



US Army Corps
of Engineers
New England Division

Public Notice

Date: August 24, 1993

Comment Period Closes:

In Reply Refer To: File No.
Christine A. Godfrey 1993-01040

424 Trapelo Road, Waltham, MA 02254-9149

ISSUANCE OF PROGRAMMATIC GENERAL PERMIT AND SUSPENSION OF NATIONWIDE PERMITS IN MASSACHUSETTS

THE NEW ENGLAND DIVISION OF THE U.S. ARMY CORPS OF ENGINEERS, 424 TRAPELO ROAD, WALTHAM, MASSACHUSETTS 02254-9149 hereby issues a Programmatic General Permit (PGP) for Massachusetts pursuant to 33 CFR Part 325.5(c)(3). The Massachusetts PGP provides a simplified review process for minimal-impact activities within the Commonwealth of Massachusetts that are subject to Corps jurisdiction under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

At the same time, the Division Engineer has made a decision regarding a proposal to exercise his discretionary authority pursuant to 33 CFR 330.5 to suspend the Nationwide permits (NWP) in Massachusetts. These proposals were announced in a public notice issued on May 4, 1993. The PGP will replace the Nationwide permits and other permitting mechanisms currently in use in Massachusetts, including Regional General Permits and Letters of Permission.

All PGP authorizations are subject to the applicability requirements, procedures and conditions contained in the PGP as attached. Project eligibility under the PGP falls into two categories, non-reporting projects (Category I) and projects that will be screened by the Corps and federal resource agencies for a determination of minimal cumulative and individual impacts (Category II).

Category III activities, Category I and II projects that do not meet all the terms and conditions of the PGP, and projects for which the Corps has decided to exert Discretionary Authority (see Condition 4 of the PGP) will require an individual permit. The individual permit review process and federal exemptions are not affected by this PGP.

The PGP review thresholds have been established to reduce duplication of state and federal regulatory review where appropriate, and to simplify the overall permitting procedures for applicants, while maintaining an adequate level of environmental protection. Applicability of the PGP must be evaluated by the Corps with reference to federal jurisdictional boundaries, which do not necessarily coincide with the state definitions of resource areas (see Condition 2 of the PGP). Additional information on federal jurisdictional boundaries, including wetland delineations, is available from the Corps.

Individual state certifications concerning water quality and coastal zone management may be required for certain activities authorized under the PGP. Information on when an individual water quality certification must be obtained from the Massachusetts Department of Environmental Protection, and individual Federal Consistency concurrence must be obtained from the Office of Coastal Zone Management, is included in the PGP. Applicants are responsible for ensuring that all appropriate state approvals and licenses have been applied for and obtained before work may proceed.

The PGP is hereby issued for a trial period of nine months, from August 24, 1993, to May 31, 1994, during which time its use will be monitored and evaluated. After that time, the Corps expects to reissue the PGP for five years, with any revisions that are deemed necessary. The Nationwide permit suspension is in effect for the same nine month period, unless specifically revised or rescinded by the Division Engineer. After the trial period, the Corps expects to revoke the Nationwide permits.

A proposal to include dredging projects with open-water disposal in the screening category of the PGP has not been adopted at this time. Dredging projects with upland disposal that meet certain requirements may be authorized under the PGP, but any dredging project with open-water disposal will require review for an individual permit.

Several options related to restoration of abandoned cranberry bogs that were outlined in the public notice for the PGP (dated May 4, 1993), including a modification of NWP 34, have not been adopted. Cranberry activities will be subject to the same review thresholds as other activities in the PGP.

The following activities are hereby grandfathered from the provisions of the Nationwide permit suspensions: (a) all Nationwide Permit verification requests received before August 24, 1993, will be reviewed for authorization pursuant to the Corps of Engineers Nationwide Permits published at 33 CFR Part 330, November 22, 1991; (b) activities which have commenced, i.e. are under construction, or are under contract to commence in reliance upon the terms and conditions of the non-reporting Nationwide Permits published as referenced above, prior to August 24, 1993, will remain authorized provided the activity is completed within 12 months of August 24, 1993, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 330.4 (e) and 33 CFR 330.5 (NOTE: applicants must be able to document to the Corps satisfaction that the project was under construction or contract by the appropriate date); (c) projects that have received written NWP verification from the Corps, based on applications made to the Corps prior to August 24, 1993, will remain authorized as specified in those authorizations.

The Corps has scheduled four training sessions, one in conjunction with the Boston and Northeast Regional DEP offices, and one in conjunction with the other DEP Regional offices, to inform Conservation Commissioners, engineers, consultants, and the general public about these regulatory changes. The dates, times and locations are provided on the attached sheet.

For additional information contact the Corps of Engineers Regulatory Division at (617) 647-8335 or toll-free at (800) 343-4789 or (800) 362-4367 if calling within Massachusetts.



Christine A. Godfrey
Chief, Policy Analysis Branch
Regulatory Division

The decision whether to issue a permit will be based on an evaluation of the probable impact of the proposed activity in the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which may reasonable accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including the cumulative effects thereof; among those are: conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people.

Where the activity involves the discharge of dredged or fill material into waters of the United States or the transportation of dredged material for the purpose of disposing it in ocean waters, the evaluation of the impact of the activity in the public interest will also include application of the guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of Section 404(b) of the Clean Water Act, and/or Section 103 of the Marine Protection Research and Sanctuaries Act of 1972 as amended.

Based on his initial review, the District Engineer has determined that little likelihood exists for the proposed work to impinge upon properties listed in or eligible for listing in the National Register of Historic Places, and no further consideration of the requirements of the Preservation of Historical and Archaeological Data Act of 1974 is necessary. This determination is based on one or more of the following:

- a. The permit area has been extensively modified by previous work.
- b. The permit area has been recently created.
- c. The proposed activity is of limited nature and scope.
- d. Review of the latest published version of the National Register shows that no presence of registered properties or properties listed as being eligible for inclusion therein are in the permit area or general vicinity.

Presently, unknown archaeological, scientific, pre-historic or historical data may be lost or destroyed by work to be accomplished under the requested permit.

Pursuant to the Endangered Species Act, the District Engineer is hereby requesting that the appropriate Federal Agency provide comments regarding the presence of and potential impacts to listed species or its critical habitat.

The initial determinations made herein will be reviewed in light of facts submitted in response to this notice.

The following authorizations have been applied for, or have been, or will be obtained:

- () Permit, License or Assent from the State.
- () Permit from Local Wetland Agency or Conservation Commission.
- () Water Quality Certification in accordance with Section 401 of the Clean Water Act.

The States of Connecticut, Maine, Massachusetts, New Hampshire and Rhode Island have approved Coastal Zone Management Programs. Where applicable the applicant states that any proposed activity will comply with and will be conducted in a manner that is consistent with the approved Coastal Zone Management Program. Issuance of a State permit from the appropriate State agency will indicate concurrence with this statement of Consistency.

All comments will be considered a matter of public record. Copies of letters of objection will be forwarded to the applicant who will normally be requested to contact objectors directly in an effort to reach an understanding.

THIS NOTICE IS NOT AN AUTHORIZATION TO DO ANY WORK.

If you would prefer not to continue receiving public notices, please check here () and return this portion of the public notice to: U.S. Army Corps of Engineers - New England Division, Attn: Regulatory Division, Bldg 108N, 424 Trapelo Road, Waltham, MA 02254-9149.

NAME: _____

ADDRESS: _____

THE NEW ENGLAND DIVISION
U.S. ARMY CORPS OF ENGINEERS

August 24, 1993

MASSACHUSETTS PROGRAMMATIC GENERAL PERMIT
PUBLIC INFORMATION SESSIONS

The following public information sessions are to be held by the Corps of Engineers in conjunction with the Massachusetts Department of Environmental Protection to provide information on the Department of the Army Programmatic General Permit for Massachusetts. The sessions are open to the general public.

<u>REGION</u>	<u>LOCATION</u>	<u>DATE/TIME</u>
BOSTON and NORTHEAST	New England Division U.S. Army Corps of Engineers 424 Trapelo Road Waltham, MA 02254 617-647-8335 Location: Theater	Friday Sep. 17, 1993 2:30 - 4:30 p.m.
CENTRAL	Auburn Town Hall Auburn, MA	Monday Sep. 20, 1993 2:30 - 4:30 p.m.
SOUTHEAST	Sandwich Town Library Sandwich, MA	Thur. Sep. 23, 1993 2:30 - 4:30 p.m.
WESTERN	Springfield Technical College, Putnam Hall Springfield, MA	Friday Sep. 24, 1993 2:30 - 4:30 p.m.

For Additional Information: contact Monica Stillman, Corps of Engineers Regulatory Division, at 617-647-8862.

SUSPENSION OF NATIONWIDE PERMITS
EFFECTIVE IN MASSACHUSETTS
AUGUST 24, 1993

The Nationwide Permits are hereby suspended for a period of nine months in Massachusetts pursuant to the procedures at 33 CFR Part 330.5, as of August 24, 1993. Refer to 33 CFR Appendix A for complete text of the Nationwide Permits.

The following activities are hereby grandfathered from the provisions of these suspensions: (a) all Nationwide Permit verification requests received before August 24, 1993, will be reviewed for authorization pursuant to the Corps of Engineers Nationwide Permits published at 33 CFR Part 330, November 22, 1991; (b) activities which have commenced, i.e. are under construction, or are under contract to commence in reliance upon the terms and conditions of the non-reporting Nationwide Permits published as referenced above, prior to August 24, 1993, will remain authorized provided the activity is completed within 12 months of August 24, 1993, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 330.4(e) and 33 CFR 330.5 (applicants must be able to document to the Corps satisfaction that the project was under construction or contract by the appropriate date); (c) projects that have received written Nationwide Permit verification from the Corps, based on applications made to the Corps prior to August 24, 1993, will remain authorized as specified in those authorizations.

This Nationwide permit suspension does not apply to the Corps of Engineers Civil Works program.



Brink P. Miller
Colonel, Corps of Engineers
Division Engineer

16 AUGUST 1993
date

Permit No.: 199301040

Effective Date: August 24, 1993
Expiration Date: May 31, 1994

Applicant: General Public in Massachusetts

DEPARTMENT OF THE ARMY PROGRAMMATIC GENERAL PERMIT
COMMONWEALTH OF MASSACHUSETTS

The New England Division of the U.S. Army Corps of Engineers hereby issues a programmatic general permit that expedites review of minimal impact work within coastal and inland waters and wetlands within the Commonwealth of Massachusetts. Activities with minimal impacts, as specified by the terms and conditions of this general permit, are either non-reporting (provided required local and state permits and required state certifications are received), or are to be screened by the Corps and federal resource agencies for applicability under the general permit. The Corps individual permit review process, and activities exempt from Corps jurisdiction, are not affected by this proposal.

Activities covered by this general permit include work and structures that are located in, or that affect, navigable waters of the United States (regulated by the Corps under Section 10 of the Rivers and Harbors Act of 1899), as well as the discharge of dredged or fill material into waters of the United States (regulated by the Corps under Section 404 of the Clean Water Act).

Procedures

A. State and Local Approvals

For projects authorized pursuant to this general permit, when the following state approvals are also required, they must be obtained in order for this general permit authorization to be valid (applicants are responsible for ensuring that all required state licenses and approvals have been applied for and obtained):

(a) A Final Order of Conditions under the Wetlands Protection Act (WPA) (MGL c. 131 Section 40) must be obtained for activities subject to jurisdiction as defined in 310 CMR 10.02.

(b) A waterways license or permit under MGL c. 91, from the Massachusetts Department of Environmental Protection (DEP) Division of Waterways must be obtained for activities subject to jurisdiction, as defined in 310 CMR 9.05.

(c) For work in Corps jurisdiction involving a discharge to waters of the U.S., an individual 401 water quality certification (WQC) ¹ must be obtained from the Massachusetts DEP before work can proceed pursuant to this general permit for the following circumstances:

1. proposed work that is not subject to the WPA (310 CMR 10.00) but does require a 401 Water Quality Certification and proposes the loss of bordering vegetated wetlands, land under water, or federal non-state wetland;
2. any project intended to create a real estate subdivision for which a Notice of Intent is submitted on or after October 1, 1992;

(1) See MGL c. 21 Sections 26 - 53 and regulations at 314 CMR 9.00, as supplemented by the Interim Guidance effective 10/1/92.

3. Any project which will result in the loss of more than 5,000 square feet of bordering vegetated wetlands or land under water;
4. proposed work in Outstanding Resource Waters (ORWs) as designated in 314 CMR 4.00;
5. proposed work in coastal areas, which will result in the loss of any amount of salt marsh;
6. projects involving dredging more than 100 cubic yards in navigable waters.

(d) Any project in Corps jurisdiction located within the Massachusetts coastal zone (as defined in 301 CMR 20.00 and 21.00 and the Massachusetts Coastal Zone atlas) which is above the review thresholds of the Massachusetts Environmental Policy Act (MEPA), including any project located in a coastal Area of Critical Environmental Concern (ACEC), must receive a Federal Consistency concurrence from the Office of Coastal Zone Management (CZM) before work can proceed. Any project in Corps jurisdiction located seaward of the Massachusetts coastal zone (the seaward boundary of the coastal zone is consistent with the state boundary, which is generally, though not in all areas, the three-mile limit) which may affect the land or water uses or natural resources of the coastal zone must receive a Federal Consistency concurrence or waiver from the Office of Coastal Zone Management before work can proceed.

B. Corps Authorization: Category I (Non-Reporting)

Work in Massachusetts that is subject to Corps jurisdiction², that meets the definition of Category I on the Definition of Categories sheet (attached), and that meets all of this permit's other conditions may proceed without application or notification to the Corps provided all required federal, state and local authorizations are obtained.

Work that is not subject to the Massachusetts Wetlands Protection Act (WPA), but is subject to Corps jurisdiction, is eligible for Corps authorization under this PGP; although an Order of Conditions is not required, the general permit review thresholds and requirements concerning WQC and CZM consistency apply. Such projects could include activities that are exempt from the WPA, and activities in federal wetlands (e.g., isolated wetlands), that are not covered under the WPA.

Although Category I projects are non-reporting, the Corps reserves the right to require review for an individual permit if there are concerns for the aquatic environment or any other factor of the public interest (see condition 5 on Discretionary Authority).

C. Corps Authorization: Category II (Screening)

i. Projects that do not meet the non-reporting thresholds will be screened by the Corps of Engineers and the federal resource agencies (Environmental Protection Agency, U.S. Fish and Wildlife Service, and National Marine Fisheries Service) for a case-by-case determination of applicability under this general permit.

Screened projects may not proceed until written notification is received from the Corps and the applicable certifications or waivers concerning water quality and coastal zone management are received by the applicant.

For these projects, applicants should submit an application to the Corps; applicants filing a notice of intent (NOI) with

(2) See Condition 2 concerning federal jurisdictional boundaries.

their local Conservation Commission should submit a copy of their NOI materials to the Corps at the same time they apply to their Commission, along with additional information concerning the work within Corps jurisdiction².

Additional information required may include (a) purpose of the project; (b) 8 1/2" by 11" plan views of the entire property and project limits with existing and proposed conditions; (c) wetland delineation for the site, information on the basis of the delineation, and calculations of the impact areas²; (d) typical cross-section views of all wetland and waterway fill areas and wetland replication areas; (e) amount, type and source of fill material to be discharged into waters and wetlands, including the volume of fill below ordinary high water in inland waters, and below the high tide line in coastal waters; (f) mean high and mean low water elevations in navigable waters; (g) limits of any Federal navigation project in the vicinity and State Plane coordinates for the limits of the proposed work closest to the Federal project; (h) alternatives analyses submitted to the DEP for WQC review, and/or additional alternatives information compiled; (i) for dredging projects include the volume of material and area in square feet to be dredged below mean high water, existing and proposed water depths, type of dredging equipment to be used, nature of material (e.g. silty sand), any existing sediment grain size and bulk sediment chemistry data for the proposed or any nearby projects, information on the location and nature of municipal or industrial discharges and occurrence of any contaminant spills in or near the project area, and the location of the disposal site (include locus sheet). Additional information may be requested by the Corps; dredging applicants may be required to conduct sediment testing, including physical, chemical and biological testing.

Information submitted will be reviewed for categorization as to (1) projects that will be subject to interagency coordination procedures (see below); (2) projects that warrant further study by the Corps (the applicant may be contacted for additional information); (3) projects that are ineligible under the terms and/or conditions of this general permit; and (4) projects that the Corps determines will require individual permit review, irrespective of whether they meet the terms and conditions of this general permit, based on concern for the aquatic environment or any other factor of the public interest.

Projects to be screened will be reviewed with the Federal resource agencies at meetings held every three weeks, or as necessary to provide applicants with a timely response. The Corps and Federal agencies may agree on certain activities that do not need to be coordinated at these meetings. For projects to be reviewed with the Federal agencies, the agencies may recommend special conditions for projects to avoid or minimize adverse environmental effects and to insure that the terms and conditions of the general permit are met. The Corps will determine that a project is ineligible under this general permit and will begin its individual permit review procedures if any one of the Federal agencies, within 10 working days after the screening meeting, expresses a concern within their area of expertise, states the resource or species that could be impacted by the project, and

describes the impacts that, either individually or cumulatively, will be more than minimal.

This 10-day notice may be verbal and is not required to be fully documented, but must be confirmed with a written response within an additional 10 working days from the date of the verbal comment. The intent of the verbal notification is to allow the Corps to give timely notification to the applicant that additional information, or an individual Corps' permit, may be required. The Corps may reinstate a project's eligibility under the PGP provided the Federal agencies' concerns have been satisfied. Applicants must receive PGP authorization in writing from the Corps for projects in Category II prior to proceeding with regulated activities.

ii. **Historic Properties.** Applicants should submit a copy of their application materials to the Historic Preservation Officer at the Massachusetts Historical Commission (MHC) to be reviewed for the presence of historic/archaeological resources in the permit area that may be affected by the proposed work. Applicants should submit a statement to the Corps indicating that they have submitted this information to the MHC.

iii. **Projects that extend the coastline.** The construction of solid fill structures and fills along the coast may extend the coastline or baseline from which the territorial sea is measured, and must be coordinated with the Minerals Management Service (MMS), Outer Continental Shelf (OCS) Survey Group, pursuant to the Submerged Lands Act (43 U.S.C. Section 1301-1315, 33 CFR 320.4(f)). The Corps will forward project information to MMS for their review. MMS will coordinate their determination with the Department of the Interior (DOI) Solicitor's Office. The DOI will have 15 calendar days from the date MMS is in receipt of the project information to determine if the baseline will be affected. No notification within the 15 day review period will constitute a "no affect" determination. Otherwise, the solicitor's notification to the Corps may be verbal but must be followed with a written confirmation within 10 business days from the date of the verbal notification. This procedure will be eliminated if the Commonwealth of Massachusetts provides a written waiver of interest in any increase in submerged lands caused by a change in the baseline resulting from solid fill structures or fills authorized under this General Permit.

D. Corps Authorization: Category III (Individual Permit)

Work that is in Category III on the attached Definition of Categories sheet, or that does not meet the terms and conditions of this general permit, will require an application for an individual permit from the Corps of Engineers (see 33 CFR Part 325.1). The screening procedures outlined above will only serve to delay project review in such cases. The appropriate application materials (including either the NOI joint application form or the Corps application form) should be submitted by the applicant at the earliest possible date; general information and application forms can be obtained at (617) 647-8338.

Programmatic General Permit Conditions:

The following conditions apply to activities authorized under the Programmatic General Permit, including all Category I (non-reporting) and Category II (screening) activities:

1. Other Permits. Authorization under this general permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
2. Applicability of this general permit shall be evaluated with reference to Federal jurisdictional boundaries. Federal and state boundaries may or may not be the same; for example, the upper limit of the WPA-defined "bank" may or may not coincide with the Corps "ordinary high water"; the upper limit of the WPA-defined "beach" may or may not coincide with the Corps "high tide line"; the WPA wetland delineation based on vegetation may or may not coincide with the Corps delineation based on vegetation, soils and hydrology. Applicants are responsible for ensuring that the boundaries used satisfy the federal criteria defined at 33 CFR 328-329.
3. Minimal Effects. Projects authorized by this general permit shall have minimal individual and cumulative adverse environmental impacts as determined by the Corps.
4. Discretionary Authority. Notwithstanding compliance with the terms and conditions of this permit, the Corps of Engineers retains discretionary authority to require review for an individual permit based on concerns for the aquatic environment or for any other factor of the public interest.
This authority is invoked on a case-by-case basis whenever the Corps determines that the potential consequences of the proposal warrant individual review based on the concerns stated above. This authority may be invoked for projects with cumulative environmental impacts that are more than minimal, or if there is a special resource or concern associated with a particular project, that is not already covered by the remaining conditions of the PGP, that warrants greater review.
Whenever the Corps notifies an applicant that an individual permit may be required, authorization under this general permit is voided, and no work may be conducted until the individual Corps permit is obtained, or until the Corps notifies the applicant that further review has demonstrated that the work may proceed under this general permit.
5. Single and Complete Projects. This general permit shall not be used for piecemeal work and shall be applied to single and complete projects. All components of a single project shall be treated together as constituting one single and complete project. All planned phases of multi-phased projects shall be treated together as constituting one single and complete project. This general permit shall not be used for any activity that is part of an overall project for which an individual permit is required.
6. Historic Properties. Any activity authorized by this general permit shall comply with Section 106 of the National Historic Preservation Act. Information on the location and existence of historic resources can be obtained from the Massachusetts Historic Preservation Office and the National Register of Historic Places. If the permittee, during construction of work authorized herein, encounters a previously unidentified archaeological or other cultural resource within the area subject to Department of the Army jurisdiction that might be eligible for listing in the National Register of Historic Places, he/she shall immediately notify the Division Engineer.
7. National Lands. Activities authorized by this general permit shall not impinge upon the value of any National Wildlife Refuge, National Forest, National Marine Sanctuary (e.g. Stellwagen Bank) or any area administered by the National Park Service (e.g. Cape Cod National Seashore).
8. Endangered Species. No activity is authorized under this general permit which is likely to 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 is likely to destroy or adversely modify the critical habitat of such species; or which would result in a "take" of any threatened or endangered species of fish or wildlife, or which would result in any other violation of Section 9 of the ESA protecting threatened or endangered species of plants. Applicants shall notify the Corps if any listed species or critical habitat might be affected or is in the vicinity of the project and shall not begin work until notified by the district engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. Information on the location of threatened and endangered species and their critical habitat can be obtained from the U.S. Fish and Wildlife Service and National Marine Fisheries Service (addresses and current Massachusetts list attached).

9. Wild and Scenic Rivers. This general permit does not authorize any activity that would adversely affect a component of the National Wild and Scenic River System, or a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status. Information on Wild and Scenic Rivers may be obtained from the National Park Service (address attached).

10. Federal Navigation Project. Any structure or work that extends closer to the horizontal limits of any Corps' navigation project than a distance of three times the project's authorized depth (see attached map for locations of these projects) shall be subject to removal at the owner's expense prior to any future Corps' dredging or the performance of periodic hydrographic surveys.

11. Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following: (a) damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes; (b) damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest; (c) damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit; (d) design or construction deficiencies associated with the permitted work; (e) damage claims associated with any future modification, suspension, or revocation of this permit.

12. Navigation. There shall be no unreasonable interference with navigation by the existence or use of the activity authorized herein, and no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized herein.

13. Minimization. Discharges of dredged or fill material into waters of the United States shall be avoided and minimized to the maximum extent practicable.

14. Work in Wetlands. Heavy equipment working in wetlands shall be avoided if possible, and if required shall be placed on mats to minimize soil and vegetation disturbance.

15. Temporary Fill. Temporary fill in waters and wetlands authorized by this general permit (e.g. access roads, cofferdams) shall be properly stabilized during use to prevent erosion. Temporary fill in wetlands shall be placed on geotextile fabric laid on existing wetland grade. Temporary fills shall be disposed of at an upland site, suitably contained to prevent erosion and transport to a waterway or wetland. Temporary fill areas shall be restored to their original contours.

16. Sedimentation and Erosion Control. Adequate sedimentation and erosion control management measures, practices and devices, such as phased construction, vegetated filter strips, geotextile silt fences or other devices, shall be installed and properly maintained to reduce erosion and retain sediment on-site during and after construction. They shall be capable of preventing erosion, of collecting sediment, suspended and floating materials, and of filtering fine sediment. These devices shall be removed upon completion of work and the disturbed areas shall be stabilized. The sediment collected by these devices shall be removed and placed at an upland

location, in a manner that will prevent its later erosion into a waterway or wetland. All exposed soil and other fills shall be permanently stabilized at the earliest practicable date.

17. Waterway Crossings. (a) All temporary and permanent crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed to withstand and to prevent the restriction of high flows, and so as not to obstruct the movement of aquatic life indigenous to the waterbody beyond the actual duration of construction. (b) No open trench excavation shall be allowed in flowing waters. (c) Temporary bridges, culverts, or cofferdams shall be used for equipment access across streams (note: areas of fill and/or cofferdams must be included in total waterway/wetlands impacts to determine applicability of this general permit). (d) For projects eligible for Category I, instream work shall be conducted during the low flow period July 15 - October 1 in any year; projects that are not to be conducted during that time period shall be screened pursuant to Category II, regardless of the fill and/or impact area.

18. Discharge of Pollutants. All activities involving any discharge of pollutants into waters of the United States authorized under this general permit shall be consistent with applicable water quality standards, effluent limitations, standards of performance, prohibitions, and pretreatment standards and management practices established pursuant to the Clean Water Act (33 U.S.C. 1251), and applicable state and local laws. If applicable water quality standards, limitations, etc., are revised or modified during the term of this permit, the authorized work shall be modified to conform with these standards within 6 months of the effective date of such revision or modification, or within a longer period of time deemed reasonable by the Division Engineer in consultation with the Regional Administrator of the Environmental Protection Agency. Applicants may presume that State water quality standards are met with issuance of the 401 Water Quality Certification.

19. Spawning Areas. Discharges in spawning or nursery areas during spawning seasons shall be avoided, and impacts to these areas shall be avoided or minimized to the maximum extent practicable during all times of year.

20. Environmental Values. The permittee shall make every reasonable effort to carry out the construction or operation of the work authorized herein in a manner so as to minimize any adverse impacts on fish, wildlife, and natural environmental values.

21. Inspections. The permittee shall permit the Division Engineer or his authorized representative(s) to make periodic inspections at any time deemed necessary in order to ensure that the work is being performed in accordance with the terms and conditions of this permit. The Division Engineer may also require post-dredging survey drawings for any dredging work.

22. Maintenance. The permittee shall maintain the work or structures authorized herein in good condition, including maintenance to ensure public safety.

23. Property Rights. This permit does not convey any property rights, either in real estate or material, or any exclusive privileges, nor does it authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations.

24. Modification, Suspension and Revocation. This permit may be either modified, suspended, or revoked in whole or in part pursuant to the policies and procedures of 33 CFR 325.7; and any such action shall not be the basis for any claim for damages against the United States.

25. Restoration. The permittee, upon receipt of a notice of revocation of authorization under this permit, shall restore the wetland or waterway to its former conditions, without expense to the United States and as directed by the Secretary of the Army or his authorized representative. If the permittee fails to comply with such a directive, the Secretary or his designee may restore the wetland or waterway to its former condition, by contract or otherwise, and recover the cost from the permittee.

26. Special Conditions. The Corps may impose other special conditions on a project authorized pursuant to this general permit that are determined necessary to minimize adverse environmental effects. Failure to comply with all conditions of the authorization, including special conditions, will constitute a permit violation and may subject the permittee to criminal, civil, or administrative penalties, or restoration.

27. False or Incomplete Information. If the Corps makes a determination regarding the eligibility of a project under this permit, and subsequently discovers that it has relied on false, incomplete or inaccurate information provided by the permittee, the permit shall not be valid and the Government may institute appropriate legal proceedings.

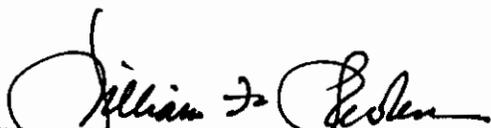
28. Abandonment. If the permittee decides to abandon the activity authorized under this general permit, unless such abandonment is merely the transfer of property to a third party, he/she must restore the area to the satisfaction of the Division Engineer.

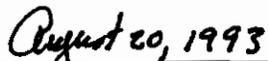
29. Duration of Authorization. Activities authorized under this general permit that have been commenced (i.e., are under construction) or are under contract to commence in reliance upon this authorization will remain authorized provided the activity is completed within twelve months of the date of the general permit's expiration, modification, or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 325.2(e)(2). Activities completed under the authorization of the general permit that was in effect at the time the activity was completed will continue to be authorized by the general permit.

30. Previously Authorized Activities. (a) All pending applications received before the date of issuance of this general permit shall be reviewed according to the regulations in use at the time the applications were submitted.

(b) Activities which have commenced, i.e. are under construction, or are under contract to commence in reliance upon the terms and conditions of the non-reporting nationwide permits, prior to issuance of this general permit, shall remain authorized provided the activity is completed within twelve months of the date of issuance of this general permit, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 330.4 (e) and 33 CFR 330.5. The applicant must be able to document to the Corps' satisfaction that the project was under construction or contract by the appropriate date.

(c) Projects that have received written verification or approval from the Corps, based on applications made to the Corps prior to issuance of this PGP, for Nationwide permits, regional general permits, or letters of permission, shall remain authorized as specified in each authorization. (d) Activities authorized pursuant to 33 CFR Part 330.3 (activities occurring before certain dates) are not affected by this general permit.


DISTRICT ENGINEER


DATE

DEFINITION OF CATEGORIES

A. INLAND WATERS AND WETLANDS (WATERS OF THE U.S.) (1)	CATEGORY I NON-REPORTING PGP	CATEGORY II SCREENED PGP	CATEGORY III INDIVIDUAL PERMIT REQUIRED
(a) FILL	Less than 5,000 square feet waterway and/or wetland fill and secondary impacts (e.g., areas drained, flooded, excavated). Fill includes temporary and permanent fill. This category excludes dams, dikes, water diversions and water withdrawals.	5,000 square foot to 1 acre waterway and/or wetland fill and secondary impacts (e.g., areas drained, flooded, excavated). Fill includes temporary and permanent fill. Any dam, dike, water diversion, or water withdrawal.	Greater than 1 acre waterway and/or wetland fill and secondary impacts (e.g., areas drained, flooded, excavated). Fill includes temporary and permanent fill.
(b) BANK STABILIZATION PROJECTS	Less than 500 linear feet and less than 1 cubic yard fill per linear foot below ordinary high water, provide no fill is placed in wetlands.	Projects that do not meet the terms under category I.	
(c) REPAIR/MAINTENANCE OF PREVIOUSLY AUTHORIZED FILL	For currently serviceable fills with no expansion or change in use.	For currently serviceable fills with expansion of any amount up to 1 acre, and/or change in use.	Replacement or expansion of greater than 1 acre fill.
B. COASTAL WATERS OF THE U.S. AND NAVIGABLE WATERS (2)			
(a) FILL	N/A	Up to 1 acre waterway fill and/or secondary waterway or wetland impacts (e.g., areas drained or flooded). Fill includes temporary and permanent waterway fill.	Greater than 1 acre waterway fill and/or secondary waterway or wetland impacts (e.g., areas drained or flooded). Fill includes temporary and permanent waterway fill.
(b) BANK STABILIZATION	N/A	Up to 1 acre temporary salt marsh fill or excavation and backfill.	Any amount of permanent salt marsh fill.
(c) REPAIR/MAINTENANCE OF PREVIOUSLY-AUTHORIZED STRUCTURES OR FILL	For currently serviceable structures or fill with no expansion or change in use.	Repair and maintenance of existing, previously authorized coastal or navigable waters bank stabilization (e.g., armoring) expansion of fill up to 1 acre.	Any new or reconstructed coastal or navigable waters bank stabilization project (e.g., armoring). Replacement or expansion of greater than 1 acre of fill.
		Replacement of non-serviceable structures or fill. Covers replacement of fill up to 1 acre.	Replacement of non-serviceable structures or fill. Covers replacement of fill up to 1 acre.

	CATEGORY I NON-REPORTING PGP	CATEGORY II SCREENED PGP	CATEGORY III INDIVIDUAL PERMIT REQUIRED
(d) DREDGING	Maintenance Dredging less than 1,000 c.y. with upland disposal; provided proper siltation controls are used; limited to dredging and disposal operations conducted between Nov. 1 and Jan. 15 in any season.	Maintenance dredging greater than 1,000 c.y. or that does not meet the terms in Category I; upland disposal required. New dredging up to 10,000 c.y.; upland disposal required.	Maintenance dredging (any amount) in or affecting a special aquatic site (3), or with open water disposal. New dredging greater than 10,000 c.y. or of any amount in or affecting a special aquatic site (3), or with open water disposal.
(e) MOORINGS	Private, non-commercial, non-rental, single boat moorings not associated with any boating facility. (4)	Moorings that do not meet the terms in Category 1.	Moorings within the horizontal limits, or with moored vessels that extend within the limits, of Corps Federal Navigation Projects.
(f) PILE-SUPPORTED STRUCTURES AND PIERS; FLOATS	Private, bottom-anchored floats not associated with any boating facility (4); up to 400 square feet in size; supported off the substrate at low tide, and not positioned over vegetated shallows (5) or salt marsh. Piers and structures licensed by Chapter 91 through the amnesty program. Private, pile-supported piers for navigational access to the waterway, up to 1,000 s.f. in size; may have attached floats up to 200 s.f. in size; provided the pier and floats are not positioned over vegetated shallows (5) or salt marsh, floats are supported off the substrate at low tide, and that a Chapter 91 license has been issued.	Private piers and floats that do not meet the terms in Category I. Expansions to existing boating facilities (4).	Pile-supported structures, piers and pile-supported or bottom anchored floats associated with a new or previously unauthorized boating facility. (4) Any structure, pier, or float that extends, or with docked or moored vessels that extend, within the horizontal limits of Corps Federal Navigation Projects.

CATEGORY I
NON-REPORTING PGP

CATEGORY II
SCREENED PGP

CATEGORY III
INDIVIDUAL PERMIT REQUIRED

C. GENERAL

- | | | |
|---|---|--|
| <ul style="list-style-type: none"> i. Temporary buoys, markers, floats, and similar structures for recreational use during specific events, provided they are removed within 30 days after the use has been discontinued. ii. Coast Guard – approved aids to navigation. iii. Oil spill clean – up temporary structures or fill. iv. Fish and Wildlife harvesting structures or fill. v. Structures (including fill) licensed by chapter 91 through the amnesty program. | <ul style="list-style-type: none"> i. Structures and work in or affecting navigable waters that are not defined under any of the headings listed above. Includes, but is not limited to, utility lines, aerial transmission lines, pipelines out falls, bridges, boat ramps, etc. ii. Shellfish aquaculture facilities; refer to limitations of Corps aquaculture Letter of Permission dated Sep. 1, 1991, incorporated herein. | <ul style="list-style-type: none"> i. EIS required by the Corps. ii. Structures or work within the horizontal limits of Corps Federal navigation projects, or with docked or moored vessels that extend within those limits; (does not include utility lines; aerial and subsurface crossings fall into Category III). |
|---|---|--|

Footnotes

1. Waters of the U.S., Inland Areas: Inland rivers, lakes, streams and wetlands
2. Navigable Waters: waters that are subject to the ebb and flow of the tide, and Federally designated navigable rivers (the Merrimack River, Connecticut River, and the Charles River to the Watstown dam in Massachusetts).
3. Special Aquatic Sites Include wetlands (salt marsh), mudflats and vegetated shallows.
4. Boating facilities: facilities that provide, rent or sell mooring space, such as marinas, yacht clubs, boat yards, town facilities, dockminiums.
5. Vegetated Shallows: Subtidal areas that support rooted aquatic vegetation such as eelgrass.

Contacts for Programmatic General Permit:

**U.S. Army Corps of Engineers
Regulatory Division
424 Trapelo Road
Waltham, Massachusetts 02254-9149
617-647-8335
800-343-4789 or 800-362-4367 from within Massachusetts**

**Massachusetts Historical Commission
80 Boylston Street
Boston, Massachusetts 02116
617-727-8470**

**Coastal Zone Management
20th Floor
100 Cambridge Street
Boston, Massachusetts 02202
617-727-9530**

**National Park Service
North Atlantic Region
15 State Street
Boston, Massachusetts 02109-3572**

(National Wild and Scenic Rivers System study segments for Massachusetts as of June 2, 1992, include segments of the West Branch of the Farmington River, segments of the Sudbury, Assabet and Concord Rivers, and segments of the Westfield River.)

Federal Endangered Species:

**U.S. Fish and Wildlife Service
Ralph Pill Marketplace, 4th Floor
22 Bridge Street
Concord, New Hampshire 03301-4901
603-225-1411**

**National Marine Fisheries Service
One Blackburn Drive
Gloucester, Massachusetts 01930-2298
508-281-9300**

Massachusetts Department of Environmental Protection (DEP):

**DEP-Water Pollution Control
One Winter Street
Boston, Massachusetts 02108
617-292-5695**

Regional DEP Offices:

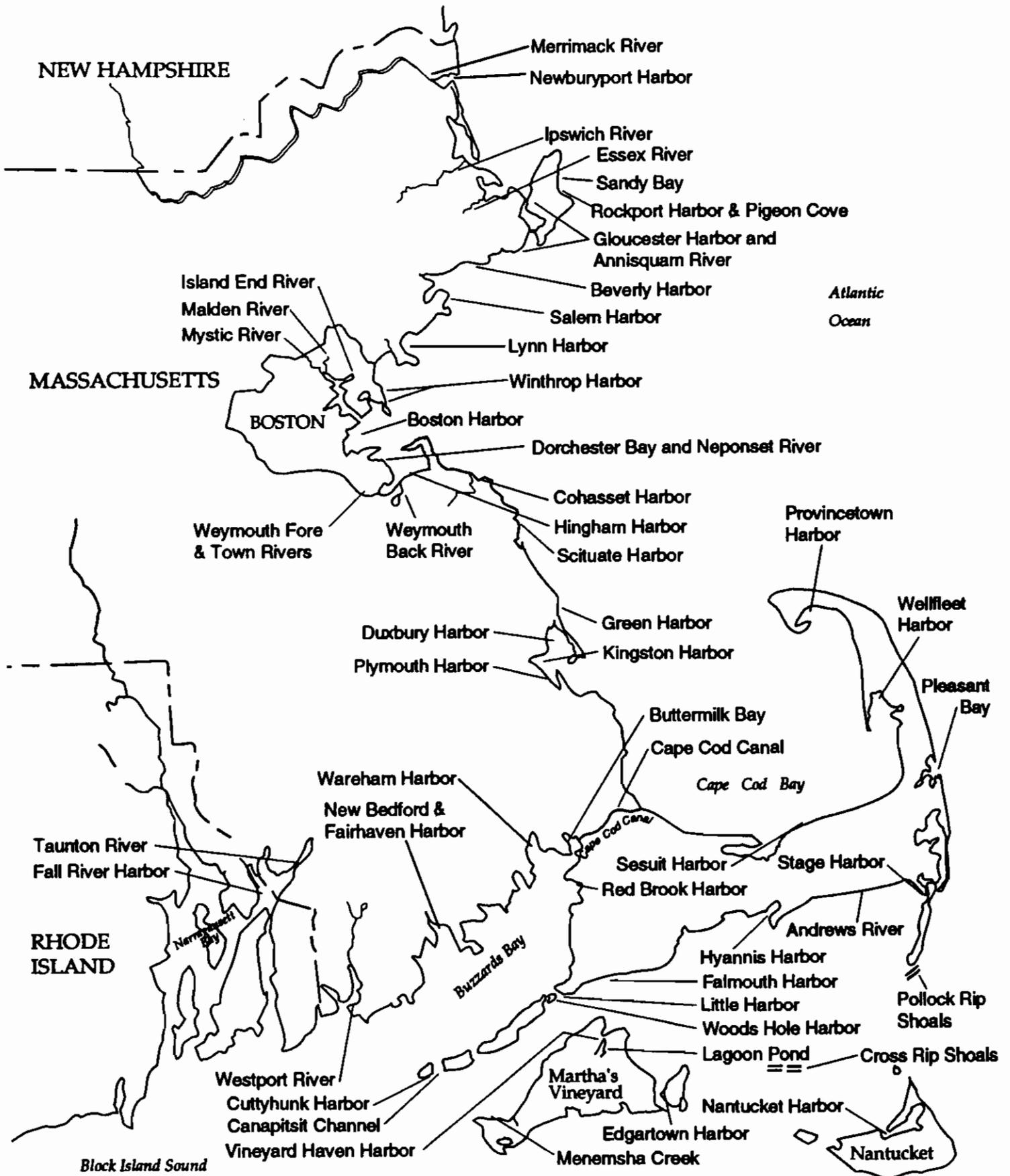
**DEP-Western Region
Water Pollution Control
436 Dwight Street
Springfield, Massachusetts 01103
413-784-1100 x214**

**DEP-Central Region
Water Pollution Control
75 Grove Street
Worcester, Massachusetts 01605
508-792-7683**

**DEP-Southeast Region
Water Pollution Control
20 Riverside Drive
Lakeville, Massachusetts 02347
508-946-2800**

**DEP-Northeast Region
Water Pollution Control
10 Commerce Way
Woburn, Massachusetts 01801
617-935-2160 x112**

Federal Navigation Projects in Massachusetts





United States Department of the Interior

FISH AND WILDLIFE SERVICE
New England Field Offices
400 Ralph Pill Marketplace
22 Bridge Street, Unit #1
Concord, New Hampshire 03301-4901

Ref: 1993-01040

May 26, 1993

Mr. William Lawless, Chief
Regulatory Division
U.S. Army Corps of Engineers
424 Trapelo Road
Waltham, Massachusetts 02254

Dear Mr. Lawless:

This is in response to your May 4, 1993 Public Notice requesting comments on the proposed Programmatic General Permit (PGP) for certain minimal-impact activities within the Commonwealth of Massachusetts. Activities under the jurisdiction of 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 of 1972 would be processed under the PGP. These comments are submitted in accordance with the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq) and the Clean Water Act [33 U.S.C. 1344 (m)].

Concurrent with the issuance of the PGP, the nationwide permits would either be suspended or modified based on three options specified in the Public Notice. Option (1), which we recommend, would revoke all nationwides in effect in Massachusetts. Options (2) and (3) involve proposals to identify cranberry agriculture as a special situation and develop a procedural mechanism to give special consideration to this activity either under the PGP or by retaining and modifying nationwide permit #34.

Cranberry Agriculture

During the past 18 months the Service has been working with the Corps, EPA, DEP and representatives of the cranberry industry to develop a general permit for cranberry growers or an umbrella general permit that would include cranberry culture along with all other activities. Field reviews were conducted to observe abandoned cranberry bogs to identify the intensity and context of impacts if these areas were to be developed into modern commercial cranberry bogs. The criteria that the Service recommended in our March 25, 1992 letter (copy enclosed) are substantially identical to those in option (1), the draft PGP. We also provided some suggestions on alternatives for expansion projects at existing cranberry farms involving disturbed upland, disturbed wetland and abandoned bogs. The guidance we developed to assist in the identification of those abandoned bogs that would be potential candidates for redevelopment proposals is substantially different from the proposal offered by the Massachusetts Cranberry Growers which is presented as options (2) and (3) in the Public Notice.

During the field review, all of the abandoned bogs in southeastern Massachusetts that we observed showed significant reversion to natural wetland condition as a result of successional change. Most of the former commercial cranberry bogs have been abandoned for two decades or longer. As

a result, these former cranberry bogs all exhibit varying degrees of colonization by native herbaceous and woody species. While cultivated cranberry vine can still be found on some of these former bogs, it does not exist as a dominant species except perhaps in some very localized areas. Wetland functional values for wildlife and other uses on these abandoned bogs are in the range of values encountered on unaltered wetlands. This is due largely to the fact that these former cranberry bogs have been recolonized by a variety of herbaceous and woody species and the cessation of programmed disturbance or maintenance. The former monoculture that once existed, exists no longer. Our guidance was based largely on the degree of monoculture remaining on these former cranberry bogs relative to the degree of colonization by herbaceous and woody species. Simply put, the time interval that has elapsed since these bogs were abandoned has been sufficiently long enough so as to allow natural repairs in the form of plant recolonization and successional change to restore significant wildlife and other wetland functional values.

Options (2) and (3) would allow for the conversion of up to 5 acres of abandoned bogs, regardless of ecological succession stage or other environmental attributes, into commercial cranberry beds. In our view, these proposals would authorize projects that exceed the minimal adverse effect threshold on an individual and cumulative basis. We have consistently recommended that the minimal effect threshold should be established at 1 acre for wetland alterations in New England. Substantial evidence for this threshold was developed by the Corps and EPA during the York County Maine proceedings which resulted in the modification of nationwide permit #26 from 10 acres to 1 acre and also required the review of all nonwater dependent activities between 0.1 and 1.0 acre. These findings were later transferred into similar NW 26 modifications for Portsmouth and Newington, N.H. More recently, the New England Division used these and related findings to limit NWP #26 to 1 acre in all New England States except New Hampshire where it was revoked upon implementation of the NH SPGP. In our April 27, 1993 letter to New England Division (copy enclosed) concerning revisions to the Maine SPGP, we recommended that the upper limit for the screening category be established at 1 acre. This was consistent with previous Service recommendations and was also based on a review of projects processed under the Maine and New Hampshire SPGP's. The 1 acre threshold is a reasonable demarcation point separating projects that normally exceed the minimal adverse effects threshold from those that need to be reviewed before such a judgement can be rendered.

With respect to option (3) which would retain NWP #34 with a 5 acre limit, we previously recommended in a June 7, 1991 letter (copy enclosed) that NWP #34 should be deleted from further consideration. In the past 2 years, we have seen no information that would cause the Service to reconsider that recommendation. From a practical standpoint, we see little evidence to suggest that either option (2) or (3) would provide "regulatory relief" for the Cranberry Growers. The stated intent of this PGP is to match the state regulatory programs as much as possible with a goal of simplifying the overall permitting procedures for applicants. Both options (2) and (3) would contradict the stated intent of the PGP and complicate permit processing of these applications because State agencies, the Service, other Federal resource agencies and the Corps would likely be embroiled in discourse. The specter of special treatment for one industry group would almost certainly invite other groups to seek similar privileges and further complicate the interagency discourse.

For all of the foregoing reasons, we recommend that option 1 be retained and that special considerations not be extended to any industry group as provided for by options (2) and (3).

Open Water Disposal

You also requested comments on the proposal to include projects with open-water disposal of dredge material at the Massachusetts Bay Disposal Site (MBDS), and Wellfleet and Buzzards Bay Disposal Sites in the PGP. As currently drafted under Category II 6. the proposal would include "any dredging project (maintenance or new) with open water disposal". Under these broad criteria, projects involving 1,000 c.y. or 1,000,000 c.y. of dredged material could be processed under the PGP. We believe these criteria are far too broad and would knowingly contain dredging and disposal actions that exceed minimal adverse effect thresholds. Procedurally, we are not certain that these specific actions are appropriate for a general permit given the requirements for dredge material testing (physical, chemical, biological) and the need for an alternative analysis. The site designation process for these disposal sites did not contemplate a blanket or general disposal authorization but an evaluation of each individual dredging project proposing to use the disposal site. The proposal identified in the PGP is not covered under the EIS for the MBDS and may need an EA/EIS to address the NEPA issues involved. Portions of the maintenance dredging and open water disposal issue were addressed by the Service in a December 7, 1992 letter (copy enclosed) regarding general permit #36. We recommended that GP #36 be revoked because of environmental concerns and the fact that NWP #35 as conditioned by New England Division provided an environmentally superior substitute mechanism. Because of all of the uncertainties associated with dredging and open water disposal, we recommend that the first phrase in II 6. "Any dredging project (maintenance or new) with open water disposal;" be removed from the PGP. The remainder of II 6. is acceptable and appropriate for the screening category.

Procedures

A. Non-reporting category - As discussed in our April 13, 1993 letter on a previous version of this general permit (copy enclosed), it remains unclear how, if at all, discretionary authority or special conditions (permit conditions 5 and 28) could be applied to category I projects. As a starting point, we suggest that paragraph A be modified to specifically state that non-reporting projects are subject to discretionary authority and any special conditions that may be imposed. While the use of discretionary authority and special conditions may be infrequently used in this category of projects, prospective applicants and agency staff should have a clear understanding that they may be utilized from time to time.

B. Screening category - We suggest the third sentence in the third paragraph on page 2 of the draft permit be modified as follows: For projects in the screening category, the agencies may recommend special conditions for projects to avoid or minimize adverse environmental effects and to insure that the terms and conditions of the general permit are met.

Outstanding Resource Waters. The Commonwealth has designated a significant number of waters as Outstanding Resource Waters (ORW's) under the antidegradation provision in their water quality standards (314 CMR 4.04). These waters so designated are essentially no discharge zones for most activities. As currently drafted, the PGP does not explicitly identify this class of waters nor does it contain a process in the procedures section to

indicate how applications for discharges in ORW's will be administered. Additionally, it may be advisable to modify permit condition 20 (Discharge of Pollutants) to specifically identify the State's antidegradation policy and designated Outstanding Resource Waters.

Programmatic General Permit Conditions

2. Wetland boundaries. We suggest deleting the first 3 words (project impacts and) in the first sentence to eliminate potential confusion over the meaning of the sentence. As currently drafted, an individual could be misled to believe that agency review of impacts for any project would not extend beyond the federal wetland boundary. Since project impacts frequently extend beyond the wetland boundary and are a consideration during the permit review process, the condition should be worded so as to avoid or minimize any potential for misinterpretation or ambiguity.

3. Minimal Effects. This condition was modified to limit the minimal effects determination solely to the Corps. Previously the condition specified minimal effects in a much broader context. Given the present circumstances, we believe the Corps has an obligation to clearly define and articulate its definition of minimal effects or return to the former context.

The comments in our April 13, 1993 letter regarding a data management system that would help identify where cumulative adverse effects may be occurring remain pertinent.

4. State Certifications. We suggest that you include a specific reference to Section 10, 404 and 103 projects for activities in the Coastal zone. Many individuals may not be aware of the different trigger mechanisms between 401 certifications and CZM consistency determinations.

5. Discretionary Authority. We discussed this condition in our April 13, 1993 letter and while the condition was modified slightly, it still sends the wrong message about the types of projects that discretionary authority should be used on. The list in condition 5 includes major projects that would normally require an EIS as well as individual permit review. We continue to recommend a list of projects similar to those contained in our April 13 letter.

14. 404(b)(1) Guidelines. This condition was significantly modified (shortened) from the previous version we reviewed in April. We recommend that the language in that version which pertained to the substantive provisions of 404 regulations be included in the final permit conditions.

18. Sediment and Erosion Control. The comments contained in our April 13, 1993 letter remain applicable. The BMP's in the 319 and 320 management plans should be utilized to create enforceable sediment and erosion conditions.

19. Waterway Crossings. We continue to recommend that the 6 additional conditions identified in our April 13, 1993 letter be included in the waterway crossing condition. The Corps should be especially sensitive to the potential environmental problems associated with stream and wetland crossings as a result of the recent Iroquois Pipeline investigation in New York and Connecticut. The results of that project demonstrate beyond any reasonable doubt, that specific permit conditions are a necessary prerequisite for applicants to follow and for accountability in any related

compliance or enforcement action.

20. Discharge of Pollutants. We continue to recommend the modification identified in our April 13, 1993 letter for this permit condition.

21. Spawning areas. We continue to recommend the modifications identified in our April 13, 1993 letter for this permit condition. These specific conditions are necessary to provide a reasonable level of information for applicants to follow and thereby help protect these critical life cycle functions and habitats.

Definition of Categories

As discussed in our April 13 letter, we recommend that the Corps use the term alteration in place of fill when defining thresholds for the various categories. We understand that some changes were made in Category I and II to accommodate the distinctions between these terms, however, no changes were made in Category III where significant involvement with MEPA thresholds may be encountered. These problems could all be easily avoided by simply adopting the term alteration in place of the word fill in the definitions section.

Category I

2. We recommend that the 500 lineal foot limit be changed to 200 lineal feet.

Category II

4. The 500 lineal foot limit should be changed to 200 lineal feet as recommended in our April 13 letter.

6. The phrase "any dredging project (maintenance or new) with open water disposal;" should be deleted for the reasons we identified in comments on the Public Notice for this permit. This phrase also appears to conflict with conditions in Category III.3 and 4. The remaining parts of this condition are acceptable.

Category III

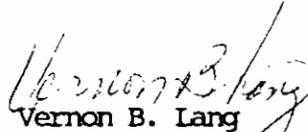
We recommend that an additional criterion be included to the list of projects requiring an individual permit review as follows: 7. Dams, dikes, diversions, impoundments or water conveyance systems. A similar condition was included in the Massachusetts LOP to identify these types of activities for individual permit review. It also serves notice on prospective water development interests that these actions would be given a thorough review not just a screening level evaluation.

In summary, we recommend that the programmatic general permit with option (1) in the Public Notice be approved and implemented subject to the full consideration of comments and recommendations provided by the Service; the retention of the 1 acre upper screening threshold for all wetland alterations and; the revocation of all nationwide permits in Massachusetts. The selection of options (2) or (3) in the Public Notice or other modifications to the general permit procedures or conditions could create a regulatory framework where aquatic resources of national importance may be adversely affected. Therefore, we reserve our prerogatives under the 1992 MOA [Part IV (3)(a)] should options 2 or 3 in the Public Notice or other

adverse modifications to the general permit be adopted.

Questions concerning these comments should be directed to me at 603-225-1411.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Vernon B. Lang".

Vernon B. Lang
Acting Supervisor
New England Field Offices

Enclosures

CC: ARD/ES Reading File
D. Thompson, EPA
C. Mantzaris, NMFS
P. Harvey, MaDEP-OGC
B. College, MaDEP-Wetlands
J. Mead, MaCZM
ES: VLang:lea:5-26-93:603-225-1411



United States Department of the Interior

FISH AND WILDLIFE SERVICE
New England Field Offices
400 Ralph Pill Marketplace
22 Bridge Street, Unit #1
Concord, New Hampshire 03301-4901

April 13, 1993

Ms. Monica Webster
Regulatory Division
U.S. Army Corps of Engineers
424 Trapelo Road
Waltham, Massachusetts 02254

Dear Ms. Webster:

I have reviewed the preliminary draft of the Massachusetts programmatic general permit as requested in your April 1, 1993 transmittal. As I indicated at the March 11 meeting, I am favorably impressed with the progress thus far. The review thresholds for non-reporting, screening and individual permit review are consistent with previous Service recommendations and I am hopeful that we can keep them at these levels.

My specific comments and questions on the preliminary draft are as follows:

Procedures

A.(1) Will the local Conservation Commission or DEP Wetlands Office issue the 401 certification for freshwater wetland alterations less than 5,000 square feet in size? I am not sure of the mechanism that Massachusetts will use here inasmuch as there has been discussion of a generic certification and the possibility of the local Conservation Commission's wetlands order also serving as the 401.

My other comment here relates to the mechanism that would be utilized to modify a project in this category. An example might involve a situation involving a stream crossing project where time of year restrictions were not imposed at the local level to protect a fish migration or other life cycle function. It is not clear how the federal agencies would utilize condition #24 to add conditions or otherwise modify a project in this category.

B. The comment above is a generic question that will likely be frequently encountered during the screening process. As currently drafted, the procedures do not identify the process that agencies would utilize to add conditions or make modifications to projects to minimize adverse effects or otherwise insure that individual or cumulative effects will be minimal. Our respective staffs should not be misled into believing that the only function of the screening process is to decide whether or not a project meets or exceeds the minimal effects threshold. Therefore, I recommend that the procedures section be modified to identify the process that agencies would use to add conditions or modify projects in Category I and II.

Conditions

2. State Certifications - In addition to my question posed under the non-reporting category, does MaCZM have a "no review threshold" as opposed to generic certification for certain activities?

3. Minimal Effects - My question here has to do with the mechanism that will be utilized to determine whether cumulative adverse effects are occurring to waters of the U.S. This determination has been illusive with respect to other SPGP's and the NW's due in large part to an inadequate data base on permit actions to allow for a meaningful analysis. One of the integral components of this SPGP should be a data management system to compile and maintain accurate records on the numbers of permits, their locations, sizes, resources impacted and permanence of impact. It would also be useful to know if the water body meets interim goal standards, what the water classification is and how frequently excursions from criteria or standards occur. These data would help integrate the 404 program with other CWA programs and provide a greater sense of direction to agency staff and the public.

4. Discretionary Authority - The list of examples given generally includes major projects. As such, it tends to send the wrong message. I would suggest listing as examples Category I or II projects that impacted spawning or nursery habitat, a high quality water or one with cumulative impacts that exceed the minimal effects threshold. We should be sending the message that discretionary authority will be utilized on minor projects not just major ones.

7. Endangered Species - As written this condition contains several errors. I suggest that you use the endangered species condition in the nationwide permit regulations. It is located on page 59145 of the Federal Register version and is general condition 11. Since we are dealing with a single FWS and NMFS office each, it may be prudent to list the address of each office to assist future applicants with information requests.

8. Wild and Scenic Rivers - Same general comment as in item 7 above. I recommend that you use general condition 7 in the nationwide permit regulations, also on page 59145 of the Federal Register version. In addition, you might delete the U.S. Forest Service, give the address of the National Park Service, and list the rivers currently protected in Massachusetts.

14. Sedimentation and Erosion Control - As a practical matter, the condition does not seem to be enforceable. I suggest that the condition be modified to require compliance with the BMP's in Massachusetts' approved Section 319 Management Plans and where applicable, their approved Management Plans for the coastal zone. This measure has the added advantage of further integrating the SPGP into the overall Clean Water Act strategy.

15. Waterway Crossings - I suggest numbering the first sentence a. and then add the following items: b. Movement of aquatic life shall remain unrestricted at all times; c. Instream work shall occur during the low flow period July 15-October 15; d. Construction equipment shall operate from the

streambank/shoreline or from a floating platform; e. Temporary bridges or culverts shall be used for equipment access across streams; and f. No open trench excavation shall be allowed in flowing waters. Cofferdams, flumes or other devices shall be utilized when making crossings of flowing waters.

16. Discharge of Pollutants - In the first sentence after the words "applicable water quality standards", insert Certifications, Management Plans, before the words "effluent limitations". After the words "water quality standards" in the second sentence, repeat all of the words following water quality standards in the first sentence. This is necessary to insure that permit conditions conform to any revisions in effluent limitations or other standards during the life of the SPGP.

17. Spawning Areas - I suggest that the condition be modified as follows: Discharges in breeding, spawning, nesting, incubation, nursery or hibernacula areas during such seasons or periods of use by aquatic life or other wildlife for such purposes shall be avoided. In addition, impacts to these areas shall be avoided or minimized to the maximum extent practicable during all times of the year.

Definitions of Categories

One generic comment that I have concerns the use of the term fill instead of alteration to define threshold levels in the various project categories. The state wetlands regulations use the term alteration not fill to define the thresholds for projects subject to local approval and for those subject to other review procedures. Since this SPGP is being developed to essentially piggyback on the state regulatory program where possible, I recommend that we use the term alteration when describing review thresholds.

Category I

2. As discussed at our last meeting, I believe the 500 lineal foot threshold would allow for projects with more than a minimal adverse effect to proceed. In our June 7, 1991 response on the Nationwide Permit regulations, we recommended that NW 13 be reduced from 500 feet to 200 feet. We concluded that riparian habitat is often destroyed by construction equipment placing the streambank stabilization material, under cut banks and other fish habitat is filled and invertebrate habitat including that of freshwater mussels is impacted directly by filling or indirectly by sedimentation. Therefore, I recommend that the proposed 500 foot threshold be reduced to 200 feet. The one cubic yard/linear foot standard is acceptable.

Category II

4. I recommend that the 500 foot threshold be reduced to 200 feet consistent with my comment above.

10. Is there any reason to keep the aquaculture letter of permission (LOP) once the SPGP is approved? My understanding is that the aquaculture LOP was developed primarily to permit the backlog of unauthorized shellfish projects. I further understand that these existing projects have been permitted and that only a few new projects have been proposed.

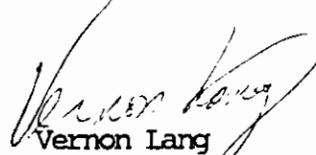
Category III

I recommend that an additional criterion be included to this list as follows:

8. Dams, dikes, impoundments, diversions or water conveyance systems.

If you have any questions concerning these comments, please contact me at 603-225-1411.

Sincerely yours,



Vernon Lang
Assistant Supervisor
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