



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

PUBLIC NOTICE

Date: December 13, 2011
Comment Due Date: January 13, 2012
E-mail: michael.j.elliott@usace.army.mil

REISSUANCE OF THE DEPARTMENT OF THE ARMY RHODE ISLAND GENERAL PERMIT (GP)

The New England District, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751 hereby proposes to reissue the statewide Rhode Island General Permit (draft attached), pursuant to 33 CFR Part 325.5(c) (3), for minimal-impact activities within waters of the United States within the State of Rhode Island. The existing GP expires on February 13, 2012 and we propose to reissue the GP for another five years. The reissued GP will 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 being issued in accordance with 33 CFR 325.3(b) to coordinate reissuance of the GP with Federal resource agencies, state agencies and the public.

General Permits are encouraged as a way to streamline state and Federal regulatory programs. The New England District has already had success with streamlining these programs with the use of GPs throughout New England. Continued utilization of the very successful GP process in place of the nationwide permits (NWP's) will provide benefits to the public, including simplifying the process and expediting decisions while maintaining environmental protection. This GP would authorize activities formerly covered under the NWP program and currently covered under the existing GP. The New England District suspended all NWPs in the six New England states on July 31, 2007.

All GP authorizations would be subject to the applicability requirements, procedures, and conditions contained in the GP documentation. Project eligibility under this GP will fall into two Categories as more fully described in Appendices 1 and 2 of the GP. Individual GP authorizations are not valid until all other required Federal, state and local permits and/or certifications are obtained.

Projects with minimal individual and cumulative effects on the aquatic environment will be approved administratively under this GP. Representatives of the Corps, state agencies and the Federal resource agencies (U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, and National Marine Fisheries Service) will continue to review Category 2 activities as outlined within the GP. Projects that do not meet the terms and conditions of the GP, including those that have the potential for more than minimal effects, will require an Individual Permit. The Individual Permit review process is detailed at 33 CFR 325, Processing of Department of the Army Permits. The GP reissuance does not alter the Individual Permit review procedures, or Federal exemptions, which are not necessarily the same as the State of Rhode Island's exemptions.

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. The EFH applies to those waters and substrates necessary to fish for spawning, feeding, breeding, and growth to maturity. The EFH designations made by the Councils include all of Connecticut's coastal waters and most estuaries and rivers for up to 61 marine species. 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 effect EFH consult with National Marine Fisheries Service (NMFS) regarding the action. Accordingly, the Corps has and continues to consult with NMFS regarding the actions permitted under the GP. For certain types of actions that will likely result in no more than minimal adverse effects to EFH individually and cumulatively, NMFS has issued a statement of General Concurrence in accordance with the requirements of 50 CFR 600.920(f), dated January 17, 2002. The General Concurrence covers EFH consultation requirements for those activities permitted by the Corps, which individually and cumulatively have no more than minimal adverse effects on EFH.

The General Concurrence was drafted to cover most activities that would fall under the Category 2 of the GP. The General Concurrence will cover those Category 2 actions in which NMFS concurs with the Corps determinations that the activity will result in no more than minimal adverse effects to EFH. In cases where NMFS does not concur with the Corps determination, NMFS will notify the Corps during interagency coordination meetings or by other established means that this General Concurrence will not cover a specific Category 2 action. The NMFS will periodically review its findings of General Concurrence and may revise or revoke a General Concurrence if new information indicates that the covered actions are having more than minimal adverse effects on EFH.

Water Quality Certification (WQC) and Coastal Zone Management (CZM) Consistency

The Corps is simultaneously requesting that the Rhode Island Department of Environmental Management (DEM), Water Resources – Freshwater Wetlands, and the Rhode Island Coastal Resources Management Council, determine whether to issue, deny or waive WQC and CZM Consistency, respectively.

Proposed Changes:

GENERAL CONDITIONS

The order of the general permit conditions changed and some of the conditions were either reworded or expanded upon to provide additional guidance and clarification. Additional conditions were added due to new requirements and or policy guidance.

CONTACT LIST:

The contact list, Appendix C, was modified to add and/or update related websites and e-mail addresses.

Comments

We are seeking public comment in order to properly evaluate the proposed GP in Rhode Island. Anyone wishing to comment is encouraged to do so in writing within the comment period specified in this notice. Comments should be submitted to: Mr. Michael Elliott, Regulatory Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, Massachusetts 01742-2751. If you have any questions, please contact Mr. Elliott at (978) 318-8131 or michael.j.elliott@usace.army.mil.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this proposal. Requests for a public hearing shall specifically state the reasons for holding a public hearing. The Corps holds public hearings for the purpose of obtaining public comments when that is the best means for understanding a wide variety of concerns from a diverse segment of the public.



Robert J. DeSista
Chief, Permits and Enforcement Branch
Regulatory Division

**Department of the Army
General Permit
State of Rhode Island**

The New England District of the U.S. Army Corps of Engineers (Corps) hereby issues a General Permit (GP) for activities in waters of the United States (U.S.) that have no more than minimal individual, secondary, and cumulative impacts on the aquatic environment in waters of the U.S. within the boundaries of and off the coast of the State of Rhode Island.

I. GENERAL CRITERIA

Under this GP, projects may qualify for the following:

- **Category 1: Non-reporting**
Projects meeting Category 1 are eligible for authorization under this GP without notifying the Corps. (An application to the State is required, unless exempt from State regulation),
- **Category 2: Reporting/Application Required**
Submittal of an application to the State and subsequent written authorization from the Corps, either directly or within a State issued permit, is required for these projects.

II. ACTIVITIES COVERED:

- Work and structures that are located in, or that effect navigable waters of the U.S.¹. The Corps regulates this under Section 10 of the Rivers and Harbors Act of 1899);
- The discharge of dredged or fill material into waters of the U.S.² The Corps regulates this under Section 404 of the Clean Water Act (CWA); and
- The transportation of dredged material for the purpose of disposal in the ocean. The Corps regulates this under Section 103 of the Marine Protection, Research and Sanctuaries Act.

1. State Approvals

Applicants are responsible for applying for and obtaining any of the required state or local approvals (see GC 1, Page 6). Federal and state jurisdictions may differ in some instances. State permits may be required for specific projects regardless of the general permit category.

¹ Defined at 33 CFR 329 and Appendix A, Page 4.

² Defined at 33 CFR 328

In order for authorizations under this GP to be valid, when any of the following state approvals are also required, the approvals must be obtained prior to the commencement of work in Corps jurisdiction:

- RI Department of Environmental Management (DEM) approval under the Freshwater Wetland Act, Rhode Island General Laws (RIGL).
- RI DEM approval under RIGL Section 46-19 et seq. entitled “Inspection of Dams and Reservoirs” and regulations promulgated thereto.
- RI DEM approval under the “Water Quality Regulations for Water Pollution Control” pursuant to RIGL Chapter 42-17.1 and Section 46-12-1 et seq.
- RI DEM approval under the “Rules and Regulation for Dredging and the Management of Dredged Material” pursuant to RIGL Chapter 46-6.1.
- Water Quality Certification (WQC) under Section 401 of the CWA (33 USC 1341). The CWA requires applicants to obtain a WQC or waiver from the state water pollution control agency (DEM). The DEM has granted WQC for GP Category 1 activities provided that the applicant obtains the required approvals listed above. The DEM conditionally granted WQC for GP Category 2 activities provided that (a) the applicant obtains the required approvals listed above and (b) the DEM finds through Category 2 Federal/State screening meetings that the activity is reasonably likely to have minimal or no impact on water quality.
- RI Coastal Resources Management Council (CRMC) approval (“Assent”) pursuant to RIGL Chapter 23, Section 46-23-1 et seq, “Rules and Regulations Governing the Protection and Management of Freshwater Wetlands in the Vicinity of the Coast.” Category 1 projects require an application to CRMC for their review. Category 2 projects require an application to CRMC for review by CRMC and the Corps.
- Coastal Zone Management (CZM) Consistency under Sec. 307 of the Federal CZM Act of 1972, as amended. The CRMC administers the RI CZM program. The CRMC has determined that any project in the Coastal Area that is authorized under Category 1 or 2 of this GP is consistent with the RI CZM program and does not require any additional CZM review. The state’s Coastal Area is statutorily defined in RIGL Chapter 23, Section 46-23.

2. Corps Authorizations

A. Category 1 (Non-reporting) - For projects meeting the Category 1 eligibility below, proponents may proceed without application to the Corps. See above for required State approvals.

Eligibility Criteria

Activities in Rhode Island that meet the following may proceed without application to the Corps:

1. Meet the definition of Category 1 in Appendix A,
2. Meet the terms of this General Permit (GP),
3. Meet the General Conditions (GCs) of this GP,
4. Regulated by the State and received one of the State approvals listed above,
5. Not located on the Narragansett Land Claim Settlement Area or sites that may influence this area (Areas of Influence). The Narragansett Land Claim Settlement Area is shown at Appendix B. Areas of Influence to this area are located outside of this Land Claim Settlement Area, but are in or adjacent to either the Wood or Pawcatuck River. These are areas of special concern and are not eligible for Category 1. They are as follows:

- The Pawcatuck River from the Highway 112 crossing downstream to the confluence with the Wood River;
- The Wood River, upstream of the confluence with the Pawcatuck River to the Highway 91 crossing;
- Tributaries to the Wood and Pawcatuck Rivers within the segments described at the two bullets above and within .25 miles of the main stems of the Wood and Pawcatuck Rivers; and
- The adjacent wetlands (bordering, contiguous and neighboring) to the Wood and Pawcatuck Rivers and their above specified tributaries.

Consultation with the Corps and/or other agency experts may be necessary to ensure compliance with this GP's general conditions (pages 5-17) and related federal laws such as the National Historic Preservation Act, the Endangered Species Act (ESA) and the Wild and Scenic Rivers Act. For example, experts on historic resources may include the agencies and Indian tribes or tribal agencies referenced in Appendix C, while experts on endangered species include the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS).

B. Category 2 (Application Required) Projects not meeting the Category 1 eligibility criteria may be eligible for Category 2. Proponents may not proceed with work within Corps jurisdiction until written authorization is received from the Corps.

Eligibility Criteria

Activities in Rhode Island that meet the following require written approval from the appropriate state permitting agency (Page 2) and the Corps:

1. Meet the definition of Category 2 in Appendix A,
2. Meet the terms and eligibility criteria of this GP,
3. Meet the GCs of this GP,
4. Regulated by one of the state authorities listed in State Approvals on Page 2

Activities regulated by the state: For inland projects, if the Corps determines that the activity is eligible for the GP, the Corps will send an authorization memorandum to the DEM, and the DEM may then notify the applicant in a joint Corps/DEM authorization letter. For coastal projects, if the Corps, after consultation with Federal resource agencies, determines that the activity is eligible for the GP, the Corps will send an authorization letter directly to the permittee. The CRMC will send their decision (Assent) directly to the permittee.

Activities not regulated by the state or exempt from state regulation: The Corps, not the state, will issue the written authorization for such projects if they are eligible for the GP and they cannot be legally undertaken until the Corps approves them in writing.

3. Applying for a General Permit

1. Applicants must apply directly to the appropriate RI permitting agency (DEM or CRMC), not to the Corps, for projects in Rhode Island. The Corps and Federal resource agencies will receive State Notices from CRMC and copies of complete applications from the DEM prior to the monthly interagency screening meetings.
2. Applicants must apply directly to the Corps for activities exempt from State regulation.

3. Applicants must apply directly to the Corps for activities located on the Narragansett Land Claim Settlement Area and Areas of Influence. These activities are not eligible for authorization under Category 1.
4. The Corps will forward copies of applications being reviewed under Category 2 of the GP to the RI Historic Preservation and Heritage Commission, and the Narragansett and Wampanoag Tribal Historic Preservation Offices, for projects in their areas of concern (Appendix C) early in the permit review process.
5. The Corps will coordinate review of all Category 2 activities with federal and state agencies, as appropriate. To be eligible and subsequently authorized, an activity must result in no more than a minimal impacts to the aquatic environment as determined by the Corps and based on comments from the review team in accordance with the terms, general conditions and Appendix A thresholds of this GP. This may require project modifications involving avoidance, minimization or compensatory mitigation for unavoidable impacts to ensure net effects of a project are minimal.

Emergency Situations Procedures

Emergency situations are limited to sudden, unexpected occurrences that could potentially result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process an application under standard procedures. Contact the Corps and the State in the event of an emergency situation.

Individual Permit Procedures

Proponents of work that does not meet the terms and general conditions of this GP must submit ENG FORM 4345 and the appropriate application materials to the Corps at the earliest possible date in order to expedite the Individual Permit review process. General information and application forms can be obtained at our website or by calling the Corps (see Appendix C). Individual 401 WQC and CZM consistency concurrence are required when applicable from the State of Rhode Island before Corps permit issuance. The Corps encourages applicants to concurrently apply for a Corps Individual Permit and state permits.

III. GENERAL CONDITIONS:

The following conditions apply to activities authorized under this GP, unless otherwise specified, including all Category 1 (non-reporting) and Category 2 (requiring review and written authorization) activities:

1. Other Permits. Authorization under this GP does not obviate the need to obtain other Federal, State, or local authorizations required by law.

2. Federal Jurisdictional Boundaries.

(a) Applicability of this GP shall be evaluated with reference to Federal jurisdictional boundaries. Applicants are responsible for ensuring that the boundaries used satisfy the Federal criteria defined at 33 CFR 328 “Waters of the U.S.” and 33 CFR 329 “Navigable Waters of the U.S.” Note: “Waters of the U.S.” generally and as used in this document include the subcategories “navigable waters of the U.S.” and “wetlands.”

(b) Proponents are required to delineate the waters of the U.S. that they plan to impact for Category 1 (the state reviews this work) and Category 2 projects. Proponents shall delineate all waters of the U.S. that will be filled (direct impacts) in accordance with the Corps of Engineers Wetlands Delineation Manual and the most recent regional supplements. In addition, applicants shall approximately identify all waters of the U.S. on the property and known waters adjacent to the property in order for the Corps to evaluate secondary impacts. The waters of the U.S. shall be clearly shown on the project plans submitted with the application.

(c) For the purposes of this GP, the Corps will generally rely on the RI DEM’s CWA jurisdictional recommendations. However, on a case-by-case basis, the Corps may modify/refine the above delineation and identification requirements for waters of the U.S. or may require additional documentation from the permit applicant to support the basis of federal jurisdiction.

Additional sources of information:

- Corps Wetlands Delineation Manual, regional supplements, and Corps Wetland Delineation Data Sheets: www.nae.usace.army.mil/regulatory and then “Jurisdictional Limits and Wetlands.”
- The USFWS publishes the 1988 National List of Plant Species that Occur in Wetlands (www.nwi.fws.gov).
- The Natural Resources Conservation Service (NRCS) publishes the current hydric soil definition, criteria and lists: <http://soils.usda.gov/use/hydric>. For the Field Indicators for Identifying Hydric Soils in N.E., see www.neiwpcc.org/hydricsoils.asp.
- The applicant shall delineate all vernal pool on the property in accordance with Federal boundaries (see GC 2). The Corps may waive this requirement on a case-by-case basis.

3. Minimal Direct, Secondary and Cumulative Impacts.

(a) Activities authorized by this GP shall have no more than minimal direct, secondary and cumulative adverse environmental impacts. Category 2 applicants shall provide information on secondary and cumulative impacts.

(b) Secondary impacts to waters of the U.S. (e.g., areas drained, flooded, cleared, excavated or fragmented) shall be added to the total fill area when determining whether the project qualifies for Category 1 or 2.

(c) Cumulative impacts are the changes in an aquatic ecosystem that are attributable to the collective effect of a number of individual discharges of dredged or fill material. Although the impact of a particular discharge may constitute a minor change in itself, the cumulative effect of numerous such

piecemeal changes can result in a major impairment of the water resources and interfere with the productivity and water quality of existing aquatic ecosystems

4. Mitigation (Avoidance, Minimization and Compensatory Mitigation).

(a) Activities must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the U.S. (includes wetlands) to the maximum extent practicable at the project site (i.e., on site) through consideration of alternatives.

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal. Compensatory mitigation of unavoidable direct and indirect impacts, including temporal losses, will generally be required for Category 2 activities to offset unavoidable impacts and to ensure that they are no more than minimal. Compensatory mitigation requirements will be determined on a case-by-case basis.

(c) Unless specifically authorized, no work shall drain a water of the U.S. by providing a conduit for water on or below the surface.

(d) Projects using creosote-treated materials in any water of the U.S. (includes wetlands) require an Individual Permit.

(e) The applicant must minimize impacts to uplands surrounding vernal pools (vernal pool terrestrial habitat) to the greatest extent practicable, with the effort to minimize impacts being commensurate with the value of the vernal pool. Impact minimization should be in accordance with:

- Best Development Practices: Conserving pool-breeding amphibians in residential and commercial development in the northeastern U.S., Calhoun and Klemens, 2002. Chapter III, Management Goals and Recommendations, pages 15 - 26, is particularly relevant. (Available for purchase at www.maineaudubon.org/resource/index.shtml and our website*) E.g., site clearing, grading and construction activities should be limited to <25% of the VP seasonal pool terrestrial habitat, and roads and driveways should be excluded from the VP envelope.
- Science and Conservation of Vernal Pools in Northeastern North America, Calhoun and deMaynadier, 2008. Chapter 12, Conservation Recommendations section, page 241, is particularly relevant. (Available for purchase via the internet. Chapter 12 is available on our website*.)
- See <http://www.nae.usace.army.mil/Regulatory> >> Vernal Pools.

Additional sources of information:

- Direct, secondary and cumulative impacts are defined at Appendix B, Definition 3.
- See www.nae.usace.army.mil/Regulatory >> Mitigation >> Compensatory Mitigation Guidance to view the April 10, 2008 “Final Compensatory Mitigation Rule” (33 CFR 332) and related documents. The Q&A document states: “In order to reduce risk and uncertainty and help ensure that the required compensation is provided, the rule establishes a preference hierarchy for mitigation options. The most preferred options are mitigation bank and in-lieu fee program credits but these do not exist in RI. Permittee-responsible mitigation is the third and only option available in RI, with three possible circumstances (in order of preference): (1) conducted under a watershed approach, (2) on-site and in kind, and (3) off-site/out-of-kind.

5. Discretionary Authority. Notwithstanding compliance with the terms and general conditions of this GP, the Corps retains discretionary authority to require either a Category 2 or Individual Permit review (if the project originally qualified for Category 1) or an Individual Permit review (if the project originally qualified for a Category 2) based on concerns for the aquatic environment or for any other factor of the public interest [33 CFR 320.4(a)]. This authority is invoked on a case-by-case basis whenever the Corps determines that the potential impacts of the proposal warrant a higher level of

review (either a Category 2 or an Individual Permit) 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 GP and that warrants greater review. Whenever the Corps notifies an applicant that either a Category 2 or Individual Permit review is required, authorization under this GP is void and no work may be conducted until the Corps issues the required authorization and notifies the applicant in writing that work may proceed.

6. Single and Complete Projects

(a) This GP shall not be used for piecemeal work and shall be applied to single and complete projects. All components of a single project and/or all planned phases of a multi-phased project (e.g., subdivisions should include all work such as roads, utilities, and lot development) shall be treated together as constituting one single and complete project.

(b) A single and complete non-linear project, defined at 33 CFR 330.2(i), must have independent utility. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed, even if the other phases were not built, can be considered as separate single and complete projects with independent utility.

(c) Unless the Corps determines that an activity is a single and complete project, this GP shall not be used for any activity that is part of an overall project for which an Individual Permit is required.

(d) For linear projects such as power lines or pipelines with multiple crossings, a “single and complete project” is all crossings of a single water of the U.S. (i.e. single waterbody) at a specific location. For linear projects crossing a single waterbody several times at separate and distant locations, each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly-shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately. If any crossing requires a Category 2 review or an individual permit, then the entire linear project shall be reviewed as one project under Category 2 or the individual permit procedures.

7. Permit On-Site. For Category 2 projects, the permittee shall ensure that a copy of this GP and the accompanying authorization letter are at the work site (and the project office) authorized by this GP whenever work is being performed, and that all personnel with operation control of the site ensure that all appropriate personnel performing work are fully aware of its terms and conditions. The entire permit authorization shall be made a part of any and all contracts and sub-contracts for work that affects areas of Corps jurisdiction at the site of the work authorized by this GP. This shall be achieved by including the entire permit authorization in the specifications for work. The term “entire permit authorization” means this GP and the authorization letter (including its drawings, plans, appendices and other attachments) and also includes permit modifications. If the authorization letter is issued after the construction specifications, but before receipt of bids or quotes, the entire permit authorization shall be included as an addendum to the specifications. If the authorization letter is issued after receipt of bids or quotes, the entire permit authorization shall be included in the contract or sub-contract. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be obligated by contract to comply with all environmental protection provisions contained within the entire GP authorization, and no contract or sub-contract shall require or allow unauthorized work in areas of Corps jurisdiction.

8. Historic Properties.

(a) Any activity authorized by this GP shall not result in effects [as that term is defined at 36 CFR 800.16(i)] on properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties, unless and until the Corps or another federal action agency has satisfied the consultation requirements of Section 106 of the National Historic Preservation Act.

(b) Work is not eligible for Category 1 and an application to the Corps is required if the activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing, or is potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. Work is eligible for Category 1 provided another federal action agency has satisfied the consultation requirements of Section 106 of the National Historic Preservation Act.

(c) Information on the location and existence of historic resources can be obtained from the RIHPHC, the National Register of Historic Places [see 33 CFR 330.4(g)], and the two Native American tribes listed in Appendix C, which contains contact information and geographic areas of interest for each tribe. Historic properties include those that are eligible for inclusion, but not necessarily listed on the National Register.

(d) If the permittee, either prior to construction or during construction of the work authorized herein, encounters a previously unidentified archaeological or other cultural resource within the area subject to Corps jurisdiction that might be eligible for listing in the National Register of Historic Places, he/she shall stop work and immediately notify the Corps, RIHPHC and applicable tribe(s).

9. National Lands. Any of the following work is not eligible as a Category 1 project:

(a) Activities that impinge upon the value of any National Wildlife Refuge, National Forest, National Estuarine Research Preserves, National Marine Sanctuary, National Park or any other area administered by the National Park Service, USFWS, U.S. Forest Service.

(b) Work on Corps properties and Corps-controlled easements. In addition to any authorization under this GP, proponents must contact the Corps, Real Estate Division at (978) 318-8585 to obtain real estate documents.

(c) Any proposed temporary or permanent modification or use of a federal project (including but not limited to a levee, dike, floodwall, channel, sea wall, bulkhead, jetty, wharf, pier, or other work built but not necessarily owned by the United States), which would obstruct or impair the usefulness of the federal project in any manner, and/or would involve changes to the authorized federal project's scope, purpose, and/or functioning that go beyond minor modifications required for normal operation and maintenance requires review and approval by the Corps pursuant to 33 USC 408.

10. Federal Threatened and Endangered Species.

(a) No activity may be authorized under Category 1 of this GP which:

i. "May affect" a threatened or endangered species, a species proposed for listing as threatened or endangered, or designated or proposed critical habitat (all herein referred to as "listed species or habitat") as identified under the Federal Endangered Species Act (ESA) (unless specified in a programmatic agreement with NMFS or USFWS),

ii. Results in a "take" of any Federally-listed threatened or endangered species of fish or wildlife, or

iii. Results in any other violation of Section 9 of the ESA protecting threatened or endangered species of plants.

(b) No activity may be authorized under Category 1 if a listed species or critical habitat¹ is present in the action area². Project proponents must check the USFWS and NMFS websites¹ to ensure that listed species or critical habitat are not present in the action area or to provide information on federally-listed species or habitat as required in GC 10(c).

(c) Proponents must submit an application to the Corps if any of the activities in (a) or (b) above may occur and provide information on federally-listed species or habitat¹ to allow the Corps to conduct any required consultation under Section 7 of the ESA.

(d) Although some work is excluded from Category 1 as stated in (a) and (b) above, work may qualify for Category 1 if a “No Effect determination” or “May Affect” has been made for that work by a federal action agency. The permittee must comply with any conditions that were imposed to avoid adverse effects to listed species or critical habitat.

Additional sources of information:

¹ USFWS: www.fws.gov/newengland/EndangeredSpec-Consultation_Project_Review.htm.

NMFS: www.nero.noaa.gov/prot_res/esp/ListE&Tspec.pdf.

² The “Endangered Species Act Consultation Handbook – Procedures for Conducting Section 7 Consultations and Conferences,” defines action area as “all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action. [50 CFR 402.02].”

11. Essential Fish Habitat (EFH).

As part of the GP reviewing process, the Corps will coordinate with the NMFS in accordance with the 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to protect and conserve the habitat of marine, estuarine and anadromous finfish, mollusks, and crustaceans. This habitat is termed “Essential Fish Habitat,” (EFH) and is broadly defined to include “those waters and substrate necessary to fish for spawning, breeding, feeding and growth to maturity.” All species managed under the MSA have had EFH designations. There are 61 species with EFH in the coastal waters of southern New England. Applicants may be required to describe and identify potential impacts to EFH. Conservation recommendations regarding the protection of EFH for species managed under the MSA made by NMFS will normally be included as special conditions to any permit issued by the Corps. Information on the location of EFH can be obtained from NMFS. The NMFS has established a web site at www.nero.nmfs.gov/RO/DOC/appguide1.html.

12. Wild and Scenic Rivers. Currently there are no designated Wild and Scenic Rivers or rivers designated as Study Rivers in the State of Rhode Island.

13. Federal Navigation Project. Any proposed structure or work that extends closer to the horizontal limits of any Corps Federal Navigation Project (FNP) than a distance of three times the FNP’s authorized depth shall be reviewed under Category 2 of this project.

14. Navigation.

(a) 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.

(b) The permittee understands and agrees that if future U.S. operations require the removal, relocation or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps, to remove, relocate or alter the structural work or obstructions caused thereby, without expense to the U.S. No claim shall be made against the U.S. on account of any such removal or alteration.

15. Federal Liability. In issuing this GP, 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 U.S. in the public interest;
- (c) damages to persons, property or to other permitted or unpermitted activities or structures caused by the activity authorized by the GP;
- (d) design or construction deficiencies associated with the permitted work; (e) damage claims associated with any future modification, suspension or revocation of this permit.

16. Heavy Equipment in Wetlands.

- (a) Operating heavy equipment other than fixed equipment (drill rigs, fixed cranes, etc.) in wetlands shall be minimized, and such equipment shall not be stored, maintained or repaired in wetlands to the maximum extent practicable. Where construction requires heavy equipment operation in wetlands, the equipment shall either have low ground pressure (typically <3 psi), or it shall be placed on swamp/construction/timber mats (herein referred to as “construction mats” and defined at Appendix B, Definition 5.) that are adequate to support the equipment in such a way as to minimize disturbance of wetland soil and vegetation.
- (b) Construction mats are to be placed in the wetland from the upland or from equipment positioned on swamp mats if working within a wetland. Dragging construction mats into position is prohibited.
- (c) Other support structures that are capable of safely supporting equipment may be used with written Corps authorization (Category 2 authorization or Individual Permit). Similarly, the permittee may request written authorization for the Corps to waive use of mats during frozen, dry or other conditions. An adequate supply of spill containment equipment shall be maintained on site.
- (d) In tidal wetlands, no dredge work shall have equipment traverse, be placed, or stored on the marsh vegetation unless specifically authorized in writing by the Corps.

17. Temporary Fill. Temporary fill that qualifies for Category 1 (e.g., <5,000 SF of combined temporary and permanent fill associated with the single and complete project) or is authorized in writing under Category 2, shall adhere to the following:

- (a) All temporary fill shall be stabilized to prevent its eroding into portions of waters of the U.S. (includes wetlands) where it is not authorized.
- (b) Unconfined temporary fill authorized for discharge into waters of the U.S. (includes wetlands) (e.g., temporary stream crossings) shall consist of material that minimizes impacts to water quality (e.g. sandbags, clean gravel, stone, etc.).
- (c) Temporary fill authorized for discharge into wetlands should be placed on geotextile fabric or other material (e.g., straw) laid on the pre-construction wetland grade where practicable to minimize impacts. (Swamp and timber mats are excluded from this requirement.)
- (d) Temporary fill shall be removed as soon as it is no longer needed, disposed of at an upland site, and suitably contained to prevent its subsequent erosion into waters of the U.S. (includes wetlands).
- (e) Waters of the U.S. (includes wetlands) where temporary fill was discharged shall be restored (see GC 18).
- (f) Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must be placed in a manner that will not be eroded by expected high flows (see GC??).
- (g) Construction mats and corduroy roads (see GC 16 above) are considered as temporary fill when they are removed immediately upon work completion. The area must be restored (see GC 18).

18. Restoration.

- (a) Wetland areas where permanent disturbance is not authorized shall be restored to their original condition and elevation, which under no circumstances shall be higher than the pre-construction elevation. Original condition means careful protection and/or removal of existing soil and vegetation, and replacement back to the original location such that the original soil layering and vegetation schemes are approximately the same, unless otherwise authorized.
- (b) Upon completion of construction, all disturbed wetland areas (the disturbance of these areas must be authorized) shall be properly stabilized. Any seed mix shall contain only plant species native to New England and shall not contain any species listed in the “Invasive and Other Unacceptable Plant Species” Appendix in the “New England District Compensatory Mitigation Guidance” (see GC 27). This list may be updated periodically.
- (c) In areas of authorized temporary disturbance, if trees are cut they shall be cut at ground level and not uprooted in order to prevent disruption to the wetland soil structure and to allow stump sprouts to revegetate the work area, unless otherwise authorized.

19. Bank Stabilization.

Both Inland and Coastal

- (a) Projects involving construction or reconstruction/maintenance of bank stabilization structures within Corps jurisdiction should be designed to minimize environmental effects, effects to neighboring properties, scour, etc. to the maximum extent practicable.
- (b) Project proponents must design and construct bank stabilization projects using this sequential minimization process: avoidance of aquatic resource impacts, diversion of overland flow, vegetative stabilization, stone-sloped surfaces, and walls/bulkheads. Vertical walls/bulkheads shall only be used in situations where reflected wave energy can be tolerated.*

Only Coastal

- (c) Thresholds for Navigable Water bank stabilization activities are provided at Appendix A, Page 5.

Additional sources of information:

* This generally eliminates bodies of water where the reflected wave energy may interfere with or impact on harbors, marinas, or other developed shore areas. A revetment is sloped and is typically employed to absorb the direct impact of waves more effectively than a vertical seawall. It typically has a less adverse effect on the beach in front of it, abutting properties and wildlife. For more information, see the Corps Coastal Engineering Manual, located at <http://chl.erdc.usace.army.mil>. Select “Products/Services” and then “Publications.” Part 5, Chapter 7-8, a(2)c is particularly relevant.

20. Soil Erosion and Sediment Controls.

- (a) Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. They shall be capable of preventing erosion, of collecting sediment, suspended and floating materials, and of filtering fine sediment. This is to reduce erosion and retain sediment on-site during and after construction.
- (b) Temporary soil erosion and sediment controls shall be removed upon completion of work, but not until all disturbed areas are permanently 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.
- (c) All exposed soil and other fills shall be permanently stabilized at the earliest practicable date. (See GC 18.)

(d) Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

Additional sources of information:

Appropriate soil erosion and sediment controls are management measures, practices and devices, such as phased construction, installation of sediment control barriers (i.e., silt fence, vegetated filter strips, geotextile silt fences, erosion control mixes, hay bales or other devices) downhill of all exposed areas, retention of existing vegetated buffers, application of temporary mulching, etc.

21. Waterway Crossings and Work¹:

(a) All permanent crossings of rivers, streams, brooks, etc. (hereon referred to as “streams”) shall be suitably culverted, bridged or otherwise designed and constructed to i) withstand expected high flows, ii) not restrict or impede the passage of normal or high flows, or iii) not substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, beyond the actual duration of construction. [NOTE: Areas of fill and/or cofferdams must be included in total waterway/wetlands impacts (see Appendix A, Page 1) to determine applicability of this GP.]

(b) New Stream Crossings. To ensure compliance with GC 21(a) above, new stream crossings are eligible for Category 1 provided:

i. Spans² are installed to avoid or cause minimal disruption to the streambed. Work in the stream shall be minimized, and design and construction shall allow the streambed’s natural structure and integrity to remain intact to the greatest extent practicable. Any fill or excavation of the streambed waterward of bankfull width other than footings, support pilings, and work specified in 21(f) and 21(h), requires Category 2 review and, unless demonstrated otherwise, stream simulation² as necessary to restore or establish substrate and banks in the span structure and work area to match the characteristics of the substrate and banks in the natural stream channel.

ii. The spans are designed and constructed to conform to the following:

- “RI DEM *Wetland BMP Manual: Techniques for Avoidance and Minimization*,” Chapter 9 “Wetland Crossings.” www.dem.ri.gov/programs/benviron/water/permits/fresh/pdfs/wetbmp.pdf.
- The most recent design and construction manual located on our website³.

(c) Replacement Stream Crossings. See Appendix B, Definition 15 for information on the replacement of serviceable stream crossings. To ensure compliance with GC 21(a) above, replacement of non-serviceable stream crossings are eligible for Category 1 provided:

i. Spans¹ are installed. For replacement of spans, work in the stream shall be minimized, and design and construction shall allow the streambed’s natural structure and integrity to remain intact, as applicable. Unless authorized in writing in a Category 2 authorization letter, for replacement of culverts and spans, stream simulation shall be performed as necessary to restore or establish substrate and banks in the span structure and work area to match the characteristics of the substrate and banks in the natural stream channel.

¹This condition does not apply to 1) non-tidal drainage systems and 2) irrigation ditches excavated on dry land.

²For purposes of this GP, spans are bridges, 3-sided box culverts, open-bottom culverts or arches that span the stream with footings and abutments landward of bankfull width.

³See <http://www.nae.usace.army.mil/Regulatory> >> Stream & River Continuity >> Stream Simulation Design & Construction Manual, “Stream Simulation: An Ecological Approach to Providing Passage for Aquatic Organisms at Road/Stream Crossings, USFS, 2008.” Section 5.3.3 is of particular importance. Sections 7.5.2.3 Construction Methods and 8.2.11 Stream-Simulation Bed Material Placement both show important steps in the project construction.

- ii.** The spans are designed and constructed to conform to the documents in 21(b)(ii) above.
- (d) Culvert Extensions.** Culvert extensions are eligible for Category 1 provided that after completion the entire culvert conforms to the documents in 21(b)(ii) above.
- (e)** Projects using slip lining (retrofitting an existing culvert by inserting a smaller diameter pipe), plastic pipes, High Density Polyethylene Pipes (HDPP), or retrofit methods increasing flow velocity, are not allowed as non-reporting Category 1 activities, either as new or maintenance work.
- (f) Minimization of Turbidity and Sedimentation Impacts.** Unless specifically authorized in a written Category 2 authorization letter, all Category 1 and 2 work must adhere to the following to prevent sediment input to the stream and to minimize turbidity and sedimentation impacts for sensitive life stages:
- i.** No unconfined fill or excavation in flowing waters is allowed except for that specified in GC 17(b).
 - ii.** All work, including bank stabilization work, landward of the waterline shall utilize soil erosion and sediment controls (see GC 20) as appropriate.
 - iii.** All work landward and waterward of the waterline must be isolated using appropriate management techniques to maintain continuity of flow. This may involve bypass pumping around barriers immediately up and downstream of the work footprint (e.g., “dam and pump”), cofferdams, etc. Even during periods of no flow in the stream, management techniques must still be employed due the potential for unexpected flows. The low flow channel shall remain unobstructed during periods of low flow except when it’s necessary to perform the authorized work. The purpose is to avoid adverse impacts to fish.
 - iv.** Management techniques used to isolate the work must be installed and removed outside of the TOY restriction (i.e., during of the TOY window), but the isolated work may be conducted during the TOY restriction.
 - v.** TOY restrictions coincide with the low flow period which is from July 1 to October 1.
 - vi.** The above do not apply to exploratory drilling and borings for bridges, which qualify for Category 1 of this GP.
- (g)** Construction equipment shall not cross or access streams without the use of temporary bridges, culverts, or cofferdams. (Notes: 1. Areas of fill and/or cofferdams must be included in total waterway/wetlands impacts to determine applicability of this GP). 2. See GC 17(b) for more information.)
- (h)** Any work that temporarily or permanently impacts upstream or downstream flood conditions, or permanently impacts wetlands in excess of Category 1 thresholds, must be reviewed at least under Category 2.

22. Wetland Crossings.

- (a)** All temporary and permanent crossings of wetlands shall be suitably culverted, bridged, or otherwise designed to: **i)** withstand and prevent the restriction of high flows, **ii)** not obstruct the movement of or not substantially disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the wetland, including those species that normally migrate through the area, beyond the actual duration of construction unless the activity’s primary purpose is to impound water.
- (b)** To qualify for Category 1, new and replacement wetland crossings that are permanent shall be culverted, spanned or bridged in such a manner as to preserve hydraulic and ecological connectivity between the wetlands on either side of the road. Closed bottom culverts shall be embedded with a natural bottom.
- (c)** In the case of non-compliance, the permittee shall take necessary measures to correct wetland damage due to lack of hydraulic and ecological connectivity.
- (d)** Any work that results in flooding, impacts to wetlands on either side of the wetland crossing in excess of Category 1 thresholds, or impacts wetland drainage from the upgradient side of the wetland crossing does not qualify for Category 1.

Additional sources of information:

See the RI DEM's BMP manual for information on properly constructed wetland crossings at: www.dem.ri.gov/programs/benviron/water/permits/fresh/wetbmp.htm.

23. Discharge of Pollutants.

(a) All activities involving any discharge of pollutants into waters of the U.S. (includes wetlands) authorized under the GP shall be consistent with applicable water quality standards, effluent limitations, standards of performance, prohibitions, and pretreatment standards and management practices established pursuant to the CWA (33 USC 1251) and applicable state and local laws. If applicable water quality standards, limitations, etc. are revised or modified during the term of this GP, the authorized work shall be modified to conform with these standards within six months of the effective date of such revision or modification, or within a longer period of time deemed reasonable by the Corps in consultation with the EPA. Applicants may presume that state water quality standards are met with issuance of the WQC (applicable only to Section 404 activities).

(b) All projects authorized by this GP shall be designed, constructed and operated to minimize or eliminate the discharge of pollutants.

(c) All activities involving any discharge of pollutants into waters of the U.S., including wetlands, authorized under this GP must comply with Section 402 [33 U.S.C. 1342] of the CWA and the requirements of the National Pollutant Discharge Elimination System (40 CFR 122).

24. Spawning Breeding and Migratory Areas. Activities and impacts such as excavations, Discharges of dredged or fill material, and/or suspended sediment producing activities in fish migratory areas, fish and shellfish spawning or nursery areas, or amphibian and migratory bird breeding areas, during spawning or breeding seasons shall be avoided and minimized to the maximum extent practicable.

25. Storage of Seasonal Structures. Coastal structures such as pier sections and floats, that are removed from the waterway for a portion of the year (often referred to as seasonal structures) shall be stored in an upland location located landward of mean high water (MHW) and not in tidal wetlands or mudflats. These seasonal structures may be stored on the fixed, pile-supported portion of the structure that is seaward of MHW. This is intended to prevent structures from being stored on the marsh substrate, mudflats, or the substrate seaward of MHW. Seasonal storage of structures in navigable waters, e.g., in a protected cove on a mooring, requires Corps and local harbormaster approval.

26. Environmental Functions and Values. The permittee shall make every reasonable effort to carry out the construction or operation of the work authorized herein in a manner that maintains as much as is practicable, and minimize any adverse impacts on existing fish, wildlife, and natural environmental values.

27. Invasive Species.

(a) The introduction, spread, or the increased risk of invasion of invasive plant or animal species on the project site, into new or disturbed areas, or areas adjacent to the project site caused by the site work is prohibited.

(b) Unless otherwise directed by the Corps, all applications for Category 2 inland projects and Category 2 coastal fill projects proposing fill in Corps jurisdiction shall include an Invasive Species Control Plan (ISCP).

Additional sources of information:

(a) Information on what are considered as invasive species is provided in the New England District's "Compensatory Mitigation Guidance" document at www.nae.usace.army.mil/regulatory >> Mitigation >> Compensatory Mitigation Guidance. The Invasive Species section has a reference to our "Invasive Species Control Plan (ISCP) Guidance" document, located at www.nae.usace.army.mil/regulatory >> Invasive Species. This provides information on preparing an ISCP.

(b) The June 2009 "Corps of Engineers Invasive Species Policy" at www.nae.usace.army.mil/regulatory >> Invasive Species, provides policy, goals and objectives.

28. Inspections. The permittee shall allow the Corps to make periodic inspections at any time deemed necessary in order to ensure that the work is being or has been performed in accordance with the terms and conditions of this GP. The Corps may also require post-construction engineering drawings for completed work or post-dredging survey drawings for any dredging work. To facilitate these inspections, for Category 2 projects the permittee shall complete and return to the Corps the following when requested by the Corps 1) Work-Start Notification Form and 2) Compliance Certification Form whenever either is provided with a Category 2 authorization letter.

29. Maintenance.

(a) The permittee shall maintain the work authorized herein in good condition and in conformance with the terms and general conditions of this permit.

(b) This does not include maintenance of dredging projects. Each maintenance dredging event exceeding the Category 1 thresholds (see Appendix A, Page 6) requires a new written Corps authorization unless an unexpired, written Corps authorization specifies that the permittee may "dredge and maintain" an area for a particular time period. Category 1 or 2 maintenance dredging includes only those areas and depths previously authorized and dredged.

(c) Some maintenance activities may not be subject to regulation under Section 404 in accordance with 33 CFR 323.4(a)(2) (see Appendix B, Endnote ???).

(d) See www.nae.usace.army.mil/regulatory >> Useful Links and Documents >> Other for inland mosquito ditching and maintenance information. See "Regulatory/Permitting," and then "Other."

30. Property Rights. This GP 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.

31. Transfer of GP Verifications. When the structures or work authorized by this GP are still in existence at the time the property is transferred, the terms and conditions of this GP, including any special conditions, will continue to be binding on the entity or individual who received the GP verification, as well as the new owner(s) of the property. The permittee may transfer responsibilities and obligations under the GP verification to the new owner by submitting a letter to the Corps to validate the transfer. A copy of the GP verification must be attached to the letter and the letter must contain the following statement and signature: "When the structures or work authorized by this GP are still in existence at the time the property is transferred, the terms and conditions of this GP, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this GP and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

32. Modification, Suspension, and Revocation. This GP or any work authorize under Category 1 or 2 may be either modified, suspended, or revoked, in whole or in part, pursuant to the policies and procedures of 33 CFR 325.7. Any such action shall not be the basis for any claim for damages against the U.S.

33. Restoration Directive. The permittee, upon receipt of a notice of revocation of authorization under this GP, 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.

34. Special Conditions. The Corps may independently, or at the request of the Federal resource agencies, impose other special conditions on a project authorized pursuant to this GP that are determined necessary to minimize adverse navigational and/or environmental effects or based on any other factor of the public interest. Failure to comply with all terms and general conditions of the authorization, including special conditions, constitutes a permit violation and may subject the permittee to criminal, civil or administrative penalties and/or an ordered restoration.

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

36. Abandonment. If the permittee decides to abandon the activity authorized under this GP, unless such abandonment is merely the transfer of property to a third party, he/she may be required to restore the area to the satisfaction of the Corps.

37. Enforcement cases. The GP does not apply to any existing or proposed activity in Corps jurisdiction associated with an ongoing Corps or EPA enforcement action, until such time as the enforcement action is resolved or the Corps or EPA as appropriate determines that the activity may proceed independently without compromising the enforcement action.

Duration of Authorization/Grandfathered:

38. Duration of Authorization. This GP expires five years from the effective date noted on Page 1 of this document. Activities authorized under this GP that have commenced (i.e., are under construction) or are under contract to commence before this GP expires will have an additional year from this GP's expiration date to complete the work. The permittee must be able to document to the Corps' satisfaction that the project was under construction or under contract by the appropriate date. If work is not completed within the one year extended timeframe, the permittee must contact the Corps prior to commencing work. The Corps may issue a new authorization provided the project meets the terms and conditions of the RI GP current at the time.

39. Previously Authorized Activities:

(a) Projects that received authorization (Category 1 or 2) from the Corps and that were completed under the previous GPs, nationwide permits, regional general permits or letters of permission, shall remain authorized.

(b) Activities authorized pursuant to 33 CFR 330.3 ("Activities occurring before certain dates") are not affected by this GP.

(c) Any work not commenced or completed that has written authorization from the Corps, DEM or CRMC under the GP in effect between February 13, 2007 and February 13, 2012 is considered authorized under Category 1 of this GP. The terms and general conditions of this GP apply along with any special conditions in the previous written authorization. The new expiration date for the work is the same as the state's expiration date unless the work is exempt or not regulated by the state, in which case the expiration date coincides with the expiration date of this GP.

DISTRICT ENGINEER **DATE**

APPENDIX A: DEFINITION OF CATEGORIES

I. INLAND WATERS & WETLANDS	<p>Inland Waters and Wetlands: Waters that are regulated under Section 404 of the Clean Water Act, including rivers, streams, lakes, ponds and wetlands [33 CFR 328.4)(c)], excluding Section 10 Navigable Waters of the U.S. The jurisdictional limits are the ordinary high water (OHW) mark in the absence of adjacent wetlands, beyond the OHW mark to the limit of adjacent wetlands when adjacent wetlands are present, and the wetland limit when only wetlands are present. For the purposes of this GP, fill placed in the area between the mean high water (MHW) and the high tide line (HTL), and in the bordering and contiguous wetlands¹ to tidal waters are reviewed in the Navigable Waters section (see Page 3).</p> <p>Projects not meeting Category 1 must apply/report to the Corps as either a Category 2 or Individual Permit project. Projects not qualifying for Category 1 or 2 require an Individual Permit. See the <u>Individual Permit Procedures on Page 4</u>. All Category 1 and 2 projects must comply with all of this GP's applicable terms (Pages 1 – 4) and general conditions (Pages 5 – 17).</p>	
	CATEGORY 1²	CATEGORY 2
<p>(a) NEW FILL/ EXCAVATION DISCHARGES</p>	<p>1. <5,000 SF of inland waterway and/or wetland fill and associated secondary impacts³, (e.g., waters of the U.S. that are drained, flooded, fragmented, mechanically cleared or excavated). Fill area includes all temporary and permanent fill areas⁴ and regulated discharges associated with excavation. Construction mats and corduroy roads⁵ are considered as fill [see General Condition (GC) 17].</p> <p><u>Work in this category excludes:</u></p> <ul style="list-style-type: none"> • Work in vernal pools⁷ (VPs) or within 100 FT of the VP's edge when Corps jurisdiction is triggered. • Work in special aquatic sites (SAS)⁸ other than wetlands. 	<p>1. 5,000 SF to 1 acre waterway and/or wetland fill and secondary impacts, (e.g., waters of the U.S. that are drained, flooded, fragmented, mechanically cleared or excavated). Fill area includes all temporary and permanent fill areas⁴. Construction mats and corduroy roads⁵ are considered as fill (see GC 17).</p> <p>2. Projects with proactive restoration⁹ as a primary purpose with impacts of any area \geq5,000 SF. The Corps, in consultation with Federal and State agencies, must determine that net adverse effects are not more than minimal.</p> <p>3. Specific activities with impacts \geq5,000 SF required to affect the containment, stabilization, or removal of hazardous or toxic waste materials performed, ordered or sponsored by a government agency with established legal or regulatory authority. Wetlands must be restored in place.</p> <p>4. Work in VPs or within 100 FT of the VP's edge when Corps jurisdiction is triggered. Wetland fill and/or secondary impacts (e.g., site clearing, grading and construction activities) should be limited to <25% of the VP habitat⁷. Roads & driveways should be excluded from the VP envelope⁷. The applicant shall delineate all VPs on the property when any work (upland or wetland/waterway) will occur within 200' of the VP.</p> <p>5. Temporary structures, work, and discharges (e.g., construction mats) \geq5000 SF necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps or not subject to Corps regulation.</p>

	CATEGORY 1 ²	CATEGORY 2
(b) BANK STABILIZATION PROJECTS	<p>Inland bank stabilization activities necessary for erosion prevention.</p> <p>Provided:</p> <ul style="list-style-type: none"> • Work complies with all GCs (GCs 19 & 21 in particular), • <100 FT long and <1 CY of fill per linear foot average along the bank waterward of OHW, • No structures angled steeper than 3H:1V • Only angular or subangular stone or fiber roll revetments allowed. • No unconfined fill or excavation in flowing waters (see GC 21). Proper management techniques and water diversions are required. See GC 21(e). • In-stream work limited to Jul 1 – Oct 1 [See GC 21(e)]. • No discharges of dredged or fill material into SAS⁸ • No material is of the type, or is placed in any location, or in any manner, to impair surface water flow into or out of any water of the U.S. • No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas). • No stream channelization activities. 	<p>Inland bank stabilization projects ≥ 100 FT long or ≥ 1 CY per linear foot below OHW.</p>
(c) RIVER/ STREAM/ BROOK WORK & CROSSINGS and WETLAND CROSSINGS	<ul style="list-style-type: none"> • River, stream and brook work and crossings must comply with the GCs (GC 21 in particular). • No open trench excavation in flowing waters • No slip lining. • Fill must be <5000 SF. 	<ol style="list-style-type: none"> 1. Work in riffles and pools⁸. 2. Stream relocations. 3. Dams and dikes. 4. Dam removal projects with proactive restoration⁹ as a primary purpose with impacts of any area $\geq 5,000$ SF. The Corps, in consultation with Federal and State agencies, must determine that net adverse effects are not more than minimal.

	CATEGORY 1 ²	CATEGORY 2
(d) REPAIR AND MAINTENANCE OF AUTHORIZED FILLS	<ul style="list-style-type: none"> • Repair/maintenance of existing, currently serviceable, authorized fills with no expansion or change in use. • Conditions of the original authorization apply • Minor deviations in fill design allowed¹⁰. • Includes structures or fills destroyed or damaged by storms, floods, fire or other discrete events is authorized, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. 	<p>1. Repair/maintenance of existing, currently-serviceable, authorized fills; or replacement of non-serviceable authorized fills, <1 acre, including expansion or a change in use.</p>
(e) MISC.	<p>1. Activities required for the containment and cleanup of oil and hazardous substances that are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 300) provided that the work is done in accordance with the Spill Control and Countermeasure Plan required by 40 CFR 112.3 and any existing state contingency plan and provided that the Regional Response Team (if one exists in the area) concurs with the proposed containment and cleanup action. SAS⁸ must typically be restored in place at the same elevation.</p> <p>2. Scientific measurement devices whose purpose is to measure and record scientific data, such as staff gages, water recording devices, water quality testing and improvement devices, and similar structures. This excludes any biological sampling devices. Structures may not restrict movement of aquatic organisms.</p> <p>3. Survey activities, such as core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil surveys, sampling, and historic resources surveys (but not recovery). Exploratory trenches must be restored in accordance with GC 19. The construction of temporary pads is authorized provided the discharge doesn't exceed 25 CY. This doesn't authorize permanent structures or the drilling and the discharge of excavated material from test wells for oil and gas exploration (the plugging of such wells is authorized).</p> <p>4. Maintenance, repair, and emergency repair of high, significant and low hazard dams performed in accordance with RI DEM Rules and Regulations for Dam Safety. Associated wetland impacts that don't meet the definition of maintenance in (d) Category 1 above are limited to <5000 SF.</p>	<p>1. Maintenance, repair, and emergency repair of high, significant and low hazard dams performed in accordance with RI DEM Rules and Regulations for Dam Safety with associated wetland impacts ≥ 5000 SF not meeting the definition of maintenance in (d) Category 1 above.</p>

II. NAVIGABLE WATERS	Navigable Waters of the U.S. Waters that are subject to the ebb and flow of the tide (Section 10 Rivers and Harbors Act of 1899) (33 CFR 329). The jurisdictional limits are the mean high water (MHW) line in tidal waters. For the purposes of this GP, fill placed in the area between MHW and the high tide line (HTL), and in the bordering and contiguous wetlands ¹ to tidal waters are also reviewed in this Navigable Waters section.			
Projects not meeting Category 1 must apply/report to the Corps as either a Category 2 or Individual Permit project.				
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th style="width:50%; text-align: left;">CATEGORY 1²</th> <th style="width:50%; text-align: left;">CATEGORY 2</th> </tr> </table>			CATEGORY 1 ²	CATEGORY 2
CATEGORY 1 ²	CATEGORY 2			
(a) FILL	<ul style="list-style-type: none"> • No provisions for new or previously unauthorized fills in Category 1, other than: • Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the U.S., including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills provided the U.S. Coast Guard authorizes such discharges as part of the bridge permit. Causeways and approach fills are not included in this category and require Category 2 or Individual Permit authorization. 	<ol style="list-style-type: none"> 1. <1 acre temporary or permanent fill, excavation and/or secondary impacts (e.g., areas drained, flooded, fragmented or mechanically cleared). Fill area includes all temporary and permanent waterway fills, and temporary fills in special aquatic sites (SAS)⁸, provided: <ul style="list-style-type: none"> • Temporary or permanent fill in vegetated shallows¹¹ <1000 SF. • Permanent fill in SAS⁸ (excluding vegetated shallows¹¹) <4300 SF. 2. State-approved mosquito control using open-marsh water management (OMWM) techniques. 3. Fills with proactive restoration⁹ (SAS⁸, saltmarsh, vegetated shallows¹¹, anadromous fish run, etc.) as a primary purpose with any amount of impact. The Corps, in consultation with Federal & State agencies, must determine that net adverse effects are not more than minimal. 4. Projects using creosote-treated materials in any water or wetland require an Individual Permit. 		
(b) REPAIR AND MAINTENANCE WORK	Repair or maintenance of: <ul style="list-style-type: none"> • Existing, currently serviceable, authorized structures and fills. • Recreational docks authorized under RI Amnesty Program provided that they are outside Federal Navigation Projects (FNP)¹² <p><u>Provided:</u></p> <ul style="list-style-type: none"> • No expansion or change in use. • Must be rebuilt in same footprint, however minor deviations in structure design allowed.¹⁰ 	Repair/maintenance of currently serviceable authorized fills with expansion or a change in use <1 acre. Replacement of non-serviceable authorized fills, including expansion or a change in use, totaling <1 acre. Repair/maintenance of currently serviceable authorized structures w/expansion where the structure (existing + expansion) qualifies for Cat 2 [see (e) below]. Replacement of non-serviceable authorized structures w/expansion where the structure (existing + expansion) qualifies for Cat 2 [see (e) below].		

	CATEGORY 1 ²	CATEGORY 2
(c) DREDGING	<p>Maintenance dredging¹³ for navigational purposes <1,000 CY with upland disposal. Includes return water from upland contained disposal area.</p> <p><u>Provided:</u></p> <ul style="list-style-type: none"> • Dredging & disposal operation limited to Nov 1 - Jan 15. • No impact to SAS⁸. • No dredging in intertidal areas. • Proper siltation controls are used. 	<ol style="list-style-type: none"> 1. Maintenance dredging¹³ ≥1,000 CY. 2. Improvement dredging¹³ <10,000 CY (unlimited volumes within existing marina perimeter limits, provided: <ul style="list-style-type: none"> • No impacts to SAS⁸ • Disposal includes: 1.upland; 2.beach nourishment of any area provided the primary purpose of the dredging is navigation or the sand is from an upland source; or 3.open water & confined aquatic disposal, if Corps, in consultation with Federal and State agencies, finds the material suitable. • New dredging at marinas is within the existing CRMC-approved marina perimeter limit, does not result in detrimental changes to tidal circulation patterns within the project area, and side slopes are maintained so as to cause no detrimental impacts to nearby SAS⁸ or salt marsh. 3. Projects with proactive restoration⁹ as a primary purpose with impacts of any area. The Corps, in consultation with State and Federal agencies, must determine that net adverse effects are not more than minimal. 4. Specific activities with impacts of any area or cubic yardage required to affect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority may be reviewed as a Cat. 2 project. Wetlands must be restored in place.
(d) MOORINGS	<ol style="list-style-type: none"> 1. Outhauls permitted by a CRMC-approved municipal harbor management plan (HMP). See CRMC 300.4.B.7. 2. All private, non-commercial, non-rental, single-boat moorings, provided: <ul style="list-style-type: none"> • Authorized by the local harbormaster. • Within a CRMC-approved HMP area. • No interference with navigation. • Not located within the buffer zone of the horizontal limits of a Federal Channel¹². • Not located in SAS⁸. Prior to installation of mooring, a site-specific vegetated shallow¹¹ survey should be conducted to document that vegetated shallows are not present. 	<ol style="list-style-type: none"> 1. Moorings that don't meet the terms of Category 1. 2. Moorings associated with a boating facility¹⁵. A vegetated shallow¹¹ survey may be required. 3. Moorings located such that they, and/or vessels docked or moored at them, are within the buffer zone of the horizontal limits of a Federal Channel¹². The buffer zone is equal to 3 times the authorized depth of that channel. 4. Moorings such that they, and/or vessels docked or moored at them, extend into the horizontal limits of a Federal Channel¹³ require an Individual Permit. <p>For 1-4 above, siting of new individual moorings in SAS⁸, including vegetated shallows¹¹, should be avoided to the maximum extent practicable. If SAS⁸ cannot be avoided, plans should show elastic mooring systems that prevent mooring chains from resting or dragging on the bottom substrate at all tides and helical anchors, or equivalent SAS⁸ protection systems, where practicable.</p>

<p>(d) MOORINGS (continued)</p>	<p><u>In addition, for minor relocation of previously authorized moorings and moored floats:</u></p> <ul style="list-style-type: none"> • Cannot be relocated into a Federal Navigation Project¹² other than a Federal Anchorage¹² • Existing moorings not in SAS⁸ may not be relocated to SAS⁸. • When existing moorings in SAS⁸ are replaced or upgraded, low impact mooring technology that eliminates contact with the bottom substrate at all tides, such as helical anchors and elastic or other floating mooring tackle (i.e., no dragging chains), shall be employed. 	
CATEGORY 1²		CATEGORY 2
<p>(e) PILE-SUPPORTED STRUCTURES AND FLOATS</p>	<ol style="list-style-type: none"> 1. Reconfiguration of existing authorized docks. <ul style="list-style-type: none"> • No additional slips and no expansion. • Includes reconfiguration within CRMC-approved perimeters. 2. Boat and float lifts at authorized residential docks. 3. Private, bottom-anchored floats ≤ 400 SF, and private, pile-supported structures for navigational access to the waterway ≤ 400 SF with attached floats ≤ 150 SF. <p><u>Provided:</u></p> <ul style="list-style-type: none"> • Floats supported at least 2' above the substrate during all tides. • Pile-supported structures & floats are not located within 25' of vegetated shallows¹¹ and moored vessels are not positioned over SAS⁸. • Pile-supported structures are $\leq 4'$ wide and have at least a 1:1 height to width ratio¹⁶. • Extend ≤ 75 FT waterward from MHW. • No structure extends across $>25\%$ of the waterway width at MLW. • Not located within the buffer zone of the horizontal limits of an FNP¹³. • State license issued. • Not associated with a boating facility.¹⁵ 	<ol style="list-style-type: none"> 1. Private structures and floats that do not meet the terms of Category 1. 2. Structures or floats located such that they, and/or vessels docked or moored at them, are within the buffer zone of the horizontal limits of a FNP¹². 3. Structures or floats located such that they and/or vessels docked or moored at them are within the horizontal limits of an FNP¹² require an Individual Permit. 4. Structures or floats associated with a new or previously unauthorized boating facility.¹⁴ 5. Expansions to existing boating facilities¹⁵ <p>Projects using creosote-treated materials in any water or wetland requires an Individual Permit.</p>

	CATEGORY 1 ²	CATEGORY 2
(f) MISC.	<ol style="list-style-type: none"> 1. Temporary buoys, markers, floats, etc. for recreational use during specific events, provided that they are removed within 30 days after use is discontinued. 2. The placement of aids to navigation and regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard. (See 33 CFR 66, Chapter I, subchapter C). 3. Activities required for the containment and cleanup of oil and hazardous substances that are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 300) provided that the work is done in accordance with the Spill Control and Countermeasure Plan required by 40 CFR 112.3 and any existing state contingency plan and provided that the Regional Response Team (if one exists in the area) concurs with the proposed containment and cleanup action. SAS⁸ must typically be restored in place at the same elevation. 4. Fish and wildlife harvesting, enhancement and attraction devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, and clam and oyster digging, and small fish attraction devices such as open-water fish concentrators (sea kites, etc.). Provided: <ul style="list-style-type: none"> • No activity results in a hazard to navigation; • This does not authorize artificial reefs or impoundments and semi-impoundments of waters of the U.S. for the culture or holding of motile species such as lobster, or the use of covered oyster trays or clam racks. 5. Scientific measurement devices whose purpose is to measure and record scientific data, such as staff gages, water recording devices, water quality testing and improvement devices, and similar structures. Structures may not restrict movement of aquatic organisms. No activity results in a hazard to navigation. 6. Survey activities such as exploratory drilling, surveying and sampling activities, excluding any biological sampling devices. Does not include oil and gas exploration and fill for roads or construction pads. No activity results in a hazard to navigation. 7. Research, educational, commercial-viability or experimental aquaculture projects that don't exceed 1,000 SF in area, culture indigenous species only, use only "transient gear" type cages or bottom culture with predator netting, are marked to inform mariners of the location of the gear, have a minimum clearance of 4 FT between the top of the gear and the elevation of MLW in areas where the elevation of the sea floor is above -15 FT MLW, have a minimum clearance of 10 FT between the top of the gear and the elevation of MLW in areas where the elevation of the sea floor is equal to or below -15 FT MLW, and have been reviewed and approved in writing by the RICRMC and the RIDEM Divisions of Water Quality and Fish and Wildlife. 	<ol style="list-style-type: none"> 1. Aquaculture projects that do not meet the terms of Category 1. 2. Structures/work in or affecting tidal or navigable waters that are not defined under any other headings. Includes but is not limited to utility lines, aerial transmission lines, pipelines, outfalls, boat ramps, bridges, tunnels and horizontal directional drilling activities seaward of the MHW line. 3. EIS required by the Corps requires an Individual Permit.

Appendix B: Definitions and Acronyms

¹ **Bordering and Contiguous Wetlands:** A bordering wetland is immediately next to its adjacent waterbody and may lie at, or below, the OHW mark (MHW in navigable waters) of that waterbody and is directly influenced by its hydrologic regime. Contiguous wetlands extend landward from their adjacent waterbody to a point where a natural or manmade discontinuity exists. Contiguous wetlands include bordering wetlands as well as wetlands that are situated immediately above the ordinary high water mark and above the normal hydrologic influence of their adjacent waterbody. Note, with respect to the Federally designated navigable rivers, the wetlands bordering and contiguous to the tidally influenced portions of those rivers are reviewed under “II. Navigable Waters.”

² **Regulation:** Either CRMC or DEM must regulate an activity for it to be considered eligible for authorization under Category 1 of the Rhode Island GP. Category 1 doesn’t apply to activities exempt from State regulation or on the Narragansett Land Claim Settlement Area. These activities must report to the Corps.

³ **Direct, Secondary, and Cumulative Impacts/Effects:**

Direct Impacts: The immediate loss of aquatic ecosystem within the footprint of the fill.

Secondary Impacts: These are effects on an aquatic ecosystem that are associated with a discharge of dredged or fill materials, but do not result from the actual placement of the dredged or fill material. Information about secondary effects on aquatic ecosystems shall be considered prior to the time final section 404 action is taken by permitting authorities. Some examples of secondary effects on an aquatic ecosystem are a) fluctuating water levels in all impoundment and downstream associated with the operation of a dam, b) septic tank leaching and surface runoff from residential or commercial developments on fill, and c) leachate and runoff from a sanitary landfill located in waters of the U.S. Put another way, secondary effects are those impacts outside the footprint of the fill that arise from and are associated with the discharge of dredged or fill material, including the operation of an activity or facility associated with the discharge. Examples may include habitat fragmentation; interruption of travel corridors for wildlife (for example, for amphibians that migrate to and from seasonal or vernal pools used as breeding habitat); hydrologic regime changes; and impacts from operation and maintenance activities for constructed facilities; such as noise/lighting, storm water runoff, and road kill of wetland dependent wildlife. Using the directions contained in the guidelines, we consider the circumstances of a proposed discharge and the project of which it is a part to evaluate the scope, extent, severity, and permanence of direct, secondary, and cumulative adverse effects upon the aquatic ecosystem.

Cumulative Impacts: The changes in an aquatic ecosystem that are attributable to the collective effect of a number of individual discharges of dredged or fill material. Although the impact of a particular discharge may constitute a minor change in itself, the cumulative effect of numerous such piecemeal changes can result in a major impairment of the water resources and interfere with the productivity and water quality of existing aquatic ecosystems.

⁴ **Fill:** Material placed in waters of the U.S. where the material has the effect of either replacing any portion of a water of the U.S. with dry land or changing the bottom elevation of any portion of a water. (33 CFR 323)

⁵ **Construction Mats:** Constructions, swamp and timber mats (herein referred to as “construction mats”) are generic terms used to describe structures that distribute equipment weight to prevent wetland damage while facilitating passage and providing work platforms for workers and equipment. They are comprised of sheets or mats made from a variety of materials in various sizes. A timber mat consists of large timbers bolted or cabled together. Corduroy roads, which are not considered to be construction mats, are cut trees and/or saplings with the crowns and branches removed, and the trunks lined up next to one another. Corduroy roads are typically installed as permanent structures. Like construction mats, they are considered as fill whether they’re installed temporarily or permanently.

⁷ **Vernal Pools and Habitat:** Vernal pools are confined basin depressions with water for two or more continuous months in the spring and/or summer, for which evidence of one of more of the following indicator vernal pools species: wood frogs (*Rana sylvatica*), mole salamanders (*Ambystoma* spp), and fairy shrimp (*Eubranchipus* spp) has been documented **OR** for which evidence of two or more of the following facultative organisms: caddisfly (*Trichoptera*) larvae casings, fingernail clams (*Sphaeriidae*), or amphibious snails (*Basammatophora*) and evidence that the pool does not contain an established reproducing fish population has been documented. Vernal pool habitat is the seasonal pool depression, seasonal pool envelope (100 FT radius from the pool edge) and seasonal pool terrestrial habitat (750 FT radius from the pool edge).

⁸ **Special Aquatic Sites:** Include inland & saltmarsh wetlands, mud flats, vegetated shallows (11 below), coral reefs, and riffle & pool complexes. (40 CFR 230)

⁹ **Proactive Restoration:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former wetland (called re-establishment) or a degraded wetland (called rehabilitation). Restoration means the result of actions which, in the opinion of the Federal

and State resource agencies, reinstates, or will reinstate, insofar as possible, the functions and values of a wetland which has been altered. Restoration is the re-creation or rehabilitation of wetland ecosystems whose natural functions have been destroyed or impaired.

¹⁰ **Maintenance:** In accordance with 33 CFR 323.4(a)(2), any discharge of dredged or fill material that may result from any of the following activities is not prohibited by or otherwise subject to regulation under Section 404 of the CWA: “Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures. Maintenance does not include any modification that changes the character, scope, or size of the original fill design.” (This could include replacement work if it meets this definition, and stream crossings typically must be an exact replica crossing in the same footprint to qualify.) Otherwise, the following work is regulated and subject to the Category 1 or 2 thresholds above in Appendix A, Pages ? and ?: The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3 – “Activities occurring before certain dates,” provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure’s configuration or filled area, including those due to changes in materials, construction techniques, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. Currently serviceable means useable as is or with some maintenance, but not so degraded as to essentially require reconstruction. Only structures or fills that were previously authorized and are in compliance with the terms and condition of the original authorization can be maintained as a non-regulated activity under 33 CFR 323.4(a)(2), or in accordance with the Category 1 or 2 thresholds in Appendix A. Note: The State’s maintenance provisions may differ from the Corps and may require reporting and written authorization from the State. Maintenance and replacements of stream crossings: An existing stream crossing must be authorized, serviceable, and in compliance with all conditions of its authorization(s) to qualify for maintenance that is not prohibited by or otherwise subject to regulation under Section 404 of the CWA. See 33 CFR 323.4(a)(2). Proponents are encouraged to contact the Corps for guidance.

¹¹ **Vegetated Shallows:** These are a type of SAS as defined under the 404(b)(1) Guidelines at 40 CFR 230. Vegetated Shallows are permanently inundated areas that under normal circumstances support communities of rooted aquatic vegetation in estuarine or marine systems as well as a number of freshwater species in rivers and lakes. In Rhode Island vegetated shallows in subtidal areas typically include, but are not limited to, eelgrass and widgeon grass (*Rupia maritima*). (Vegetated shallows don’t include salt marsh.)

¹² **Federal Navigation Projects (FNPs):** FNPs are comprised of Federal channels and Federal anchorages. Contact the Corps for their location and information. **Horizontal Limits:** The outer edge of an FNP. **Buffer Zone:** Equal to three times the authorized depth of that channel.

¹³ **Maintenance Dredging.** Includes areas and depths previously authorized by the Corps and dredged. **New Dredging:** Includes dredging proposed in previously un-dredged areas and/or in areas exceeding previously authorized dimensions (deeper or wider than previously authorized) excluding normal overdredge. **Waters of the United States** is a broader term than navigable waters of the United States defined above. This term includes navigable waters and all their tributaries, adjacent wetlands and other waters or wetlands where degradation or destruction could affect interstate or foreign commerce. Permits are required for the discharge of dredged or fill material in these waters pursuant to Section 404 of the Clean Water Act. **Navigable Waters of the United States** are those waters of the United States that are subject to the ebb and flow of the tide shoreward to the mean high water line and/or those waters that are presently used, or have been used in the past or may be susceptible to use for interstate or foreign commerce. These are waters that are navigable in the traditional sense. Permits are required in these waters pursuant to Section 10 of the Rivers and Harbors Act. This term should not be confused with the term *waters of the United States* (below).

Mean High Water Line, with respect to ocean and coastal waters, is the line on the shore established by the average of all high tides. It is established by survey based on available tidal data (preferably averaged over a period of 18.6 years because of the variations in tide). In the absence of such data, less precise methods to determine the mean high water mark are used, such as physical markings, lines of vegetation or comparison of the area in question with an area having similar physical characteristics for which tidal data are readily available.

Mean Low Water Line

High Tide Line is a line or mark left upon tidal flats, beaches, or along shore objects that indicates the intersection of the land with the water’s surface at the maximum height reached by a rising tide. The high tide line may be determined by tidal gages, physical markings or characteristics, vegetation lines, a more or less continuous deposit of fine shell or debris on the foreshore or berm, or other suitable means such as a line of oil or scum along the shore that delineate the general

height reached by a rising tide. The term includes spring high tides and other high tides that occur with periodic frequency, but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Ordinary High Water Line, with respect to non-tidal waters, is the line on shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed upon the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Appendix C: Contacts and Tribal Areas of Interest

1. FEDERAL

U.S. Army Corps of Engineers

New England District, Regulatory Division
696 Virginia Road
Concord, Massachusetts 01742-2751
(800) 343-4789 or (978) 318-8335
(978) 318-8303 fax

U.S. Environmental Protection Agency

U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912
(617) 918-1397

Federal Endangered Species

U.S. Fish and Wildlife Service
50 Bend Road
Charlestown, Rhode Island 02813
(401) 364-9124

National Marine Fisheries Service
55 Great Republic Drive
Gloucester, Massachusetts 01930

Bridge Permits

Commander (obr)
First Coast Guard District
One South Street - Battery Bldg
New York, New York 10004
(212) 668-7021

2. STATE

RI Department of Environmental Management
Water Resources/Freshwater Wetlands
235 Promenade Street
Providence, Rhode Island 02908
(401) 222-6820
(401) 222-6177 (fax)

RI Coastal Resources Management Council
Oliver Stedman Government Center
4808 Tower Hill Road Wakefield, Rhode Island
Wakefield, Rhode Island 02879-1900
(401) 783-3370
(401) 783-3767 (fax)

State Endangered Species

Department of Environmental Management.
Natural Heritage Program
235 Promenade Street
Providence, Rhode Island 02908
(401) 222-2776

3. HISTORIC RESOURCES

Rhode Island Historical Preservation & Heritage Commission
150 Benefit Street
Providence, Rhode Island 02908
(401) 222-2678
(401) 222-2968 (fax)

Tribal Historic Preservation Office
Narragansett Tribe
P.O. Box 700
Wyoming, Rhode Island 02898
(401) 539-1190
(401) 742-5048 (cell)
(401) 539-4217 (fax)

Tribal Historic Preservation Office
Wampanoag Tribe of Gay Head (Aquinnah)
20 Black Brook Road
Aquinnah, Massachusetts 02535-1546
(508) 645-9265 (phone); (508) 645-3790 (fax)
Area of Concern: Barrington, Bristol, Central Falls, Cumberland, East Providence, Lincoln, Little
Compton, Middletown, Newport, Pawtucket, Portsmouth, Tiverton, Warren, Woonsocket.

Tribal Resources

Narragansett Indian Land and Water Resource Commission
P.O. Box 700
Wyoming, Rhode Island 02898
(401) 539-1190 (phone); (401) 364-3977 (fax)

4. ORGANIZATIONAL WEBSITES:

Army Corps of Engineers	www.nae.usace.army.mil/reg/index.htm
Army Corps of Engineers Headquarters	www.usace.army.mil (click "Obtain a Permit?")
Environmental Protection Agency	www.epa.gov/owow/wetlands/
National Marine Fisheries Service	www.nmfs.noaa.gov
U.S. Fish and Wildlife Service	www.fws.gov
National Park Service	www.nps.gov/rivers/index.html
RI Dept. of Environmental Management	www.dem.ri.gov
RI CRMC	www.crmc.ri.gov
RI Division of Fish and Wildlife	www.dem.ri.gov/programs/bnatres/fishwild/index.htm
RI Historic Preservation & Heritage Comm	www.rihphc.state.ri.us
RI GIS	www.planning.ri.gov/gis/gishome.htm
Narragansett Tribe	www.narragansetttribe.com
Wampanoag Tribe	www.wampanoagtribe.net