



**US Army Corps
of Engineers**®
New England District
696 Virginia Road
Concord, MA 01742-2751

PUBLIC NOTICE

Date: February 4, 2015
File Number: NAE-2013-00714
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Department of the Army General Permits for Massachusetts

The New England District, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751 hereby announces the issuance of statewide General Permits (GPs) for Massachusetts, pursuant to 33 CFR Part 325.5(c)(3), for minimal-impact activities subject to Corps jurisdiction in waters of the U.S. within the boundaries of, and off the coast of, the Commonwealth of Massachusetts excluding work within the boundaries of Indian tribal lands. These GPs became effective on February 4, 2015. The GPs are issued in accordance with Corps regulations at 33 CFR 320 - 332 [see 33 CFR 325.5(c)(1)]. The GPs will protect the aquatic environment and the public interest while effectively authorizing activities that have no more than minimal individual and cumulative adverse effects on the aquatic environment.

The previous Massachusetts GP expired on January 20, 2015. The 23 GPs for Massachusetts issued today continue the expedited review process for activities in Corps jurisdiction under Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899, and Section 103 of the Marine Protection, Research, and Sanctuaries Act. This public notice is issued in accordance with 33 CFR 325.10 to ensure potential applicants for permits are informed of the requirements of 33 CFR 320-330 and of the steps required to obtain permits for activities in waters of the U.S. or ocean waters.

We issued public notices on June 13, 2013 and July 31, 2014, announcing our proposal to replace the existing, individual, state GPs in the six New England states with New England General Permits (NE GPs). We announced in an October 9, 2014 Public Notice that the District Engineer decided to discontinue the regional approach of the NE GP proposal and instead pursue GPs on a state-by-state basis. We began working with stakeholders to expedite the issuance of new GPs in Massachusetts to replace the Massachusetts GP that expired on January 20, 2015.

The scope, terms and conditions for the GPs for Massachusetts issued today are similar to those parameters that we proposed in the NE GP document. There were no substantive changes made after the July 31, 2014 public notice and the October 9, 2014 decision to discontinue the regional approach of the NE GP proposal and instead pursue GPs on a state-by-state basis. We believe that the three public notices had sufficiently advised all interested parties of the proposed GPs, and solicited comments and information necessary to evaluate the probable impacts on the public interest. Therefore, we did not issue another public notice soliciting comments and information.

The GPs for Massachusetts that are issued today look quite different from the existing Massachusetts GP, however, and of particular note, it organizes eligible work into more activity-specific categories. This is intended to satisfy the requirements of Section 404(e) of the Clean Water Act, which allows the

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Corps to issue GPs for activities that are similar in nature and will cause only minimal individual and cumulative adverse environmental effects. Identifying specific activities will also allow the Corps to adequately assess cumulative impacts of permitted activities, as well as fully assess impacts on threatened and endangered species.

General permits are encouraged under the President's plan and the Clean Water Act as a way to streamline Federal and state regulatory programs. The New England District has already had success with streamlining these programs through the use of GPs throughout New England. General Permits have been in place since 1993 in Massachusetts. These GPs are designed to authorize activities formerly covered under the Nationwide Permit (NWP) program and the prior Massachusetts GP that expired on January 20, 2010. Continued utilization of the GP process in place of the NWPs will provide important benefits to the public, including simplifying the process, expediting decisions, and providing necessary environmental protection.

Projects with minimal individual and cumulative effects on the aquatic environment will be approved administratively under this GP. Projects that do not meet the terms and conditions of these GPs, of which General Condition 3 requires projects authorized by these GPs to "have no more than minimal direct, secondary and cumulative adverse environmental effects," will be subjected to Individual Permit review. The Individual Permit review procedures are not altered by the GP. Federal exemptions, which are not necessarily the same as the Commonwealth of Massachusetts exemptions, are also not altered by the GP. In addition, for projects authorized pursuant to these GPs, project proponents must obtain the appropriate local or state approvals when required in order for these GPs authorization to be valid. All GP authorizations will be subject to the applicability requirements, procedures, and conditions contained in the GPs for Massachusetts document.

Project eligibility under this GP will fall into two categories: Self-Verification (Self-Verification Notification Form required) and Pre-Construction Notification (PCN) (application and written verification required). The Corps will review PCNs along with state and federal resource agencies (U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency and National Marine Fisheries Service) as applicable. Through project review, the Corps will determine if the individual and cumulative adverse environmental impacts for PCN projects are minimal and whether the project may proceed under the appropriate GPs.

National Historic Preservation Act

Based on his initial review, the District Engineer has determined that the proposed work may cause effects on properties listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places. As currently proposed, no undertaking authorized under the GPs for Massachusetts shall cause effects on such properties unless the Corps or another Federal action agency has satisfied the consultation requirements of Section 106 of the National Historic Preservation Act on a project-by-project basis.

Endangered Species

It is the Corps preliminary determination that the proposed NE GPs will have no effect on or is not likely to adversely affect any Federally-listed endangered or threatened species or their designated critical habitat. No activity is authorized under the GPs for Massachusetts which: a) is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species; b) "may

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affect” a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed; or c) violates the ESA.

Essential Fish Habitat

In 1996, the Magnuson-Stevens Fishery Conservation and Management Act was amended to require the Federal fishery management councils (Councils) to designate Essential Fish Habitat (EFH) for all Federally managed fish species. Essential Fish Habitat is broadly defined as those waters and substrates necessary to fish for spawning, feeding, breeding, and growth to maturity. Section 305 (b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act requires that Federal agencies proposing to authorize, fund, or to undertake actions which may adversely affect EFH consult with National Marine Fisheries Service (NMFS) regarding the action.

The Corps consulted with the NMFS regarding the effects of these GPs on EFH designated under the Magnuson-Stevens Fishery Conservation and Management Act. The terms and conditions of the GPs are such that projects with the potential for more than minimal impacts upon EFH will require a PCN. Consultation pursuant to the EFH provisions of the Magnuson-Stevens Fishery Conservation and Management Act will occur as necessary for proposed GP activities that may adversely affect EFH. The NMFS will require the submittal of an EFH assessment if necessary.

Coastal Zone Management Consistency

The Commonwealth of Massachusetts has a Federally-approved Coastal Zone Management (CZM) Program. Section 307(c)(1) of the Federal CZM Act of 1972, as amended, requires the Corps to provide a consistency determination and receive state concurrence prior to the issuance, reissuance, or expansion of activities authorized by a GP that authorizes activities within a state with a Federally-approved Coastal Management Program when activities that would occur within, or outside, that state’s coastal zone will affect land or water uses or natural resources of the state’s coastal zone. In a letter dated January 20, 2015, the Massachusetts Office of CZM wrote, “We concur with your certification and find that the activity as proposed is consistent with the CZM enforceable program policies.”

Water Quality Certification

State certification pursuant to Section 401 of the Clean Water Act, or waiver thereof, is required from the state prior to the issuance of GPs authorizing activities that may result in a discharge into waters of the U.S. On January 16, 2015, the Massachusetts Department of Environmental Protection issued a conditional WQC, which is located at www.nae.usace.army.mil/missions/regulatory >> State General Permits >> Massachusetts.

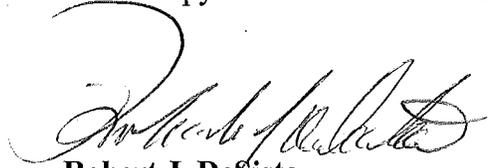
Outreach

The Corps plans to conduct outreach webinars and presentations throughout the state. We will announce these via public notice, media outlets, and our website at:

www.nae.usace.army.mil/missions/regulatory >> State General Permits >> Massachusetts, or www.nae.usace.army.mil/missions/regulatory >> Public Notices.

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You can view the GPs for Massachusetts at: www.nae.usace.army.mil/missions/regulatory >> State General Permits >> Massachusetts. Please contact Mr. Penta at (978) 318-8862 or gregory.r.penta@usace.army.mil for more information or a copy of the GPs for Massachusetts.



Robert J. DeSista
Acting Chief, Regulatory Division

If you would prefer not to continue receiving public notices by email, please contact Ms. Tina Chaisson at (978) 318-8058 or e-mail her at bettina.m.chaisson@usace.army.mil. You may also check here () and return this portion of the public notice to: Bettina Chaisson, Regulatory Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751.

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