Code, as amended, was enacted to reduce paperwork and related costs in the execution of the Coast Guard's Bridge Permit Program. 144(c) exceptions should only be considered for navigable waterways. The bridges which fall into this excluded category are those that:
  - a. cross waterways which are not used and are not susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce; and
  - b. cross waterways which are non-tidal; or if tidal (as defined by 33 CFR § 2.34), used only by recreational boating, fishing, and other small vessels less than 21 feet in length.
2. In cases where Advance Approval and Section 144(c) might apply, if the requirements for a Section 144(c) exception are met, that exception must be used in lieu of Advance Approval.
3. Section V of the 2014 Memorandum of Agreement between the USCG and FHWA provides for a process to apply a 144(c) exception to a USCG bridge permit. The MOA can be found on the Bridge Program Portal Page. Although the statutory language of Section 144(c) does not require USCG concurrence, the USCG and FHWA have agreed as a matter of policy that the USCG will serve in a consultative role providing navigation and navigability input to FHWA during the Section 144(c) evaluation process. See the Permits TTP for more information on the 144(c) evaluation process.

### **H. Advance Approval Waterways**

1. The General Bridge Act of 1946 requires the approval of the location and plans of bridges prior to start of construction (33 U.S.C. § 525). Pursuant to 33 CFR §

115.70, the Commandant has given advance approval to the location and plans of bridges to be constructed in or across reaches of waterways navigable in law, but not actually navigated other than by logs, log rafts, rowboats, canoes and small motorboats. In such cases, the clearances provided for high water stages will be considered adequate to meet the reasonable needs of navigation.

2. The term “small motorboats” means rowboats, canoes and other similar craft with outboard motors. It does not include sailing or cabin cruiser craft.
3. For Bridge Program purposes the term “reaches of waterways”, refers to a continuous stretch or expanse of a stream or river such as (1) the length of a channel uniform with respect to discharge, depth, area and slope (2) the length of a channel for which a single gage affords satisfactory measure of the stage and discharge (3) the length of a river between two gaging stations and (4) more generally, any length of a river.
4. It is important to note that Advance Approval designations are for the waterway, or portions thereof, and not for any particular bridge proposals.
5. When considering a waterway for designation as Advance Approval, full consideration must first be given to determine if the waterway meets the requirements for STA Section 144(c) if Federal Title 23 funding is to be used for the project.
6. Identification of a waterway as an Advance Approval Waterway is not a major Federal action for purposes of the NEPA. Such action is a categorical exclusion as stated in the Department of Homeland Security Instruction 023-01-001-01, Revision 01, Implementation of the National Environmental Policy Act and Figure 2-1, 32(f) of the United States Coast Guard Environmental Planning Policy, 5090.1 (EP CI) and the United States Coast Guard Environmental Planning Implementing Procedures (EP IP).
  - a. The District Bridge Office must maintain a list of waterways identified as Advance Approval.
  - b. When addressing Advance Approval matters, the following must be adhered to, as appropriate:
    - (i) Following notification of a proposal for construction of a bridge on an Advance Approval waterway the Coast Guard must notify the bridge owner that the Commandant has given advance approval for the location and plans of the bridge and that no further permit action is required.

- (ii) The Coast Guard must make a determination and advise the bridge owner of:
  - (1) The need for navigational lighting on the bridge;
  - (2) That the proposed clearances adequately provide for high water stages.
- (iii) The Coast Guard must notify the bridge owner that an Advance Approval designation on a waterway may be revoked prior to construction if navigation changes from criteria in 33 CFR § 115.70. Other than determining the requirements for bridge lighting, the Coast Guard will not place any additional conditions on bridges over Advance Approval waterways.
- (iv) The Coast Guard should be notified of construction activities to inform a Local Notice to Mariners.

## **I. Permit Application Process**

### 1. Procedure.

- a. Informal initial contact should be made with the prospective applicant at the earliest practicable time after construction of a bridge is first proposed, or such intent becomes known. This contact is to acquaint the prospective applicant with the guide clearances for that waterway, if established, environmental considerations and other factors affecting the design and location of the proposed bridge as may be appropriate.
- b. Recommendations regarding such factors may be incorporated in preliminary planning with less difficulty than at a later stage in the development of the project. Contacts should also be maintained, and meetings should be arranged with waterway users and other interested parties early in the planning stages to identify and resolve differences of opinion. This will minimize adverse public reaction to obviously inappropriate or unreasonable applications.



- c. It is not Coast Guard policy that the applicant for a bridge permit and every objector to any aspect of the proposed bridge be required to resolve their differences before action is taken on the application. Neither is the District Commander expected to resolve all such differences. It is sufficient that the parties concerned be made aware of the differences that exist and be encouraged and afforded the opportunity through the District Commander to resolve them at the earliest practicable date. It is the responsibility of the District Commander to evaluate the significance of any objections to the bridge project and to base his/her decisions or recommendations for action by the Commandant on the information available. Objections made by state and local authorities, by themselves, must not be cause for denial of a bridge permit. These objections, if based upon the effects of the proposed bridge on navigation and the environment, will receive full consideration on equal standing as accorded comments received from any member of the public.
- d. Applications for permits are to be made by letter to the District Commander having jurisdiction over the area in which the proposed bridge will be located. A detailed description of the application letter requirements can be found in COMDTPUB P16591.3 (series) (Bridge Permit Application Guide). Consult the Bridge Permit Application Guide and the Permits TTP for guidance.
- e. Special Application Requirements.
  - (i) Bridge Protective System.
    - (1) The bridge permit application process must require the Bridge Owner to provide a full consideration of the possible need for bridge protective systems that would promote safer navigation for vessels passing through the bridge. The public notice on a proposed bridge must request public comments on the need for a bridge protective system.
  - (ii) Vessel Impact Assessments.

(1) For bridges over or across navigable waterways, the District Commanders may require the bridge owners to provide a statement that their bridges will be designed to resist vessel collision loads according to the design provisions of the American Association of State Highway and Transportation Officials (AASHTO) or equivalent federal or state provisions. Examples of the cases where the District Commanders should require vessel impact statement include the presence of bends and intersections with other waterways near the bridge, the vessel transit path in relation to the navigation channel and its proximity to the bridge piers, the existence of high volume of marine traffic or large size of vessels, high speed water current, and waterway history of barges' collisions with bridges. This statement does not omit the bridge protective system requirements under Section J.1.e.1) "Bridge Protective System". The District Commanders may still require bridge owners to provide bridge protective systems.

(iii) Clearance Gauges.

(1) Clearance gauge requirements are in 33 CFR §§ 117.47 and 118.160.

(iv) Digital Electronic Clearance Gauges.

(1) 33 CFR § 118.160 does not exclude the use of digital electronic clearance gauges as an alternative to the customary gauges presently in use provided such gauges provide the mariner with the information required and meets the intent of the appropriate size and visibility requirements and are installed on the appropriate location of the bridge.

(v) Lighting.

(1) Bridges in or across waterways used for nighttime navigation are required to display navigational lights in accordance with 33 CFR Part 118. Refer to the "Bridge Lighting and Other Signals" for additional guidance.

(vi) International Bridges.

- (1) For international bridges, the U.S. Department of State determines whether a Presidential Permit is required for bridges crossing an international border. When a permit application is received to modify or replace a previously authorized international bridge where no presidential permit is required, the owner must provide proof of approval from the neighboring country to modify the bridge if specified in the Act governing the bridge permit.
- (2) If the existing bridge was authorized by a special Act of Congress, and said Act includes language that requires the owner to obtain authority from the neighboring country to build the bridge, a condition ensuring this must be incorporated as a special condition in the permit amendment, see the Permits TTP. Furthermore, especially for privately owned bridges, a surety bond or escrow agreement as identified in the Permits TTP must be considered as a safeguard for operation, maintenance and removal.
- (3) When a permit application is received to amend a permit or issue a new permit for an international bridge authorized by the International Bridge Act of 1972, authorization is assumed through the Department of State Presidential Permit process and the exchange of diplomatic notes. No special permit condition requiring the owner to obtain authority from the neighboring country is required.
- (4) When a permit application is received to amend a permit or issue a new permit for the replacement of an international bridge where the existing bridge was previously authorized by a special Act of Congress, the Department of State might waive the requirement for a Presidential Permit for the project. Therefore, no exchange of diplomatic notes occurs. See 1 & 2 above for guidance on condition language depending on the special Act of Congress and the Permits TTP for sample preamble language.
- (5) If the applicant is other than the owner of an existing bridge, which is to be modified, replaced, removed or affected so as to require a permit action, the applicant must obtain a statement of agreement or authorization from the owner.

## 2. Public Notices.

- a. A public notice (see examples in the Administrative TTP) describing the proposed bridge project must be issued. It must advise known navigation and other interested parties, news media, adjacent property owners, public officials (especially the local officials in whose jurisdiction the proposed project is located) and agencies, that an application has been received. The Chief, Bridge Permits and Policy Division, must be included in all public notice mailing lists.
3. Findings of Fact.
    - a. The Findings of Fact (FOF) documents all information considered when making a Coast Guard permit decision, including administrative, navigational and environmental information. It is best to complete the FOF as information becomes available during the permitting process. See the Permits TTP for additional guidance on the FOF.

#### **J. Construction of Temporary Bridges.**

1. The Coast Guard is obligated to treat the construction and subsequent removal of temporary bridges consistent with the Federal environmental control laws and bridge statutes applicable to the case. Since these laws apply equally to both permanent and temporary bridges, both must be properly addressed in the FOF and the environmental documentation. To ensure responsive documentation, the District Bridge Manager must determine as early as practical if the applicant intends to construct a temporary bridge. The applicant may plan to construct a temporary bridge to meet one of the following situations:
  - a. Construction of a temporary bridge in conjunction with a permanent bridge to meet land transportation needs while the permanent bridge is under construction. This situation is the most common permit action involving temporary bridges. Usually the temporary bridge must be removed no later than 90 days after the permanent bridge is opened to traffic. Unique situations may require longer periods for removal of the temporary bridge.
  - b. Construction of a temporary bridge to meet temporary land transportation needs on a one-time basis. An example of this permit action is a situation where access is needed to a particular location for a specific purpose and time period. Each permit action requires investigation into the appropriate period for retention or removal of the temporary bridge.

- c. Construction of a temporary bridge to meet temporary land transportation needs on a seasonal basis over a number of years. An example of this permit action is a situation where access is needed to a particular location at a certain time of the year, but where the bridge does not meet the reasonable needs of navigation for part of the year (summer time) or where the bridge could cause undesirable environmental impacts (fish spawning season) for part of the year. Each permit action for a temporary bridge requires investigation into the appropriate extent and time to be allowed for the construction, use and removal of the temporary bridge on an annual basis along with a time limit for retention or permanent removal of the temporary bridge.
2. The applicant must be advised that the Coast Guard will process the application for the temporary bridge at the same time the permanent bridge application is being reviewed, if the temporary bridge is to be constructed in conjunction with a proposed permanent bridge. Permit case documentation must contain the following pertaining to temporary bridges:
    - a. The narrative of the public notice must describe the temporary bridge, and state the expected period of retention. Plans accompanying the public notice must show the proposed clearances provided on a bank-to-bank plan and elevation view of the temporary bridge, preferably on a separate sheet;
    - b. The FOF must contain a description of the temporary bridge, the clearances provided, the location relative to the permanent bridge and any effect it will have on navigation; and
    - c. A recommendation for the extent and time to be allowed for removal of the temporary bridge is needed. Temporary bridges are normally removed in their entirety since only temporary approval has been granted for the bridge. Good reasons must be given if the time to be allowed for removal of the temporary bridge will exceed 90 days.
  3. Note that the intent of a temporary bridge is for use during a limited time. Therefore, the evaluation of the bridge must be commensurate with the nature and complexities of the project.
  4. Adherence to the above policy and procedures will facilitate the timely processing of permit applications submitted for final review and agency action concerning temporary bridges.

#### **K. Bridge Completion Reports**

1. Form CG 4599, BRIDGES OVER NAVIGABLE WATERS OF THE UNITED STATES COMPLETION REPORT, is required to be completed after new bridge

construction, modification, relocation, conversion to fixed drawbridge, removal, alteration or repair of any part of a bridge structure that affects its navigational aspects. Data from these forms are used to compile navigation charts, Coast Pilots, Light Lists, drawbridge regulations, etc. Instructions for filling out Form CG-4599 are located in the Permits TTP. District Commanders must verify that the bridge construction complied with the permit when the construction is completed. Verification of the navigational clearances must be made by written certification by the owner that clearances conform to those indicated on the approved plans, and that all conditions to the permit have been satisfied, as dictated by the individual circumstances and the significance of the bridge. If the as-built navigational clearances differ from those on the approved plans, the Coast Guard must confirm that the as-built clearances will not significantly affect navigation and document this determination for the file. District Commanders must require the bridge owner to provide justification that the waterway has been cleared to the Coast Guard's satisfaction. This could include providing soundings of the waterway in the vicinity of the bridge or wire dragging the area after completion of the bridge construction and making a declaration via letter or similar documentation confirming the existing bridge was removed in accordance with the permit condition and the navigation channel is clear from all debris as specified in the bridge permit. Although photographs of the completed bridge structure may be requested, they cannot be required.

#### **L. Interim Completion Reports**

1. Districts are encouraged to submit an "interim" completion report when construction reaches a point where a new bridge structure initially spans a waterway and becomes a concern to navigation. This allows timely National Oceanic and Atmospheric Administration (NOAA) chart annotations before completion of bridge and a completion report. Fill it out using the same completion report (CG-4599) and in the same manner as if it were a "final" completion report, to the extent practical.

#### **M. After-The-Fact Permits**

1. The issuance of after-the-fact permits is not considered consistent with the bridge acts, which provide that the permit be granted prior to the construction of a bridge. However, this view cannot be rigidly applied to all situations in which consideration for an after-the-fact permit may exist and require evaluation.
2. The policy for the treatment of bridges that have been constructed without a permit is:

- a. Bridges constructed over waterways, valleys, low grounds, etc., which were not determined to have been navigable waters at the time of construction are considered lawful structures. If the waterway subsequently is developed or is determined to be navigable waters of the United States, no permit is required. The bridge, however, becomes subject to the applicable bridge acts and Coast Guard jurisdiction. Permits are required for any subsequent reconstruction, alteration, etc., except as provided in Section 4.F (Bridge Permit Exemptions). Those bridges when brought to the attention of the Coast Guard must be recorded by the District Commander. Permit drawings must be obtained from the owner and a Form CG 4599 must be completed and forwarded to the Chief, Bridge Permits and Policy Division.
  - b. On April 1, 1967, the Coast Guard was transferred to the newly formed Department of Transportation and assumed responsibility for the Bridge Program from the USACE. Bridges built over or across navigable waters without prior authority before April 1, 1967 where the necessary primary authority validly existed (state or Federal) when the work was innocently constructed and where the work will not unreasonably interfere with navigation, (33 CFR § 114.25) must be treated as prescribed in Chapter 4.M.2.a. above.
  - c. Bridges built over or across navigable waters after April 1, 1967, and meeting the criteria of 33 CFR § 114.25, must be processed for an after the fact permit using the permitting procedures located in the Permits TTP.
  - d. Bridges built over or across navigable waters, regardless of date of construction, not meeting the criteria of 33 CFR § 114.25, are subject to a determination of being unlawful and thereby subject to removal or modification as an enforcement action under 33 U.S.C. § 406.
  - e. If a complaint alleging unlawful bridge construction is received by the Coast Guard, an application for an after the fact approval of the construction will not be processed until the complaint is properly considered. The Chief, Bridge Permits and Policy Division must be consulted for guidance on the disposition of the complaint.
3. The treatment of the bridges falling under the fact situations of Chapter 4.M.2.a and b. above is governed by the facts and circumstances of each case on an individual basis. The Chief, Bridge Permits and Policy Division must be consulted before any formal action is initiated.

**N. Denial of a Bridge Permit Application for Environmental or Navigational Impact Issues.**

1. Environmental.

- a. The decision to deny must be based upon relevant and material testimony or comment provided by expertise agencies at the draft or final environmental document stage if an environmental document is prepared. If the decision to deny a bridge permit appears reasonable prior to completion of the environmental analysis, the analysis must be circulated for expertise agency comment before making a decision. A public notice must also be issued. In all cases, the applicant must be given advance notice of the intent to deny and be given reasonable opportunity of at least 30 calendar days in which to show “cause” why the application should not be denied because of the environmental impact issues. See 33 CFR § 115.60 for more information.
  - b. In general, a decision to deny should be based upon the specific provisions of law governing the environmental issues involved that would prohibit the bridge from being built or operated. In the absence of specific provisions in law, there must be sufficient evidence showing that the adverse impacts to the environment outweigh the benefits of the proposed bridge project.
2. Navigational.
- a. The District Commander may deny a bridge permit application if the proposed action would not meet the reasonable needs of navigation (insufficient clearances, for example). In all cases, the applicant must be given advance notice of the intent to deny and be given reasonable opportunity of at least 30 calendar days in which to show “cause” why the application should not be denied because of the navigational impact issues. Public meetings must be held when there are substantial issues concerning the effect that the proposed bridge would have on the reasonable needs of navigation. See 33 CFR § 115.60 for more information.
3. Appeal.
- a. When an application is denied by the District Commander, the applicant may appeal the decision to the Chief, Office of Bridge Programs, under 33 CFR § 114.50. Appeals must be sent to the Chief, Office of Bridge Programs within 60 days of the District Commander’s decision. The Chief, Office of Bridge Programs will take action on the appeal within 90 days of its receipt. The determination by Chief, Office of Bridge Programs constitutes final agency action. To ensure compliance with the appeal processing procedures, District Commanders must ensure the completed case file is promptly submitted, including a completed Findings of Fact, Public Notice, and full documentation for the determination of denial.



## O. Approval of Alternative Designs

1. In those cases where an applicant requests that more than one design configuration be considered for approval for purposes of contract bidding, the application must be processed for all alternatives in like manner where a single design is proposed. Each alternative must be specifically identified and clearly described in the Coast Guard Public Notice of the application. The impacts on the environment and navigation must also be specifically identified and described for each alternative proposed.
2. Alternative designs are considered design variations of the basic configuration of the proposed bridge attributable to materials used or engineering techniques that may cause such changes as lengthening or shortening side spans, change of grade, minor variation of navigation span clearances, or change the appearance of the superstructure. Alternative designs contemplate alternatives of steel plate girder versus concrete or segmental design, or steel truss, or cable-stayed suspension, etc. Alternative design does not mean a fixed bridge versus a drawbridge, nor does it include a change of location, optional relocation of navigation span, optional navigation clearances by themselves, or piling versus earth fill. There also should not be any significant difference in the environmental impacts among the alternative designs approved.
3. A permit approving one or more acceptable designs may be issued subject to the usual conditions. However, there must be an added condition in the permit requiring written notification to the District Commander of the alternative design selected within 90 days of the bid award. Failure to so advise the District Commander would void the permit.
4. When the required notification is received, the District Commander must prepare an interim Bridge Completion Report Form CG 4599 indicating the date of the notification, the design alternative chosen, the plan sheets that remain valid and the plan sheets that are void. Do not stamp "void" or alter in any way the plans that are void. Renumber the valid plan sheets as necessary after removal of the sheets showing the alternative design not selected.
5. The original letter of notification and the approved valid plans must be retained in the district case file along with the void plans. The District Commander must submit the interim completion report with copies of the letter referencing the alternative design selected and renumbered plan sheets to the Chief, Bridge Permits and Policy Division.
6. If, at some time in the future, the permittee requests Coast Guard approval to choose one of the other previously non-selected design alternatives, the District Commander has the discretion to grant such a request by letter, using the previously non-selected plan sheets from the district case file. However, such a request should not be treated casually. A good reason, such as lack of material or

change in contractors resulting in duress or extraordinary burden on the permittee, should be given. When such a request is granted, notify the permittee by letter and follow the procedures in Section 4.P.4. above.

#### **P. Design Build Concept**

1. Design-build is a cost effective and innovative concept used to allow bridge owners to obtain bids to construct a bridge and select a contractor after receiving a bridge permit, but before a final bridge design has been chosen. Plans indicating a design-build concept must show the minimum allowable clearances within the navigational envelope and a basic idea of the bridge configuration and alignment. Districts must carefully review final design plans to ensure there is no deviation from the conceptual plans, which would materially affect navigation and also require a permit amendment action.
2. A permit approving the locations and plans indicating a design-build concept may be issued subject to the usual conditions. However, there must be an added condition in the permit requiring the permittee to submit the final design chosen for the construction of the bridge to the District Commander for approval. Failure to do so would void the permit.
3. When the required final plans are received, the District Commander must prepare an interim Bridge Completion Report Form CG 4599 indicating the date of the notification, the plan sheets that remain valid and the plan sheets that are void. See the Permits TTP for further guidance. If there are major deviations from the conceptual plans that would unreasonably impact navigation (e.g. changes in either the vertical and/or horizontal clearances; changes in the length and/or width of the bridge; construction on a different alignment, etc.) districts must:
  - a. Request a permit amendment application;
  - b. Publish a public notice/announcement of public notice (APN) and determine the comment period in consultation with Headquarters;
  - c. Complete the environmental documentation (CE, EA/FONSI, EIS) or reevaluation thereof;
  - d. Complete a Findings of Fact or Supplemental Findings of Fact;
  - e. Complete a bridge permit amendment for signature by the original permit signatory;  
and
  - f. Forward a copy of the case file to Headquarters.

## CHAPTER 5. DRAWBRIDGE OPERATIONS

### A. Introduction

1. This chapter outlines the authority and responsibilities for the establishment, change, or revocation of operating schedules that govern drawbridges over or across the navigable waters of the United States. The Coast Guard must ensure that bridges across navigable waters of the United States do not unreasonably obstruct waterway traffic and at the same time provide for the reasonable needs of land traffic. Drawbridge operations must meet the needs of vessel traffic, while considering vehicle, pedestrian and rail traffic in the overall public interest. This chapter also contains guidance on radiotelephones (marine radio), radar beacons, signals, clearance gauges, and contingency planning.

### B. Bridge Legal Authorities and Bridge Statutes.

1. The laws governing the operation of drawbridges over or across the navigable waters of the United States are found in:
  - a. Act of August 18, 1894, c. 299, § 5, 28 Stat. 362; as amended; classified to 33 U.S.C. § 499;
  - b. The District Commander has authority to approve all regulatory actions in their AOR (33 CFR § 1.05-1(e)(1));
    - (i) The District Commander has the authority (33 CFR § 1.05-1(j)) to delegate in writing to the Coast Guard District Bridge Manager, with the reservation that this authority must not be further delegated, the authority to issue temporary deviations to drawbridge operating schedules.
    - (ii) District Bridge Manager – When the authority to sign temporary deviation is delegated to the DBM that authority must reside in the DBM position, not the individual. Unless rescinded for any reason, the authority transfers with the appointment of a new DBM.
  - c. The Coast Guard's Bridge Regulations are found in 33 CFR, Chapter 1, Subchapter J, 117.
2. Policy.

- a. Coast Guard policy is to minimize the impact of drawbridge operations on waterway traffic, while considering the needs of other modes of transportation. To implement this policy and to determine the appropriate action, the following guidelines must be used. 33 CFR Part 117 Subpart A contains the general operating requirements that apply to all drawbridges; Subpart B contains specific requirements for operation of individual drawbridges.
- b. In the absence of a specific operating schedule promulgated, in Subpart B, a drawbridge must open promptly and fully on signal for the passage of vessels per 33 CFR § 117.5.
- c. Specific operating schedules must not be issued in cases where such schedules would impede waterway traffic unless there are clearly demonstrated offsetting benefits to land traffic crossing the bridge.
- d. Drawbridge operating schedules must not be prescribed merely because no objections are voiced concerning the proposal.
- e. The regulation of drawbridges is to include the operating schedule of the drawspan, operating signals, posting of schedules, and maintaining of operational equipment.
- f. Drawbridge operating schedules must not restrict the dimensions and types of vessels allowed to transit the drawspan.
- g. Specific drawbridge operating schedules must not be issued to relieve the owner or operator of the duty to properly maintain or operate the drawspan solely because of financial hardship or to save wear and tear on the structure or machinery unless there is clearly documented evidence justifying little or no need for bridge openings.
- h. Proposed changes to the specific drawbridge operating schedules must be clearly worded and have a minimum of "exceptions" and "provisions" that restrict waterway traffic.
- i. Only the Commandant and District Commanders have the authority to change the operating schedules of drawbridges. The District Commander may further delegate the authority to issue temporary deviations for operating schedules to the position of the District Bridge Program Manager.
- j. An operating schedule stating that "the draw need not open..." does not prohibit the opening of the drawspan during the period specified, and such openings are not violations of the regulation.

- k. Removable Span Bridges require the complete removal of the span by means other than machinery installed at the bridge. These bridges are considered drawbridges and as such are subject to requirements and regulations pertaining to drawbridges.
  - l. Vessels that can pass beneath the “closed” drawspan are free to proceed so long as there are no restrictions due to safety reasons.
  - m. If an existing drawbridge is replaced or modified and has a special operating schedule in 33 CFR Part 117 Subpart B, the existing schedule can be transferred to the new or modified drawbridge if it is constructed on the same general alignment as the existing drawbridge.
3. Environmental Documentation.
- a. National Environmental Policy Act (NEPA). Promulgating operating schedules for drawbridges is in most cases a categorically excluded federal action for the purposes of NEPA. In accordance with the U.S. Coast Guard Environmental Planning and Policy, COMDTINST 5090.1 (series), completion of preliminary Record of Environmental Consideration and Memorandum for the Record is not required.
  - b. NEPA Implementing Procedures.
    - (i) If a change to a drawbridge operation schedule would have a significant effect on the quality of the human environment, or if a categorical exclusion is not appropriate, apply the procedures given in the Bridge Environmental TTP and in the COMDTINST 5090.1 (series).
  - c. Coastal Zone Management Act (CZMA).
    - (i) The drafting of permanent regulations or temporary deviations is a federal action and, in accordance with 15 CFR Part 930 Subpart C, requires that the Coast Guard prepare a federal consistency determination for any such regulatory actions. The Bridge Program has established a General Consistency Determination (GCD) for its regulatory actions. Each District Bridge Office must maintain a list of States or Territories in their area of responsibility that have concurred or not concurred with the determination. In accordance with 15 CFR § 930.36, concurrence with each applicable State and Territory must be reevaluated by Headquarters on a periodic basis. Headquarters must reevaluate this determination every five years following its establishment in 2010.
4. Bridge Program Database.

- a. Any regulatory action must be entered and tracked in the Bridge Program Database.

### **C. Regulatory Actions.**

1. This instruction provides a simplified and bridge specific description of the Coast Guard rulemaking. It is not intended to conflict with either the Coast Guard's rulemaking procedures at 33 CFR subpart 1.05, or the more general Commandant Instruction on rulemaking.
2. The Bridge Program uses three primary Regulatory Actions: Rulemaking, Temporary Deviation and Notices. Simple and clear language the public can understand should be used in drafting any regulatory action or notice. See Bridge Operations TTP, "District Regulatory and Notices Actions".

- a. Rulemaking.

- (i) All permanent changes or temporary changes that last more than 180 days to the operating schedules for drawbridges are accomplished by rulemaking. Changes of 180 days or less are considered Temporary Deviations, which are discussed in section B.4, below. The Administrative Procedures Act (APA) (5 U.S.C. § 553) sets out the requirements, and exceptions to the rulemaking process. Coast Guard regulations on rulemaking are found in 33 CFR subpart 1.05. When more specific guidance is needed in individual cases, consult with the district legal officer for advice or drafting assistance and with Chief, Office of Bridge Programs for policy guidance.

- (ii) Overview of Rulemaking Process.

- (1) Under normal circumstances, rulemaking consists of a Notice of Proposed Rulemaking, a public comment period, and a Final Rule.
- (2) Notice of Proposed Rulemaking.

- (3) The Notice of Proposed Rulemaking (NPRM) is usually the first step in the rulemaking process. This document provides the public notification that a change has been proposed and public comment is requested. The NPRM does not change the operating schedule of the bridge or the regulations contained in the CFR. The NPRM must be published in the Federal Register. If you do not have enough information to propose a new regulatory text, you could issue a Notice of Inquiry (NOIQ) first, to solicit public comment without proposing text. The NOIQ will help develop an NPRM. If you have already published an NPRM but need to materially alter the proposal, you can issue a Supplemental Notice of Purposed Rulemaking, (SNPRM). An SNPRM is used when the desired regulatory outcome is so different from the NPRM that an additional opportunity for public comment is necessary.
  - (4) Public Comments.
  - (5) After the close of the comment period, all public comments will be reviewed to determine whether to revise the proposal and publish a SNPRM or proceed to a temporary, interim or Final Rule. A SNPRM usually proposes changes to a previous NPRM.
  - (6) Final Rule.
  - (7) The final rule, temporary final rule, interim final rule are the documents that change the drawbridge-operating requirement in the CFR and informs the public of the change and its effective date. The effective date is at least 30 days after the date of publication, unless an exception applies.
- (iii) Good Cause.

(1) The APA requires prior public notice and opportunity for public comment on substantive changes to drawbridge rules unless the Coast Guard for good cause finds notice and public comment are impracticable, unnecessary, or contrary to the public interest. A good cause statement must be incorporated in the preamble of the rule that includes the type of good cause applicable to the situation (impractical, unnecessary, or contrary to the public interest) and a fact-specific justification for publishing of a rule without first doing an NPRM and obtaining public comment. The APA also requires that a rule be published in the Federal Register at least 30 days before it becomes effective. A rule can be made effective earlier than 30 days after publication if it is determined there is good cause, but a rule cannot be effective earlier than the day it is signed by the District Commander. If there is good cause to forgo notice and comment there often is a good cause to make the rule effective before 30 days, as well, but not in every case. A separate good cause finding is required to forgo the 30-day delay of the effective date.

b. Public Meetings.

(i) A public meeting for rulemakings and deviations may be useful in gathering public comments and additional data related to proposed drawbridge operation changes. A public meeting should be held if the public comments indicate that the proposed change may have a significant impact on vessel movements or be of substantial interest to the public. (See Chapter 1, Section N for further details). A public meeting must be announced by notice in the Federal Register. For all public meetings, either a summary of the meeting or a copy of the meeting transcript must be placed in the public docket for the regulatory action.

c. Notices for publication in the Federal Register.

(i) Notices are not rules. Notices, such as a Notice of Inquiry; Notice of Availability, etc. provide information of stakeholder interest such as public meetings, opening or extension of public comment periods, availability of documents for stakeholder review.

d. Temporary Deviations.



- (i) The District Commander may authorize a bridge owner to temporarily change the drawbridge operation schedule for 180 days or less without initiating the rulemaking process. Requests for temporary deviations should be submitted as early as possible, preferably 90 days before the start of the action. District Commanders have discretion to accept requests submitted less than 90 days before a needed change if those requests can be processed before the date of the needed change. The deviation must clearly explain the action and duration of the change in schedule.
  - (ii) Following the Coast Guard Authorization Act 2018 (CGAA 2018) the Coast Guard must announce the temporary change in the Local Notice to Mariners and/or the Broadcast Notice to Mariners and/or other local media. The CGAA 2018 also requires that owners of non-railroad bridges to notify local newspapers, transportation agencies and law enforcement of the temporary deviation.
  - (iii) For any action that requires a change to a drawbridge-operating schedule that will last greater than 180 days or is intended to be a permanent change to the operating schedule, the District Commander will follow the appropriate rulemaking procedures.
- e. There are two types of temporary deviations currently used:
- (i) General Deviation.
    - (1) A general deviation is for any temporary change (other than to test a newly proposed schedule) to the operating schedule of a drawbridge to allow for repair/maintenance, special events, public health and safety, or other legitimate needs.
  - (ii) Test Deviation.
    - (1) A Test Deviation authorizes the bridge owner to temporarily operate the bridge with a newly proposed operation schedule to determine the effects of the proposed schedule on navigation and land traffic. Test Deviations are considered part of the Bridge Program rulemaking process and must be published in the Federal Register and include a public comment period. A Test Deviation may be initiated prior to/or in conjunction with an NPRM.

#### **D. Changes to Drawbridge Schedule of Operations.**

1. In accordance with 33 CFR § 1.05-20, any member of the public may submit a

petition for permanent changes. In accordance with 33 CFR § 117.35, the bridge owner must submit a written request for a temporary deviation. However, the District Commander can accept requests from other individuals or organizations, on behalf of the bridge owner, with knowledge and approval of the bridge owner. The District Commander may also initiate a permanent or temporary change in operations based on a change in local development, changes in maritime traffic patterns; changes in bridge clearances and periodic review of existing regulations, or any other reasons deemed necessary by the District Commander.

2. Changing the operating schedule of a drawbridge involves information gathering and analysis. See Bridge Operations TTP, “District Regulatory and Notices Actions”.
3. If after evaluating the available information the District Commander determines:
  - a. A change is needed; he/she must determine the appropriate action level (temporary deviation or rulemaking).
  - b. Requested change is not needed; he/she must inform the requester in writing and provide the reason(s) for denial of the requested change.
    - (i) When a request is denied, the District Commander must notify the applicant, no later than 10 working days after receipt of the request, in writing, the reasons for the denial. They will also allow the applicant reasonable opportunity to address each reason for denial and resubmit their request.
    - (ii) The applicant may appeal the final decision to the Chief, Office of Bridge Programs in accordance with the appeals process in Chapter 1.

**NOTE:** The DBM must ensure the complete bridge file is submitted to the Chief, Office of Bridge Programs. Failure to send a complete docket file may nullify the final agency action.

#### **E. Drawbridge Logbooks.**

1. Pursuant to 33 U.S.C.499, bridge owners are required to maintain a logbook of bridge operations and to submit the logbook to the Coast Guard when requested. These records will assist the Coast Guard in executing several functions such as evaluating and determining appropriate changes to operating schedules and providing information for investigation and enforcement activities. The statute outlines specific information requirements that must be maintained in the logbooks. These requirements can also be found in the Bridge Operations TTP, “District Regulatory and Notice Actions”. The District Bridge Office must require each drawbridge owner to maintain a logbook in accordance with 33

U.S.C. § 499 and submit the logbook to the Coast Guard when requested.

## **F. Drafting Documents and Record Keeping.**

1. Bridge Program Templates.
  - a. When drafting temporary and permanent changes to drawbridge operating schedules and notices of public meetings, use the templates available on the Coast Guard intranet site. Information on the documentation process and regulatory review process for documentation to be published in the Federal Register can be found in the Bridge Operations TTP, “District Regulatory and Notice Actions”.
2. Rulemaking Docket.
  - a. A rulemaking docket number is required to publish the action in the Federal Register. Request a project docket number from the Headquarters Office of Regulations. This number remains permanently with the project and all public-facing materials related to the rulemaking can be kept in the online docket file at Regulations.gov. It is at the discretion of the District Commander to keep convenience copies of the action in the bridge file. A docket number is not required for general deviations.

## **G. Contingency Planning.**

1. Heavy Weather, Natural Disasters or Civil Disorder.
  - a. The District Commander may authorize a drawbridge to remain closed to navigation during natural disasters or civil disorders in accordance with 33 CFR § 117.33. During heavy weather conditions (i.e., hurricanes, high winds, flooding) vessels frequently seek shelter at sea or in port. In preparation for such weather conditions, low-lying areas often need to be evacuated, and bridge owners need to take measures to protect their bridges to ensure they will not be structurally damaged. For procedures to respond to heavy weather conditions, natural disasters or civil disorder, see Bridge Operations TTP, “Contingency Planning”.
2. Drawtenders Strike.

- a. In the event of a labor strike by drawtenders that affects the operation of drawbridges, it is the responsibility of the bridge owner to ensure their bridge remains open to navigation or provide the necessary personnel on site to operate the bridge in accordance with the approved operation regulations. The Coast Guard will not take sides during any labor dispute. For procedures to respond to Drawbridge Strike conditions, see Bridge Operations TTP, “Contingency Planning”.

## **H. Communication and Signals.**

1. Radiotelephones (Marine Radio) on Drawbridges.
  - a. 33 CFR § 117.23 facilitates the timely exchange of signals and information concerning requests for opening a draw, the ability of the drawtender to comply with the request, and the exchange of information generally concerning the drawbridge. Radiotelephone (marine radio) communication may not replace the sound or visual signals unless otherwise prescribed. The regulation provides that a radiotelephone (marine radio) may be required on a drawbridge when it is determined essential for navigation or safety.
  - b. The District Commander may require the installation and operation of the radiotelephone (marine radio) equipment in accordance with 33 CFR § 117.23.
  - c. Federal Communications Commission (FCC).
    - (i) The operating frequencies, licensing, and operation of the radiotelephone stations are subject to the rules and regulations of the FCC.
    - (ii) To the extent that it does not conflict with the rules and regulations of the FCC, the District Commander must prescribe the working range and hours of operation of the radiotelephone (marine radio).
    - (iii) Normally, the hours of operation must be the hours during which the bridge is required to be tended or operated as prescribed in 33 CFR Part 117, Subpart B.
    - (iv) The working range of the radiotelephone (marine radio) is affected by a variety of factors such as power output, external electromagnetic interference, land mass effects, etc. Accordingly, the District Commander must recommend a working range distance necessary for the individual bridge situation that must provide reliable radiotelephone communication.

d. Investigation.

- (i) When it is brought to the attention of the District Commander by complaint of navigation interests, by his/her own review of the navigation casualty history, or by knowledge of the existence of unusual hazardous navigational conditions, the District Commander must conduct an investigation to support a determination for requiring installation of a radiotelephone station.
- (ii) If it is determined that a radiotelephone (marine radio) must be required, the determination, along with the findings of fact, must be submitted to the bridge owner giving opportunity of 30 days within which to submit comment or objection to the proposal.
- (iii) Upon receipt of the bridge owner's comment or objection or upon expiration of the 30-day period, the District Commander must make a final determination of the matter and inform the bridge owner thereof within an additional 30 days.
- (iv) Voluntary Installation of Radiotelephones (Marine Radio). District Commanders must encourage the voluntary installation of radiotelephone stations on drawbridges where such installations will enhance the safety or facilitate the movement of either land or water transportation. Use of two-way radiotelephone (marine radio) communications does not eliminate the requirement to sound or display signals.
- (v) List of Bridges Equipped with Radiotelephones. For a complete list of bridges equipped with radiotelephones (marine radio), go to the Bridge Program Internet site. Each district must provide updated information to Chief, Office of Bridge Programs pertaining to bridges in their area of responsibility no later than 30 April of each year for update.

2. Signaling.

- a. When the Draw Must Open Except as otherwise required by 33 CFR Part 117 Subpart B, drawbridges must open promptly and fully for the passage of vessels when a request to open has been given in accordance with 33 CFR § 117.15.
- b. Signaling for Contiguous Drawbridges. When a vessel must pass two or more drawbridges close together, signaling must be done in accordance with 33 CFR § 117.17.

- c. Signaling when Two or More Vessels are approaching a Drawbridge. When two or more vessels are approaching the same drawbridge at the same time, or nearly the same time, whether from the same or opposite directions, each vessel must signal independently for the opening of the draw in accordance with 33 CFR § 117.19.
  - d. Signaling for an Opened Drawbridge, when a vessel approaches a drawbridge with the draw in the open position, the vessel must give the opening signal. If no acknowledgment is received within 30 seconds, the vessel may proceed, with caution, through the open draw (33 CFR § 117.21).
  - e. Delaying Opening of a Draw, No person must unreasonably delay the opening of a draw after the signals required by 33 CFR § 117.15 have been given.
  - f. Sound Signals.
    - (i) Often sound signaling devices are located on or adjacent to aids to navigation, which are sometimes affixed to bridges. When visual signals are obscured, sounds signals warn mariners of the proximity of danger. For additional information concerning sound signals, see 33 CFR § 62.47.
3. Radar and Automated Identification Systems (AIS).
- a. The District Commanders may authorize the installation of radar reflectors, Radar Beacon (RACON) and AIS on bridge structures. RACONs are used to mark the centerline of the navigational channel, while radar reflectors can be used to mark the location of the edge of the navigational channel or bridge piers. AIS-ATON can be configured to establish lateral electronic ATON (e.g. the approaches to a bridge) other than just centerline or edge of the navigation channel. 33 CFR § 118.120 allows the use of AIS in lieu of or in addition to RACON.
4. Fog Signals.
- a. On waterways where visibility is frequently reduced due to fog or other causes, the District Commander may require or authorize the installation of one or more fog signals to warn the navigator of the presence of the bridge. Some sound signals are equipped with fog detectors, which activate the sound signal when visibility falls below a predetermined limit. Fog signals are approved by the District Commander in accordance with 33 CFR § 67.10-15. (For additional information concerning the general requirements for fog signals, see 33 CFR § 67.10).

5. Clearance Gauges.

- a. In accordance with 33 CFR § 117.47, clearance gauges are required for drawbridges over or across navigable waters of the United States discharging into the Atlantic Ocean south of the Delaware Bay (including the Lewes and Rehoboth Canal, DE) or into the Gulf of Mexico (including coastal waterways contiguous thereto and tributaries to such waterways and the Lower Atchafalaya River, LA), except the Mississippi River and its tributaries and outlets.
- b. Vertical clearance gauges must be designed, installed, and maintained according to the provisions of 33 CFR § 118.160 unless otherwise specified for particular drawbridges in Subpart B of 33 CFR Part 117.

## **CHAPTER 6. ALTERATION OF UNREASONABLY OBSTRUCTIVE BRIDGES**

### **A. Introduction**

1. The Coast Guard may determine a bridge to be unreasonably obstructive to navigation if the navigational benefits that would accrue because of altering the bridge equal or exceed the cost of the bridge alteration. Alternately, Congress may statutorily determine that a bridge constitutes an unreasonable obstruction to navigation.

### **B. Bridge Legal Authorities and Bridge Statutes.**

1. Authority to order the alteration of unreasonably obstructive bridges to meet the reasonable needs of navigation, pursuant to the Truman-Hobbs Act was transferred to the Secretary of Homeland Security by Title 6 U.S.C. § 552(d). This authority was subsequently delegated by the Secretary to the Commandant, by the Department of Homeland Security Delegation Number: 0170.1. The laws relating to unreasonably obstructive bridges over or across the navigable waters of the United States are contained in the following statutes:
  - a. Act of March 3, 1899, c. 425, § 9, 30Stat. 1151; as amended; classified to 33 U.S.C. §§ 401, 502 (c) Act of March 23, 1906, c. 113, § 1, 34 Stat. 84; as amended; classified to 33 U.S.C. §§ 491-498;
  - b. Act of March 23, 1906, c. 113, § 1, 34 Stat. 84; as amended; classified to 33 U.S.C. §§ 491-498
  - c. Act of June 21, 1940, c. 409, 54 Stat.497; as amended; classified to 33 U.S.C. §§ 511-524
2. The Coast Guard's Bridge Regulations are found in 33 CFR, Chapter 1, Subchapter J, 114 - 118.

### **C. Policy.**

1. Coast Guard policy is to ensure that bridges crossing the navigable waters of the United States do not unreasonably obstruct the reasonable needs of waterway traffic. To maintain navigation safety and freedom of mobility, the Truman-Hobbs Act is administered by the Commandant to ensure that bridges provide sufficient clearances for the types of vessels that transit through the bridge site. In implementing this policy and in determining what action may be appropriate, use the following general guidelines.



- a. Only the location and vertical and horizontal navigation clearances of a bridge's navigational opening(s) affect its eligibility for alteration under the Truman-Hobbs Act. The structural integrity of a bridge or its adequacy for land transportation, while valid concerns of a bridge owner, have no bearing on the determination that a bridge unreasonably obstructs navigation.
- b. The Truman-Hobbs Act applies only to actively used railroad, combined railroad/highway, or publicly owned highway bridges.
- c. The Chief, Office of Bridge Programs is responsible for overall management of the alteration program for unreasonably obstructive bridges, i.e., planning, programming and budgeting, legal interpretations whenever such questions arise, and technical engineering assistance necessary in any portion of the program. Headquarters, Bridge Program personnel are available to assist the district at any stage (preliminary and detailed investigations, public meetings) in the processing of an unreasonably obstructive bridge case, and this assistance must be requested whenever necessary. Bridge Program Office personnel will visit the district and bridge site as deemed necessary to aid in the investigation. District personnel will not be required to perform any engineering duties in these matters, the Bridge Program Office staff would be provided for this purpose.
- d. On 1 October 1999, the effort for conducting Truman-Hobbs (T-H) investigations was centralized in the Eight District Bridge Office in St. Louis, Missouri, D8(dw).b).
- e. The Coast Guard's review and analysis of T-H cases must always be comprehensive and in accordance with applicable laws and established policy and procedures. Although unreasonably obstructive bridge cases may vary in both complexity and time required executing an investigation, each case will be given the time necessary to ensure a thorough and complete investigation, including appropriate documentation.
- f. Complaints by land transportation interests concerning delays or impediments to highway or rail traffic are considered under the provisions of the T-H Act, and may not be used as reasons to declare a bridge an unreasonable obstruction to navigation.
- g. Even when there are no specific complaints that a bridge is an unreasonable obstruction to navigation, the District Commander may decide that a bridge's accident history warrants recommending a preliminary investigation.

**D. Preliminary Review.**

1. Any person, company, or other entity may submit to the District Commander of the Coast Guard district in which a bridge over or across a navigable water of the United States is located, a complaint that a bridge unreasonably obstructs navigation. The complaint must be in writing and include specific details to support the allegation.
2. Contact the Chief, Office of Bridge Programs for guidance prior to initiating a preliminary review. Upon receipt of complaints that a bridge is unreasonably obstructive, or based on the bridge's allision history, the district will determine whether to recommend the bridge to the Chief, Office of Bridge Programs for further study under T-H. The district's opinion as to whether or not the complaint warrants additional study will be formed through informal discussions with the complainant, users of the affected waterway, and other interested parties.
3. If the bridge is an actively used railroad or publicly owned highway bridge, then it may be ranked and added to the T-H Backlog Priority List of potential candidates for investigation and alteration under T-H. The T-H Team will only investigate potentially unreasonably obstructive bridges from the T-H Backlog priority list, as resources permit. The list will be updated and prioritized as new bridges are identified as candidates for investigation or factual situations change.

**E. Preliminary Investigation.**

1. The Chief, Office of Bridge Programs will determine whether to conduct a preliminary investigation. The preliminary investigation process requires analyzing the navigation issues associated with a bridge to identify the navigation benefits (in dollars) that will be derived if the bridge is altered. The navigation benefit must equal or exceed the cost of alteration to justify alteration of a bridge.

**F. Detailed Investigation.**

1. During the course of the detailed investigation, a comprehensive report must be developed regarding the unreasonably obstructive character of the bridge and the impact of the bridge upon navigation. Pertinent data, including the information obtained at the public meeting, must be developed and compiled in the report to determine the type of alteration required to meet the needs of navigation and to substantiate the need and the justification for the proposed alteration.
2. Public Meeting and Notice.

- a. The T-H Team will issue a notice of a public meeting to all known interested parties (including the bridge owner), stating it has been determined that the bridge is an unreasonable obstruction to navigation. Its purpose is to give these interested parties the opportunity to be heard and to offer evidence as to whether any alterations are required to provide reasonably free, safe, and unobstructed passage to waterborne traffic. See the Bridge Administration TTP, "Public Notices" for the procedures of issuing, routing, and distribution of public notices. Public Meetings will not be held without prior approval from the Chief, Office of Bridge Programs.

#### **G. Decision Analysis and the 60-day Letter.**

1. The Chief, Office of Bridge Programs examines the detailed investigation report and prepares a Decision Analysis with a Benefit/Cost Analysis. If the navigation benefit is equal to or greater than the cost of the bridge alteration, then the bridge is declared an unreasonable obstruction to navigation and, therefore, becomes eligible for federal funding under the Truman-Hobbs Act.
2. If the Chief, Office of Bridge Programs finds that the subject bridge is not an unreasonable obstruction to navigation, he/she so informs the T-H Team and the concerned district.
3. The Chief, Office of Bridge Programs will give a 60-day advance notification to the bridge owner. The bridge owner may then comment on Bridge Program determination.
4. In the event a third party (e.g., private business or government) will benefit from the alteration, the Commandant may require an equitable contribution from this third party as a condition precedent to issuing the Order to Alter.
5. When Congress declares a bridge unreasonably obstructive, a Decision Analysis is prepared to document the vertical and horizontal clearances required.

#### **H. Order to Alter.**

1. The Commandant signs a T-H Order to Alter. This Order to Alter will specify the navigation clearances needed to meet the reasonable needs of navigation.
2. The original signed Order to Alter and a letter of instruction will be forwarded to the T-H Team leader with instructions to serve promptly on the bridge owner. When required, the Bridge Program will prepare a letter of special conditions, setting forth safeguards to protect the environment and/or to provide for any special needs of navigation, may be issued concurrently with the Order to Alter.
3. Copies of the Order to Alter, as served, with an affidavit attached thereto,

executed by the person serving the order and showing on whom, where, and when the service was made, will be returned to the Chief, Office of Bridge Programs and the district.

### **I. Appeals Process.**

1. Except for the decision to issue an Order to Alter, if a complainant disagrees with a recommendation regarding obstruction or eligibility made by a District Commander, or the Chief, Office of Bridge Programs, the complainant may appeal that decision to the Deputy Commandant for Operations.
2. The appeal must be submitted in writing to the Deputy Commandant of Operations, U.S. Coast Guard,(CG–DCO), 2703 Martin Luther King Jr. Ave. SE, Washington, DC 20593-7418 within 60 days after the District Commander's or the Chief, Office of Bridge Programs decision. The Deputy Commandant for Operations will make a decision on the appeal within 90 days after receipt of the appeal. The Deputy Commandant of Operations' decision of this appeal must constitute final agency action.
3. Any Order of Apportionment made or issued under section 6 of the Truman-Hobbs Act, 33 U.S.C. § 516, may be reviewed by the Court of Appeals for any judicial circuit in which the bridge in question is wholly or partly located, if a petition for review is filed within 90 days after the date of issuance of the order. The review is described in section 10 of the Truman-Hobbs Act, 33 U.S.C. § 520. The review proceedings do not operate as a stay of any order issued under the Truman-Hobbs Act, other than an order of apportionment, nor relieve any bridge owner of any liability or penalty under other provisions of that Act.

### **J. Bridge Alteration.**

1. Once the Commandant has issued an Order to Alter, the bridge owner will make the required alterations with oversight and guidance provided by the Bridge Program Office. This process is detailed in the Bridge HQ-Truman-Hobbs TTP.

### **K. Permit Modification.**

1. Modifying bridges over or across navigable waters that affect the approved navigation clearances or approved configuration requires a bridge permit amendment to reflect the new conditions. While it is the Bridge Owner responsibility to request the permit amendment, a Bridge Program Engineer must communicate this requirement to the Bridge Owner. See the Coast Guard Bridge Permit Application Guide for the procedures of issuing permit modifications.
2. The Coast Guard serves as the Lead Federal Agency for the project's environmental review. See Bridge HQ-Truman-Hobbs TTP, "USCG Permit Amendment" section for the environmental and permitting process.

## CHAPTER 7. CIVIL PENALTY PROCEDURES

### A. Introduction

1. This chapter outlines the authority and responsibilities of District Commanders, Hearing Officers, and Bridge Program staff concerning the disposition of reported violations of the applicable bridge laws and regulations.

### B. Bridge Legal Authorities and Bridge Statutes.

1. Through Department of Homeland Security Delegation Number 0170.1, the Secretary of Homeland Security has authorized the Commandant of the Coast Guard to exercise jurisdiction over bridges and causeways in or over navigable waters of the United States in accordance with the following acts/statutes:
  - a. Act of March 3, 1899, c. 425, § 9, 30Stat. 1151; as amended; classified to 33 U.S.C. §§ 401, 502;
  - b. Act of March 23, 1906, c. 113, § 1, 34 Stat. 84; as amended; classified to 33 U.S.C. §§ 491-498
  - c. Act of August 18, 1894, c. 299, § 5, 28 Stat. 362; as amended; classified to 33 U.S.C. § 499
  - d. Act of August 2, 1946, 60 Stat. 497; as amended; classified to 33 U.S.C. §§ 525,530, 533 (commonly referred to the General Bridge Act of 1946);
  - e. Act to give the consent of Congress to the construction of certain international Bridges, and for other purposes, P.L. No. 92-434 (H.R. 15577), 86 Stat. 31-733 (September 26, 1972); as amended; classified to 33 U.S.C. §§ 535-535i (commonly referred to to as "the International Bridge Act of 1972).
2. The Coast Guard's Bridge Regulations are found in 33 CFR, Chapter 1, Subchapter J, 114 - 118.

### C. Policy.

1. The Coast Guard has developed these policies to provide a consistent approach, nationwide, to bridge penalty actions. The purpose of "general penalty procedures" is to facilitate the safe passage of vessels through bridges by deterring any inconvenience or impediment to navigation, which may result from the location, construction, modification, maintenance, and/or operation of bridges over or across navigable waters of the United States.
2. The procedures for conducting enforcement proceedings are designed to be

simple and flexible. However, certain rules and guidelines must be observed in the interest of having an orderly framework and a record of what was done in the administrative process.

3. All penalty activities must be recorded in Marine Information for Safety and Law Enforcement (MISLE) to develop an electronic record.

#### **D. Reports of Violations Involving Criminal Penalty Provisions.**

1. Certain statutes administered and enforced by the Coast Guard contain both civil and criminal penalties, while others contain only criminal penalties (i.e., fine and imprisonment). When violations are reported for which criminal penalties are authorized, weigh the facts submitted and determine whether the imposition of a criminal penalty is warranted. If it appears that, the evidence is sufficient and that the circumstances are such that a criminal penalty is indicated, Contact District legal to discuss referral of the case to the U. S. Attorney for prosecution. The procedures outlined in the Bridge Operations TTP, "Criminal Penalty" should be followed.

#### **E. Receiving, Reviewing and Forwarding Cases.**

1. The Coast Guard may receive information concerning violations of bridge laws and regulations from sources other than Coast Guard personnel. An incident can be reported by the public or any agency to any USCG unit in any format. USCG units may also report an incident while conducting normal operations.
  - a. Report of Alleged Violation. Once notification of a possible bridge-related incident has been received, the DBO will begin the investigation process to determine whether any violation(s) of the applicable federal laws or regulations has occurred. Violations may include but are not limited to:
    - (i) Illegal bridge construction;
    - (ii) Deviation from approved plans;
    - (iii) Failure to open a drawbridge, etc.;
    - (iv) Unnecessary bridge opening and/or;
    - (v) Failure to notify the District Bridge Office.
  - b. Investigation Action.

- (i) Upon receipt of the report, the District Bridge Office conducts an investigation to determine if there is sufficient evidence to establish a "prima facie" case. (This means that the file must contain proof of all elements of the violation, including jurisdiction.)

#### **F. Investigation.**

1. The primary purpose of an investigation is to uncover the facts and gather evidence relating to an event or occurrence to determine whether there is any violation(s) of the federal bridge statutes or regulations. Based upon the findings of an investigation the Coast Guard may assess a civil penalty or, in the event of a criminal violation, refer the case to the U.S. Attorney. The Coast Guard does not investigate to fix liability between private litigants. Instead, investigations are a means of enforcing the bridge statutes to promote safety, and protect life, property, and the environment.
2. All the information must be carefully evaluated, to determine jurisdiction and if the alleged facts (if proved) constitute a violation of law or regulations.
3. Information that is nonspecific or does not appear to justify an investigation still must be carefully scrutinized prior to abandoning an investigation. If the information relates to a matter within the jurisdiction of another agency, the investigator should refer it to that agency immediately.
4. If a prima facie case is established, the District Bridge Office will move forward with the enforcement action. This action will establish the appropriate level of penalty the District Bridge Office will levy or recommend be levied on the Bridge Owner.
5. See the Bridge Operations TTP, "Notification of Incident and Investigation Process" for the procedures of the investigation of incident process.

#### **G. Enforcement Action.**

1. Strive to achieve compliance on an informal basis at the lowest practicable level of administration whenever possible. Enforcement actions are Letters of Warning, Notice of Violations, Class 1 Civil Penalties and Criminal Penalties.
2. A representative from the District Bridge Office should make a reasonable effort to achieve compliance and correct the issue informally.
3. Notes of the attempt to resolve the issue informally must be prepared in sufficient detail to allow for a full understanding of the effort undertaken and included as evidence to the MISLE record to develop accurate, relevant, timely, and complete violation histories. Identify these attempts in the Bridge Program Database to

maintain a history of the actions.

4. The District Bridge Office may close any violation case at any stage of the proceedings prior to the forwarding of the case to the hearing officer or the U. S. Attorney.
5. If the District Bridge Office determines that sufficient evidence exists, he/she determines which level of enforcement is appropriate.
6. The procedures outlined in the Bridge Operations TTP, "Enforcement Action" should be followed when attempting to achieve compliance.

#### **H. Activity Files.**

1. Receipt of Violation Report.
2. When the District Bridge Office receives a violation report, he/she establishes and maintains an activity file.
  - a. MISLE.
    - (i) All marine safety related investigations and enforcement activities, including those related to bridges, are required to be entered into, tracked, and maintained on the MISLE data system. MISLE requires that an investigation be completed in the data system prior to recommending an enforcement action. Once the investigation is referred to enforcement, MISLE will generate a case number. The procedures outlined in the Bridge Operations TTP, "Enforcement Actions" should be followed for penalty cases.
  - b. Bridge Program Database.
    - (i) The process of recording the stages of investigation and enforcement of the action are also recorded in the Bridge Program Database. Records and files need not be uploaded to Bridge Program Database.

#### **I. Hearing Officer's Responsibilities.**

1. Once a case is forwarded (including all case file documentation and the recommendation for the appropriate penalty assessment) to a Hearing Officer, the Hearing Officer is solely responsible for deciding each case on the basis of the case file, and the applicable laws, regulations, and agency interpretations. However, when forwarding a case to the Hearing Officer, the District Bridge Manager may request that, if the alleged violator subsequently presents evidence, the District Bridge Manager be given an opportunity for rebuttal. See the Bridge



Operations TTP, “USCG Hearing Office Review” for the enforcement actions that can be taken by the Hearing Officer.

**J. Access to Evidence.**

1. Alleged Violator Requests.
  - a. The alleged violator may receive a free copy of all the written evidence in the case file upon request, except material that would disclose or lead to the disclosure of the identity of a confidential informant. Other evidence or material (e.g., sound or videotapes, and photographs) may be examined at the District Legal Office.
2. Documentation of Alleged Violator Requests.
  - a. The District Bridge Manager documents whether or not a copy of evidence has been provided to the alleged violator. The District Bridge Manager records the reasons for not providing a copy of or access to any material requested by the alleged violator.
3. Withholding of Evidence and Other Material.
  - a. In addition to withholding evidence, which would disclose or lead to the disclosure of the identity of a confidential source, certain other material may (and in some cases, must) be withheld from the public and the alleged violator. Where the law requires withholding, the investigator and/or the District Bridge Manager (or any other person who is aware of the fact that the material is protected) should mark the document or item to prevent its inadvertent release. Any other person may make a request that certain material be treated as confidential on the basis that the information contained is:
    - (i) Confidential financial information, trade secrets, or other material exempt from disclosure by the Freedom of Information Act (5 U.S.C. § 552).
    - (ii) Required to be held in confidence by 18 U.S.C. § 1905.
    - (iii) Otherwise, exempt by law from disclosure.
4. Confidential Treatment.

- a. The person desiring confidential treatment must submit the request to the DBO in writing and state the reasons justifying nondisclosure. Failure to make a timely request may result in a document being considered as non-confidential and subject to release.